



# SIKA ROOFING & WATERPROOFING LIQUID APPLIED RESIN TECHNOLOGY

## APPLICATOR AGREEMENT

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AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, of the year \_\_\_\_\_, between SIKA CORPORATION ("SIKA"), a New Jersey corporation, and:

\_\_\_\_\_, \_\_\_\_\_  
(Company Name) (State Incorporated)

started \_\_\_\_\_  
(Date)

a Corporation,  a Partnership,  a Sole Partnership,  a LLC,

Conducting business as; \_\_\_\_\_ (if different than above)

whose principal place of business is at:

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

whose mailing address is: (if different than above)

Same as above

\_\_\_\_\_ who shall be referred to as the "APPLICATOR" under this Agreement.

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## Responsibilities of Sika to the Applicator:

1. Sika shall provide polyurethane coating and related products and accessories for use as components in waterproofing or roof membrane coating systems (the "System Product(s)") that are free from manufacturing defect. Should Applicator have a claim against Sika for defective System Product(s) during the course of installation, Sika shall investigate the claim with the Applicator and if Sika concludes that there is a manufacturing defect in the System Product(s), Sika shall provide replacement System Product(s) as are reasonably necessary for the repair of the defective System Product(s) that have been installed and replacement of the defective System Product(s) that have not been installed; and (ii) at Sika's sole option, either reimburse or credit Applicator for its direct labor costs, exclusive of overhead and profit, relating to or arising out of, the repair of the defective System Product(s). Sika and the Applicator shall agree in advance upon repair techniques and payment terms for these repairs or replacement of the System Product(s). Sika's liability for supplying material for repairs or replacement and for reimbursement of labor costs is limited to the amount of System Product(s) originally expected to be installed on the project in
2. Sika shall offer a technical training program to be conducted at either Sika's or the Applicator's facility, or other mutually agreed upon site location, in order to teach designated employees of the Applicator the Sika application techniques and requirements for the System Product(s).
3. Sika shall provide the Applicator with, or make available to the Applicator, current product data sheets and safety data sheets, system guides, application/installation Instructions, including without limitation the Sikalastic Waterproofing and Roof Membrane System Applicator Manual (the "Sikalastic Manual"), and shall make available ongoing technical advice and support to properly apply and install the System Product(s) in the manner in which they are intended to be used.
4. Sika shall provide Applicator with, or make available to the Applicator, a supply of promotional material that is reasonable and adequate for the Applicator's use in the promotion and sale of the System Product(s).
5. Sika shall provide Applicator with, or make available to the Applicator, Safety Data Sheets and other non-proprietary product information to assist the Applicator for the safe use, transportation and disposal of the Product(s).
6. Subject to the fulfillment of the Applicator's responsibilities under this Agreement to Sika, Sika shall provide to the Applicator, for the sole benefit of the building or project owner (the "Owner"), a warranty covering the System Product(s) sold by Sika to the Applicator and installed by the Applicator as a waterproofing or roofing membrane coating system according to the specifications and job checklists for a particular project (collectively, the "Project Specifications"), Sika's technical literature and technical instructions, including, without limitation, the Sikalastic Manual (a "Project Warranty"). Any Project Warranty will be issued by Sika in a separate document and will be subject to the terms, conditions and exclusions set forth therein. In the absence of a Project Warranty, Sika warrants that the System Product(s) sold to the Applicator will be free from manufacturing defects and will meet the technical properties on the product's current Product Data Sheet for one (1) year from the date of installation if used within shelf life and installed in accordance with Sika's instructions.

SIKA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SIKA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH REGARD TO THE PRODUCTS SOLD BY SIKA, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL SIKA BE LIABLE TO THE APPLICATOR IN ANY MANNER OR TO ANY EXTENT, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OR WHETHER BASED ON CONTRACT, BREACH OF WARRANTY, TORT, STRICT OR PRODUCTS LIABILITY, OR ANY OTHER LEGAL THEORY, EXCEPT AS PRECLUDED BY LAW. SUCH EXCLUDED INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES INCLUDE LOSS OF PROFITS, EXPENSES, LOSS OF PRODUCTION, LOSS OF USE, DAMAGE TO PROPERTY, OR ANY OTHER INDIRECT DAMAGE OR LOSS OF ANY KIND TO APPLICATOR OR ITS CUSTOMERS. SIKA SHALL NOT BE RESPONSIBLE FOR THE USE OF THE ITS PRODUCTS BY APPLICATOR IN A MANNER TO INFRINGE ON ANY PATENT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT HELD BY OTHERS. NO REPRESENTATIVE OF SIKA HAS AUTHORITY TO MAKE ANY REPRESENTATIONS OR PROMISES EITHER VERBAL OR IN WRITING EXCEPT AS STATED HEREIN.

