

Definitions

As used in this 15-Year Warranty, the following terms have the following meanings:

- “Structure” means a (1) Single-Family Residence (which does not include a manufactured or modular home), (2) a detached unit or building within a multi-family, apartment, condominium or other residential project, or (3) a commercial building.
- “Buyer” means the purchaser of the “Product” and also the first owner of a “Structure” following the construction of and the subsequent installation of the Products.
- “Specifications,” “Characteristics” and “Installation Instructions” are those that Ox Engineered Products® publishes at www.oxengineeredproducts.com and that are in effect on the date of the purchase of the Products from Ox Engineered Products or an authorized reseller.

15-Year Product Warranty

Ox Engineered Products (Seller) warranties to the purchaser (Buyer), ToughSkin HT Ice & Water Guard™ (Product), if installed precisely as stated in the Seller’s installation procedures, the product will be free from manufacturing defects at the time of its delivery to the job site. Any claim by Buyer of a manufacturing defect in the product must be given to Ox Engineered Products, INC, in writing, within thirty (30) days of delivery of the product to the job site. If, upon inspection by Ox Engineered Products, they evidence manufacturing defects, Ox Engineered Products LLC’s liability and Buyer’s exclusive remedy shall be limited to the replacement of the defective membrane product at the F.O.B. point in the original contract of sale.

Buyer must give Seller written notice of any defects, via U.S. certified mail, within 60 days from the date that the defect was discovered, along with field samples illustrating production codes, application details, and digital pictures. Seller reserves the right to reserve warranty claim judgment pending full field sample evaluation. Such notice shall be sent to Ox Engineered Products 22260 Haggerty Road STE 365 Northville, MI 48167; Attention: Technical Manager.

Seller shall, at its sole option and as Buyers sole remedy, repair and/or replace product or refund the purchase price for that portion of the product that has proven defective, within the written warranty conditions. Buyer shall be responsible for all handling and transportation charges.

Failure of Buyer to give Seller proper notice of a defect, and/or unauthorized repairs or alterations, and/or misuse or misapplication of product will void this warranty completely. Seller, at its discretion, retains the right to modify this warranty. This warranty does not cover leaks and/or damage caused by leaks and/or any penetrations (including penetrations by fasteners), or by animals, vandalism, abusive conditions, structural design and defects, alterations, natural forces and acts of nature, or any other causes beyond the Sellers control.

This warranty set forth is the Seller’s sole and exclusive warranty. The Seller’s liability for any claim of any kind and of any loss or damage arising from, in connection with, or resulting from the manufacture, sale, and/or resale of product shall not exceed the purchase price paid for the product, prorated from the date of purchase to the date of discovery of the defect. In no event shall the Seller be held liable for damages, and/or for special incidental, punitive or consequential damages.

No part of this warranty shall be changed or cancelled except in writing as signed by the Seller and Buyer.

Buyer may not assign or transfer this warranty without Seller’s written consent.

Seller makes no other warranties of any kind, expressed or implied as to the warranty of merchantability or use other than the intended purpose.

Exceptions

The above warranty does not apply under the following conditions:

- I. Acts of God, such as hail and strong storms;
- II. Damage to or failure of ToughSkin HT Ice & Water Guard™ as a result of damage to or the failure of the underlying roofing structure.
- III. Any part of the product is exposed to UV after the asphalt shingle roofing material has been installed; or the product has been installed and left uncovered without asphalt shingle or roofing material for more than 180 days;
- IV. Leaks caused by fasteners; or product is installed with non-specified fasteners such as staples.
- V. Damage to ToughSkin HT Ice & Water Guard™ caused by alterations or settlement of the structure happening after completion of application, including structural changes, equipment installation, painting, or the application of cleaning solutions, coatings, or other modifications.
- VI. Product is used for an application outside of the recommended slope as defined in the product application instructions;
- VII. Improper or faulty installation of ToughSkin HT Ice & Water Guard™ (installation must be in accordance with the then current written installation instructions); or Application on roof slopes less than a 2:12 pitch;
- VIII. Re-roofing over existing underlayment or previously installed “Product”.

Additional Limited Warranty Terms

This Limited Warranty is non-transferrable and applies only to Product(s) purchased and installed in the United States on or after February 1, 2021. Neither replacement of Product(s) nor repair of any Structure under this Limited Warranty shall renew or extend the warranty term, such a term to always begin to run from the date of purchase of the Product(s) to which this Limited Warranty applies. This Limited Warranty does not apply to replacement Product(s) and only applies to Product(s) installed during original construction of Structure. No representative, agent or employee of Ox Engineered Products has the authority to modify the terms of this Limited Warranty.

