

XXVIII. Defective Work

A. General Requirements

1. On written notice from Owner, Contractor shall promptly remove from the Job Site all Work or materials not in compliance with the Contract Documents, whether or not such rejected Work or materials are incorporated in the Project. Contractor shall promptly repair or replace such rejected Work or materials at no cost to Owner.

B. Rejected Work - Contractor's Rights

1. If Contractor disagrees with a decision on rejection of Work or materials, Contractor is entitled to an expedited resolution of the issue under the provisions of this agreement which cover dispute resolution. Pending resolution of this dispute, the obligation of Contractor to make correction is suspended. The Contract Time, if any, is extended for the period the dispute remains unresolved.

2. Owner acknowledges and agrees that it may be inappropriate or unreasonably expensive to replace, refabricate or refinish building components with minor Defects or which are damaged slightly due to wear and tear commonly associated with the construction process. Contractor may, at the sole discretion of Contractor, (1) Correct minor Defects using procedures commonly accepted as good construction practice, or (2) Conclude that a cosmetic Defect is acceptable under good construction practice and take no corrective action.

XXIX. Call-Backs

A. On written notice from Owner within 30 Calendar Days after Substantial Completion (the call-back period), Contractor shall promptly repair or replace any portion of the Work which becomes Defective due to faulty materials or workmanship.

B. The obligation of Contractor to repair or replace Defects due to faulty materials or workmanship during the call-back period is in addition to and does not limit any other remedy Owner may have under the Contract Documents, Law, or any warranty provided by Contractor or others. This call-back remedy does not limit the liability of Contractor for Defective Work or limit the time within which proceedings may be commenced to enforce rights and obligations under this agreement.

C. Failure of Owner to give notice of a Defect within the call-back period constitutes a waiver of rights to repair or replacement of that Defect.

XXX. Warranty

A. Pennsylvania extends warranties of habitability and good workmanship to many buyers of construction services. These implied warranties are entirely separate from any express warranty provided by contract or by manufacturers of construction materials. The implied warranty of good workmanship requires what's reasonable under the circumstances, not perfection. The implied warranty of habitability is breached if a defect presents a major impediment to habitation, an issue for a court to decide. By signing this agreement, Owner agrees to waive, renounce and disclaim Pennsylvania's implied warranties of habitability and good construction on latent defects -- anything not discoverable on reasonable inspection at the time of purchase. For value received, Owner accepts the risk that damage from intrusion of water or moisture in any form, structural defects, subsidence or failure to comply with building codes will result in a defect in the Project or financial loss to Owner. Contractor warrants that the Work shall be free of Defects identified in this agreement for the period specified in this agreement.

B. General Requirements

1. Except as otherwise provided in this agreement, the warranty period shall begin from the date of Substantial Completion.

2. Work done by Contractor in compliance with warranty provisions of this agreement does not extend the period of the warranty.

3. Contractor shall deliver to Owner all warranties provided by vendors and manufacturers of materials and equipment used to complete the Project. Contractor shall have no obligation under warranties provided by others except to render any assistance that Owner may require in enforcing the terms of those warranties.

4. Except as provided in this agreement, and to the extent permitted by Law, Contractor disclaims all warranties, whether express or implied, whether of fitness for purpose, merchantability, habitability or workmanlike completion.

5. Failure of Owner to give notice of a breach of warranty within the warranty period constitutes a waiver of the right to repair or replacement by Contractor.

6. To make a warranty Claim under this agreement, Owner must send a clear and specific written complaint to Contractor at the following address within 60 Calendar Days of discovering Defects, unless otherwise specified in the list of items covered under this warranty. Contractor shall make repairs, replacements and corrections promptly and at no expense to Owner.

Contractor Name: _____
Address _____
Address _____
City _____, Zip: _____ State: _____

7. Upon receipt of written notification, Contractor must notify Owner within 30 Calendar Days of a disputed Claim. Contractor and Owner agree to a dispute resolution process as specified in the Contract Documents. Under the Magnuson-Moss Warranty Act and under this warranty, suit may not be filed against Contractor until the Claim has been submitted for informal dispute settlement and a decision has been reached, or a waiting period of 40 Calendar Days has been exceeded for a decision, following the submission of a request for warranty repair, whichever comes first. State or federal Laws may permit filing a suit without the waiting period, despite the terms of this agreement.

