

## PRODUCT AND PERFORMANCE WARRANTY

### 1. Definitions

1.1. In this document the defined terms have the following meaning:

**“Bayset”** means Bayset Pty Ltd (ABN 27 066 428 877) trading as:

- (a) Bayset Waterproofing Supplies;
- (b) Flooring Products Australia;
- (c) Tiling Products Australia;
- (d) TPA;
- (e) Traymark Flooring Accessories; and
- (f) Waterproofing Products Australia.

**“Product”** means any product sold by Bayset under any of the following Bayset brands:

- (a) Flooring Products Australia (FPA); or
- (b) Tiling Products Australia (TPA); or
- (c) Waterproofing Products Australia (WPA).

**“Warranty Period”** means 10 Years

**“You”, “Your”** means any of the following:

- (a) the customer who purchased the Product; and/or
- (b) the end consumer who owns the building in which the Product is installed.

### 2. Australian Consumer Law

2.1. The Product comes with guarantees that cannot be excluded under the Australian Consumer Law. You may be entitled to a replacement or refund for a major failure of the Product and compensation for any other reasonably foreseeable loss or damage. You may also be entitled to have the Product repaired or replaced if the Product fails to be of acceptable quality and the failure does not amount to a major failure.

2.2. The benefits of Bayset’s warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded. Nothing in Bayset’s warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation applicable to the supply of goods and services which cannot be excluded, restricted or modified.

### 3. Bayset’s Warranty

3.1. Bayset provides the following warranty in relation to the Product. The warranty applies to all colours and finish variants of the Product manufactured and supplied by Bayset.

3.2. Bayset warrants that, subject to the exclusions and limitations below, the Product will:

- (a) be free from manufacturing or material defects; and

(b) perform in accordance with the Product's Technical Data Sheet, for the duration of the Warranty Period. (**“Warranty”**)

3.3. The Warranty Period commences 30 days after the date of purchase of the Product (to allow for the installation of the Product).

## 4. Replacement and Repair

4.1. Subject to the exclusions and limitations below, Bayset agrees that if the Product is not performing in accordance with the Warranty, Bayset will, in its sole discretion:

- (a) replace or repair the Product or the non-performing part of the Product free of charge to You; or
- (b) cause the Product or the non-performing part of the Product to be replaced or repaired by a suitably qualified third party contractor chosen by Bayset at no charge to You.

4.2. Where necessary, Bayset may also, in its sole discretion:

- (a) replace and repair any damaged part of the substrate to which the Product has been directly applied to at no charge to You; or
- (b) cause for the damaged part of the substrate to which the Product has been directly applied to be replaced or repaired by a suitably qualified third party contractor chosen by Bayset at no charge to You.

4.3. If the Product has been concealed by any immediate coverings (for example, tiling), Bayset may also, at its sole discretion:

- (a) remove the immediate coverings to allow access to the non-performing Product; and/or
- (b) reinstate or replace the immediate coverings after the replacement or repair of the non-performing Product,

at Bayset's expense. This is subject to the specific colour and finish of the immediate covering over the area of the non-performing Product still being manufactured or reasonably available. In the event the specific colour and finish of the immediate covering is no longer manufactured or reasonably available, Bayset reserves the right to replace the immediate covering with a similar quality, grade and composition and colour. You cannot object to such an alternative.

4.4. In the event the specific colour and finish of the non-performing Product is no longer manufactured or supplied by Bayset, Bayset reserves the right to replace the non-performing part of the Product with a similar quality, grade and composition and colour. You cannot object to such an alternative.

## 5. Warranty Claims

5.1. You must, within one (1) month of becoming aware that the Product is not performing in accordance with the Warranty, notify Bayset in writing by post or by email using the contact details below:

Bayset Pty Ltd  
P.O. Box 33  
Archerfield BC QLD 4108  
info@bayset.com.au

5.2. A claim will not be accepted by Bayset if:

- a) Bayset has not been paid in full for the Product(s) supplied; or
- b) If applicable, the contractor who purchased the Product(s) from Bayset has not been paid in full for the application of the Product(s); or
- c) notice is not given strictly in accordance with clause 5.1. above; or
- d) the Warranty Period has expired.