As referenced herein, applicable "Specifications," "Characteristics" and "Installation Instructions" are those published at and in effect on the date of purchase of the applicable Product(s).

How to Make a Warranty Claim

All claims under this Limited Warranty must be made in writing to Ox Engineered Products 22260 Haggerty Road STE 365 Northville, MI 48167; Attention: Technical Manager. All claims must be postmarked no later than sixty (60) days after discovery of the condition giving rise to the claim, and within the warranty period, and must include the name, address and phone number of the claimant, nature of the claim, date of discovery of the condition giving rise to the claim, list of the Product(s) involved and the type, number of stories and address of the Structure affected. All claims also must include acceptable proof, in Ox Engineered Products sole discretion of acceptance, the date of purchase of the Product(s) as well as the approximate date of installation of said affected Product(s).

Inspection

If Ox Engineered Products determines that an inspection or investigation of a claim is necessary, the claimant must provide access for a Ox Engineered Products representative to inspect the Structure specified in the claim and conduct an investigation, including but not limited to taking photographs and samples. Failure to follow these claim procedures will void this Limited Warranty. To the extent permitted by law, any controversy or dispute arising out of or relating to this Limited Warranty, including alleged torts, shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration shall be conducted in Wayne, County MI. Some jurisdictions do not allow for mandatory arbitration, so the above provision may not apply to you.

NOTICE OF ARBITRATION AGREEMENT

This limited warranty provides that all disputes between Owner and HomeGuard® will be resolved by binding arbitration. Owner thus gives up rights to go to court to assert or defend your rights under this limited warranty (except for matters that may be taken to small claims court). Owner rights will be determined by a neutral arbitrator and not a judge or jury. Owner is entitled to a fair hearing, but the arbitration procedures are simpler and more limited than rules applicable in court. Arbitrator decisions are as enforceable as any court order and are subject to very limited review by a court.

Additional Limited Warranty Exclusions and Disclaimers

This Limited Warranty shall not apply to damage to Products or Structures caused by or resulting from any of the following:

- Abuse, mishandling, nonstandard use or application, neglect, improper maintenance, accident, modification, damage or vandalism by any party other than Ox Engineered Products®.
- Foreign objects or agents, or use of materials incompatible with the Products.
- Defects in the Structure or any component of the Structure which prohibits intended and stated performance of Product(s).
- Any penetration of the building envelope of the Structure, unless in accordance with applicable published installation instructions for the Products.
- Use of any Product(s) in an area containing a pool, hot tub, whirlpool, Jacuzzi, steam room, sauna or spa, or any other area exposed to a heightened amount of moisture, humidity or heat.
- Acts of God, including but not limited to lightning, flood, hail or high winds.

ALL IMPLIED WARRANTIES FOR THE PRODUCTS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN DURATION TO THE SHORTER OF THE APPLICABLE STATUTE OF LIMITATIONS OR THE LIMITED WARRANTY PERIOD DESCRIBED ABOVE, AND NO IMPLIED WARRANTIES WILL EXIST OR APPLY AFTER SUCH PERIOD EXPIRES. (Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.)

UNDER NO CIRCUMSTANCES SHALL OX ENGINEERED PRODUCTS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, ARISING FROM THE USE OF, INSTALLATION OF, DEFECT IN, INABILITY TO USE, OR PROPERTY DAMAGE CAUSED BY THE PRODUCTS OR ANY OTHER CAUSE.

IN NO EVENT SHALL Ox Engineered Products® LLC'S LIABILITY, WHETHER IN CONTRACT TORT, STRICT LIABILITY OR OTHERWISE, EVER EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR PART OF THE PRODUCTS, AT ISSUE. THIS LIMITED WARRANTY IS THE ONLY EXPRESSED WARRANTY HOMEGUARD® OFFERS FOR PRODUCTS INSTALLED IN STRUCTURES IN THE UNITED STATES OR CANADA. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF OX ENGINEERED PRODUCTS OR ANY RETAILER HAS THE AUTHORITY TO MODIFY THE TERMS OF THIS LIMITED WARRANTY OR TO OFFER DIFFERENT OR ADDITIONAL WARRANTIES. This Limited Warranty is not transferable. The laws of the State of Michigan (without giving effect to its conflicts of law principles) shall govern all matters relating to this Limited Warranty, including alleged torts.