8. Owner must provide Contractor with reasonable access during the Work Day to perform obligations created by this warranty. If Owner fails to provide access, Contractor is relieved of the obligation to make repairs for which access has been denied.

9. Upon repair or replacement of the Defect, Owner must sign and deliver to Contractor a full release of all legal obligations with respect to the Defect.

C. Exclusions from Warranty

1. The warranty provided by this contract does not cover any of the following items or conditions:

I. Damages or Defects that result from circumstances beyond the control of Contractor including, but not limited to, accidents, fire, explosion, smoke, falling objects, damage from aircraft, vehicles, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, or unforeseeable change in the underground water table.

II. Damage or Defects in materials or workmanship supplied by anyone other than Contractor, employees of Contractor, agents or those working under the direction of Contractor, including Subcontractors.

III. Damages or losses that result from water leakage.

IV. Dampness, condensation or standing water due to failure of Owner to maintain adequate ventilation or other cause beyond the control of Contractor.

V. Any Claim for warranty that is not filed in compliance with the terms required by the Contract Documents.

VI. Claimed Defects that are obvious, apparent and accepted at the time of completion.

VII. Damages caused or made worse by:

A. Failure of Owner or anyone other than Contractor, employees of Contractor, agents or Subcontractors to comply with the warranty Requirements of the manufacturer.

B. Failure of Owner to give Contractor notice of Defects within a reasonable time.

C. Loss that results from failure of Owner to take timely action to mitigate or minimize damage.

2. Contractor has no liability for incidental or consequential damages from breach of any warranty provided by this agreement insofar as the loss claimed is covered by insurance of Owner or for which Owner has a right of recovery from any other party.

D. Basic Warranty Coverage

1. Warranty on Cabinets

I. It is a breach of warranty if cabinet doors or drawers bind or stick during the first 180 days. Occasional adjustment of doors and drawers is necessary as part of routine building maintenance. Defects due to abuse, impact, modification, or improper maintenance are not covered under this warranty.

II. Cabinet materials shrink as they dry. It is a breach of warranty if, during the first 180 days, cabinet doors or drawer fronts are found to have visible cracks in excess of 1/8 inch by 2 inches. Defects due to abuse, impact, modification, or improper maintenance are not covered under this warranty.

III. It is a breach of warranty if cabinet doors or drawer faces warp more than 1/4 inch in 12 inches during the first 180 days. Some movement can be expected when natural wood products adjust to moisture levels within a building. Cabinets that warp due to abuse or prolonged contact with moisture are not covered under this warranty.

IV. It is a breach of warranty if closed cabinet doors have gaps in excess of 1/4 inches by 2 inches during the first 180 days. Cabinet doors that become misaligned due to abuse or improper loading are not covered under this warranty.

V. It is a breach of warranty if, during the first 180 days, cabinet doors do not stay closed when shut. Frequent use of cabinet doors can result in misalignment. Occasional adjustment of cabinet hardware is a part of routine building maintenance.

VI. Cabinet materials shrink as they dry. It is a breach of warranty if, during the first 180 days, visible gaps greater than 1/4 inch by 3 inches open between the wall or ceiling and any cabinet. Smaller gaps are not covered under this warranty.

VII. It is a breach of warranty if a cabinet, a cabinet corner or a cabinet face is found to be more than

1/4 inch out of alignment during the first 180 days unless the Defect is caused by abuse, impact, modification or improper loading.

2. Warranty on Carpentry, Interior Finish

I. It is a breach of warranty if a shelf fails due to Defective workmanship during the first 180 days. Shelves should be supported by brackets fastened securely to framing. Any shelf is subject to overloading. Defects due to overloading, modification, or improper maintenance are not covered under this warranty.

3. Warranty on Resilient Flooring

I. It is a breach of warranty if vinyl flooring develops surface bubbles more than 1/16 inch higher than adjacent surfaces during the first 180 days. Contractor may puncture vinyl flooring material to release trapped air as part of the repair. Defects that result from abuse, impact, modification, normal wear, or improper maintenance are not covered under this warranty. Fading, slip resistance, abrasion resistance, stain resistance, freeze-thaw stability, durability, compressive strength, moisture sensitivity and texture retention of vinyl or resilient flooring may be covered under the manufacturer's warranty, but are not covered under this warranty. Removing mold from vinyl floor materials is a part of normal building maintenance and is not covered under this warranty.