7. Sika agrees to indemnify, defend and hold Applicator harmless from any and all claims, suits, judgments, legal fees, damages or expenses due to any breach of this Agreement by Sika.

## Responsibilities of the Applicator to Sika:

1. Applicator agrees to pay Sika according to all of the terms and conditions of sale found on Sika's invoice to the Applicator, including the assessment of finance charges. Applicator understands that some projects may require full-time observation of the installation of the System Product(s) by a third party. In such cases, the Applicator agrees to pay all reasonable charges associated with said full-time observation, including daily observation fees provided that third party inspection has not been called for in the project specifications. Applicator acknowledges any observation by a Sika representative whether on a full or part time basis of Applicator's installation and handling of the System Product(s) does not absolve Applicator from any of its contract responsibilities or workmanship warranties to Sika or the Owner. Applicator agrees to pay all present or future sales, revenue, excise or any other taxes applicable to the purchase of the System Product(s) by the Applicator. These taxes shall be added to the purchase price and paid by the Applicator unless the Applicator provides Sika with a Tax Exemption Certificate or other proof of tax exemption in a form acceptable to the taxing authority.
2. Applicator agrees to read, study and comply in all respects with the Project Specifications for each particular project. Applicator further agrees to read, study and comply with Sika's written specifications, and application procedures, including without limitation, the Sikalastic Manual, Product Data Sheet(s) and Safety Data Sheet(s) in effect at the time of the Applicator's bid to the Owner.
3. Applicator agrees to follow the technical instructions provided by Sika's Technical Representatives (both on-site and off-site) provided those instructions do not conflict with Sika's technical literature or the Sikalastic Manual.

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4. Applicator agrees that it shall be fully responsible for determining substrate moisture content and all ambient conditions, including air/substrate temperatures, relative humidity, and dew point throughout the progress of the work on a project, and shall only apply the System Product(s) to clean, acceptable, and appropriately prepared substrates. Applicator further acknowledges and agrees that any review of project information by Sika, including any review or observation of activities of a Sika representative at the project site, are solely for the benefit of Sika and for purposes of evaluating eligibility for a warranty and does not constitute any representations, endorsements or assumption by Sika of any liability for the adequacy of design of the building, the sufficiency of the roofing/waterproofing system or substrate components to accept the System Product(s), or any materials not supplied by Sika. The Applicator agrees that it shall be fully responsible for confirming and complying with all local building and/or jurisdictional codes and correlating all materials, quantities, dimensions, application processes, techniques of installation and performing the work in a safe and satisfactory manner.
5. Applicator agrees to pay for the costs of travel, time, board, and lodging of each individual that is trained by Sika to install the Sika System Product(s). Applicator agrees to cover these costs until the individual is trained to a level of proficiency that meets Sika's satisfaction.
6. Applicator agrees and warrants to Sika that (i) it will comply in all respects with the Project Specifications for each particular project, (ii) the installation of the System Products is free from defect in workmanship, in strict accordance Sika's technical literature and technical instructions, and application procedures, including, without limitation, the Sikalastic Manual, Product Data Sheet(s) and Safety Data Sheet(s) and any other technical literature provided by Sika and (iii) it will follow prudent and sound practice in the installation of the System Product(s) as published by recognized authorities in the industry. In the event that Sika issues a Project Warranty for a particular project with a term up to and including ten (10) years, the foregoing warranties from the Applicator shall apply with respect to such project and shall be effective for the first two (2) years of the warranty period set forth in such Project Warranty and in the event that Sika issues a Project Warranty for a particular project with a term greater than ten (10) years up to 20 years, the foregoing warranties from the Applicator shall apply with respect to such project and shall be effective for the first five (5) years of the warranty period set forth in such Project Warranty and in the event that Sika issues a Project Warranty for a particular project with a term of twenty-five (25) years, the foregoing warranties from the Applicator shall apply with respect to such project and shall be effective for the first seven (7) years of the warranty period set forth in such Project Warranty (the "Applicator Warranty Period"). In the event a claim is brought by Owner under a Project Warranty during the Applicator Warranty Period applicable to such Project, and such claim relates to, results from, or arises out of a defect in the Applicator's workmanship or other breach of the warranties set forth herein, the Applicator, at Sika's sole discretion, shall either make all repairs, at its expense, or reimburse Sika for all repairs and replacement costs incurred as a result of a claim by the Owner under such Project Warranty that relates to, results from, or arises out of, defects in Applicator's workmanship or other breach of the warranties set forth herein.
7. Applicator agrees, represents and warrants that it will only employ current employees who have been trained by Sika regarding the use and installation of the System Product(s) and are proficient in the installation of the System Product(s) and capable of satisfying Sika's current specifications, details and quality control requirements. Applicator shall provide Sika with such evidence of the training and proficiency of its employees who will be installing the System Product(s) on a particular project as Sika may reasonably request.
8. Applicator agrees to allow Sika free access to visit any in-progress installation for the purpose of observing the Applicator's workmanship and the manner of material use.
9. Without Sika's prior written consent, Applicator shall not subcontract the installation of the System Product(s).
10. Applicator agrees to comply with all relevant federal, state and local statutes, laws, regulations and ordinances. Applicator also agrees to notify Sika of relevant and new laws, regulations or ordinances enacted in the Applicator's area of doing business.
11. Applicator agrees to maintain at its own expense and at all times during the term of this Agreement commercial general liability insurance, including completed operations coverage, with policy limits of at least three million dollars (\$3,000,000.00) per project protecting Sika and Applicator from claims arising out of Applicator's operations. Sika shall be named as an additional insured on such policy.
12. Applicator agrees that, so long as this Agreement is in effect, Applicator shall furnish Sika as soon as possible but in no event later than ninety (90) days after the end of each fiscal year of Applicator, a statement of Applicator's earnings and financial condition certified by independent certified public accountants or if statements certified by independent certified public accountants are not prepared, then a statement certified by the president of the Applicator (the "Applicator Financial Statements"). Sika shall use the Applicator Financial Statements solely for purposes of evaluating Applicator's eligibility to participate in Sika's Project Warranty program.
13. Applicator shall apply for, and provide all bonding required in connection with any project.
14. Applicator agrees to indemnify, defend and hold Sika harmless from any and all claims, liabilities, losses, suits, judgments, legal fees, expenses or damages due to (i) claim(s) of an Owner(s) under any Project Warranty resulting from, relating to, or arising out of, defects in the Applicator's installation of the Product(s), (ii) Applicator's failure to comply with the Project Specification and (ii) any breach by the Applicator of any covenant, representation, warranty or obligation of contained in this Agreement. The obligations set forth in this paragraph shall survive the termination or expiration of this Agreement until the Applicator Warranty Period for each Project Warranty outstanding as of the date of termination or expiration of this Agreement has expired.