5.3. If You are the end consumer who owns the property which the Product is installed, it is a condition of this warranty that You must first, where practicable, notify the contractor who installed the Product of the alleged non-performance of the Product so that they may notify Bayset of the warranty claim on Your behalf. An exception to this condition is where the contractor is no longer trading or refuses or fails to make the warranty claim on Your behalf.

5.4. If You are the contractor who purchased the Product from Bayset and You are notified by the end consumer of an alleged non-performance of the Product, you are required to notify Bayset of the warranty claim on the end consumer's behalf.

5.5. Any warranty claim must be accompanied by:

- (a) Your name, address and contact details;
- (b) proof of purchase of the Product;
- (c) the colour and finish of the Product installed (if external and relevant);
- (d) date and location of the installation of the Product and details of the contractor who installed the Product;
- (e) details and supporting documentation the alleged non-performance identified, including, but not limited to:
  - (i) the date the alleged non-performance was identified;
  - (ii) a description of the alleged non-performance;
  - (iii) any photographs and/or video footage evidencing the nature and extent of the alleged non-performance; and
  - (iv) any reports obtained in respect of the alleged non-performance.

5.6. You must make the Product available to Bayset, and/or its authorised third party, for inspection and testing. You will ensure that reasonable uninterrupted access to the premises where the Product is installed will be granted to allow Bayset or its authorised third party to carry out its inspection and testing.

## 6. Exclusions and Limitations

6.1. To the full extent permitted by law, but subject to the Australian Consumer Law, the Warranty will not apply where:

- (a) the Warranty Period has expired or notice was not given in accordance with 5.1;
- (b) the Product is determined by Bayset to be performing in accordance with the Warranty;
- (c) the Product was used for a purpose other than one for which it was intended for;
- (d) the Product has not been installed, maintained and/or operated in complete compliance with the Product's Technical Data Sheet, any Specification prepared by Bayset, and/or any other instructions issued from time to time by Bayset;

- (e) prior to installation, the Product has been improperly stored;
- (f) the Product was installed in excess of the shelf life on the Product or in the Technical Data Sheet or otherwise specified by Bayset or if no shelf life has been provided, in excess of 12 months from the date of purchase;
- (g) the Product has not been installed in accordance with the relevant Australian Standards, National Construction Code and statutory regulations;
- (h) the Product has been subject to accident, negligence, alteration, additives, abuse or misuse;
- (i) the alleged non-performance of the Product is caused, or otherwise exacerbated by:
  - (i) pre-existing conditions;
  - (ii) structural or substrate failure or movement;
  - (iii) engineering or design defects;
  - (iv) efflorescence;
  - (v) excessive substrate moisture;
  - (vi) exposure to excessive atmospheric temperature, moisture or humidity;
  - (vii) earthquake, landslide, fire, flood, storm, typhoon, cyclone, other natural disaster events or the operation of the forces of nature of catastrophic proportion; and/or
  - (viii) incompatible third-party products.

6.2. If the Product is an exposed or externally used Product, this warranty does not cover the repair or replacement of the Product showing normal wear and tear which is reasonably expected to occur in the Product.

6.3. You acknowledge that the Product may have slight batch colour and size variations which do not constitute a fault with the Product.

6.4. Subject to clause 4 'Replacement and Repair' above, the Warranty does not cover any other consequential or indirect damage incurred as a result of the non-performing Product.

6.5. To the extent permitted by law, Bayset is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate You for any:

- (a) increased costs or expenses;
- (b) loss of profit, revenue, business, contracts or anticipated savings; loss or expense resulting from a claim by a third party; or
- (c) special, indirect or consequential loss or damage of any nature whatsoever, arising from a non-performance of the Product or Bayset's repair or replacement of the Product under this warranty document.

## **7. No Representations / Entire Agreement**

7.1. You agree and acknowledge that this warranty document contains the entire agreement relating to the Warranty.

7.2. To the full extent permitted by law, this warranty document supersedes all other warranties of any kind including whether express or implied by any representations, statement, correspondence or other conditions such as merchantability or fitness for purpose.