II. Joints are required in resilient sheet flooring when room dimensions exceed roll widths. It is a breach of warranty if, during the first 180 days, joints in resilient flooring leave a gap between pieces of more than 1/8 inch and more than 12 inches long. The visibility of joints in resilient flooring may be exaggerated by the color, pattern, and texture of the material, and by reflected light, such as from a large window. Defects that result from abuse, modification, or improper maintenance are not covered under this warranty.

III. It is a breach of warranty if, during the first 180 days, resilient flooring is found to be installed with stains, discoloration or faded colors. Stain resistance does not mean that resilient flooring won't stain. Staining and loss of gloss can result from normal use and is not necessarily an indicator of Defective material or workmanship. It is normal for resilient flooring to vary slightly from display Samples in color and texture. Display Samples come from different dye lots and may be used for many years. Over time, color, texture, and feel of the Sample may change with handling. The color and gloss of resilient flooring can fade under sunlight and traffic. Slight variations are common within a specified color or pattern. Variations will be greater when material is selected from differing dye lots. Manufacturing Defects may be covered under the manufacturer's warranty, but are not covered under this warranty.

IV. It is a breach of warranty if resilient flooring is found to be installed out of compliance with the recommendations of the manufacturer during the first 180 days. All manufacturers recommend that the surface on which resilient flooring is laid be free of bumps, protrusions, or irregularities such as fasteners, loose knots, or free aggregate. Defects that result from sharp objects such as spike heel shoes or roller blades, moisture, hydrostatic pressure, alkali in the subfloor, heavy sunlight penetration, ultraviolet ray exposure, pallet jack or fork lift traffic, or contact with caustic or corrosive liquids, are not covered under this warranty. The flooring manufacturer may offer a warranty against premature wear or fading. Premature wear and fading are not covered under this warranty.

4. Warranty on Plumbing Systems

I. It is a breach of warranty if a water supply, drain, or vent line to a plumbing fixture develops a leak during the first 180 days due to a Defect in materials or workmanship. It is a breach of warranty if, during the first 180 days, a plumbing fixture is found to be installed out of compliance with either the recommendations of the manufacturer or the building Plans or Requirements of the building code. Inspection and maintenance of caulking and sealants around plumbing fixtures is a part of normal building maintenance, and is not covered under this warranty. Defects that result from abuse, condensation, modification, the shrinkage of materials as they age, or improper maintenance are not covered under this warranty.

II. It is a breach of warranty if, during the first 180 days, any part of the plumbing system fails to deliver water or discharge wastes due to a Defect in materials or workmanship or failure of Contractor to comply with the applicable plumbing code or building Plans. Any plumbing vent or waste line can be obstructed by frost or debris. Removing frost and debris from vent lines is a part of normal building maintenance, and is not covered under this warranty. Defects in plumbing supply, waste, or vent lines that result from abuse, modification, or improper maintenance are not covered under this warranty.

III. It is a breach of warranty if, during the first 180 days, a faucet, plumbing fixture or valve runs or drips when fully closed or turned off. Defects that result from abuse, modification, or improper maintenance are not covered under this warranty.

IV. It is a breach of warranty if, during the first 180 days, plumbing fixtures, fittings or trim are found to be installed out of compliance with recommendations of the manufacturer or out of compliance with the plumbing code. Flaws in the appearance or performance of plumbing fixtures, fittings or trim may be covered under the manufacturer's warranty, but are not covered under this warranty. Defects that result from abuse, improper maintenance, or modification are not covered under this warranty.

V. It is a breach of warranty if plumbing supply lines are found to be out of compliance with approved Plans or the building code during the first 180 days. Severe weather can cause any plumbing supply line to freeze and burst. Defects in plumbing supply lines caused by cold weather are not covered

under this warranty. When temperature of the building envelope is not controlled during cold weather, it's a normal part of building maintenance to close the main supply valve and drain water from the supply system. Exterior hose bibs should have garden hoses disconnected and drained. Valves for exterior hose bibs should be left open. Interior valves should be shut off. Defects in plumbing supply lines caused by abuse, modification, or improper maintenance are not covered under this warranty.