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## Additional Conditions and Mutual Responsibilities:

1. This Agreement is non-exclusive. Sika reserves the right to sell its products to other applicators and the Applicator reserves the right to purchase products not supplied by Sika. Sika does not under any circumstances warranty any other manufacturer's product or its installation.
2. Neither party shall use the other's trade name or logo. By this Agreement, neither party is authorized or empowered to act as an agent for the other nor is authorized to transact business or incur obligations for the other.
3. This Agreement shall continue for a term of 1 year from the date of Sika's signed acceptance of this Agreement and shall automatically be continued from year to year unless canceled, for any reason reached by either party. Either the Applicator or Sika may cancel this Agreement upon 30 days written notice to the other party via a nationally recognized overnight delivery service to the address stated above or to a change of address that was previously stated in writing by the relocated party to the second party. If the Applicator or Sika ceases to function as a going concern, or a Receiver for either party is appointed or applied for or a petition under the Federal Bankruptcy or Corporate Reorganization Acts are filed by or against either party or either party makes an assignment for the benefit of creditors, this Agreement is automatically terminated without notice. In the event this Agreement is terminated, except as otherwise provided herein, the obligations of either party to the other remain in full force and effect for those purchases and installations made, and any Project Warranties issued, under this Agreement while this Agreement was in effect.

4. Neither party shall be held responsible for delays or failure to perform hereunder if caused by fires, floods, strikes, labor disputes, accidents, acts of war, priorities required or requested by any governmental authority, transportation delays, restrictions imposed by federal or state law, or regulations, or Sika's inability to secure raw materials, energy or for any other causes that are beyond either party's control.
5. The failure of either party to enforce any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce any such provisions.
6. The rights created by this Agreement are not assignable.
7. This instrument contains the entire Agreement between the parties with respect to the subject matter of this Agreement. No modifications, representations, promises or conditions in connection with the subject matter of this Agreement shall be binding upon Sika or the Applicator unless made in writing and signed by an authorized officer of Sika or of the Applicator. Acknowledgment or acceptance of any acts or performance by any party inconsistent with the terms of this Agreement shall not be deemed an acceptance or approval by either party of these inconsistent acts or performance. This Agreement supersedes and is in lieu of all existing Agreements or arrangements between the parties.
8. The validity of this Agreement and the provisions thereof shall be construed according to the laws of the State of New Jersey. Applicator acknowledges the exclusive jurisdiction of the state courts or federal courts in the State of New Jersey for the purposes of adjudicating disputes arising under this Agreement.

This Agreement is valid for project locations within the U.S.A. (U.S. Territories excluded)

FOR SIKA CORPORATION:

Signed: \_\_\_\_\_

Sebastien Godard, Executive Vice President

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

William Bellico, Vice President Marketing

Date: \_\_\_\_\_

OFFICER/OWNER FOR the APPLICATOR:

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_