VI Certain combinations of temperature and indoor humidity may naturally cause condensation to accumulate on pipes and plumbing fixtures. Eliminate excess condensation by increasing ventilation, controlling humidity, or insulating the pipes affected. Accumulation of condensation on plumbing pipes and fixtures is not a Defect and is not covered under this warranty.

VII All plumbing drain and waste lines can be obstructed by excessively large or dense objects, by the invasion of roots, or by backup of the public or private sewer. Keeping plumbing drain and waste lines free of obstructions is a part of normal building maintenance, and is not covered under this warranty. It is a breach of warranty if plumbing drain, waste, or vent lines are found to be installed out of compliance with the applicable plumbing code or out of compliance with the building Plans during the first 180 days. The following constitute abuse or improper maintenance of plumbing drain or waste lines, and are not covered under this warranty: (1) Use that exceeds that design standards of the system, (2) Disposing of non-biodegradable items through the system, (3) Connecting the system to a sump pump, roof drain, or backwash from a water conditioner or pool filter, (4) Covering a leach field with a surface that is impermeable to water, (5) Driving or parking vehicles over the leach field, and (6) Failing to periodically pump the septic tank.

VIII It is normal to hear the sound of water flowing through drain and supply pipes. It is also normal to hear the sound of pipe expanding or contracting slightly in response to heat or cold. Water hammer is a sudden thump or banging in water supply lines that occurs when water flow to a faucet or fixture stops abruptly. Water hammer can do serious damage to a plumbing system, especially when water at high pressure is shut off very quickly, such as with an automatic valve. A plumbing system subject to water hammer should be designed with a pressure-regulating valve or an air chamber to reduce the noise and potential for damage from water hammer. Failure to install a pressure-regulating valve or an air chamber is not a breach of warranty if the valve or chamber is not part of the contract and is not required by the building code. The sound of water hammer will be obvious to anyone present in the building. Progressive damage from an obvious water hammer problem is not covered under this warranty. On request, Contractor will suggest a remedy for water hammer and quote a price for taking preventative measures.

IX It is a breach of warranty if a faucet, shower head, or plumbing fixture is found to be installed out of compliance with the applicable code or the building Plans during the first 180 days. Low water pressure may cause reduced flow through any plumbing fixture. Water pressure varies in public water systems and may be low at times of peak demand or when flow is reduced in water mains. Some municipal codes require that plumbing fixtures, including faucets and shower heads, be equipped with flow control devices to conserve water. Inadequate water flow at points of supply due to either low water pressure at the main or government regulation is not covered under this warranty.

X It is a breach of warranty if, during the first 180 days, a bathtub or shower enclosure is found to be installed out of compliance with either the building code or the manufacturer's recommendations. Ensure that bathtub and shower enclosures are free of any chip, crack, scratch, blemish, or Defect at Installation, and document any concerns. After Substantial Completion, only Defects resulting from faulty workmanship of Contractor are covered under this warranty. Manufacturing Defects in bathtubs and shower enclosures may be covered under the manufacturer's warranty, but are not covered under this warranty. Bathtubs are heavy when filled and may cause the framing to flex and creak, even when installed in compliance with both the manufacturer's instructions and the building code. Flexing and creaking are not signs of failure, and are not covered under this warranty.

XXXI. Contractor Claims

A. If Contractor claims that any instruction, Drawing, act or omission of Owner or any representative of Owner, or any agency of government, increases costs to Contractor, requires extra time or changes the Scope of Work, Contractor shall have the right to assert a Claim for such costs or time.

B. Unresolved Claims or disputes shall not cause Contractor to delay or suspend Work or for Owner to delay or suspend payments as provided by this agreement. Continued performance by Contractor shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. Contractor shall cooperate with Owner and representatives of Owner to mitigate potential damages, delay and other adverse consequences arising out of the condition which is the subject of the Claim.

XXXII. Arbitration

A. The location of arbitration hearings held under this agreement shall be the county in which the Project is located unless agreed to otherwise by all Parties to the arbitration.

XXXIII. Statutes of Limitations

A. No action shall be brought to recover damages for any Defect in the Project more than 4 years after Substantial Completion if the Claim is based on a Defect reasonably apparent at Substantial Completion. Nothing in this agreement shall be construed as extending the period prescribed by Law for the bringing of an action.