

# ColorGard® System Warranty Program

## LIMITED WARRANTY

### I. Warranty

- A. Metal Roof Innovations, Ltd. (“Manufacturer”) warrants, pursuant to its ColorGard System Warranty Program (“Limited Warranty”), to the building owner (“Owner”) that, subject to the express terms, limitations, conditions, and disclaimers set forth below, the ColorGard snow retention system (“ColorGard Snow Retention System”) shall be free from System Failure, as provided in Article I(B) below, for the earlier of: (1) a period of thirty (30) years after the date of delivery or (2) until the roof is no longer commercially serviceable (“Limited Warranty Period”). The building owner is defined as the building owner at the time that the ColorGard Snow Retention System is initially installed. The ColorGard Snow Retention System is defined as the Manufacturer furnished ColorGard cross member and S-5!™ attachment clamps.
- B. Pursuant to Article I(A) above and 1(E) below, Manufacturer warrants against the following System Failure in regards to its ColorGard Snow Retention System:
1. The S-5! clamps will not pull off the seam, break or otherwise yield causing the ColorGard Snow Retention System to release;
  2. The ColorGard cross member and its anchorage will not buckle, break or otherwise yield or separate from the S-5! clamps;
  3. The ColorGard Snow Retention System will not prematurely or excessively corrode and will not cause premature and excessive corrosion of the roof system. Premature and excessive corrosion is defined as corrosion to the extent that the ColorGard Snow Retention System is ineffective to perform its intended function during the Limited Warranty Period. In the case of roof panels, premature and excessive corrosion is defined as corrosion of the roof panels to the point of panel perforation during the Limited Warranty Period;
  4. The ColorGard Snow Retention System will not cause structural damage to the roof panels. Structural damage is defined as holes, fractures or perforation causing water infiltration of the roof system. Minor deformation of the seam resulting from the tensioning of setscrews or the application of load to the assembly is normal and not covered under this Limited Warranty; and
  5. So long as the ColorGard color strip insert and the roof are constructed from the same material, the color strip material’s color will not materially vary from the roof material’s color. Material color change means color change that exceeds 2 Delta E Hunter units.
- C. In the event of System Failure, Manufacturer will provide comparable Manufacturer branded replacement parts and labor necessary to repair the ColorGard Snow Retention System or component part. Any Manufacturer branded replacement part or product will be warranted for the remainder of the original Limited Warranty Period.
- D. Manufacturer shall make final determination as to the existence or cause of any alleged System Failure and whether the roof is no longer commercially serviceable.
- E. Manufacturer shall have no obligation or liability in connection with this Limited Warranty or the ColorGard Snow Retention System if any one of the following shall occur:
1. Any deficiency or failure of the building structure or roof to which the ColorGard Snow Retention System is attached;
  2. Contractor and/or Owner fails to comply with every term and/or condition stated in this Limited Warranty and the Warranty Application Form;

3. Failure to install or maintain the ColorGard Snow Retention System in a manner that does not permit drainage of water from all surfaces;
4. Damage is caused by workers on the roof;
5. ColorGard Snow Retention System or component parts have been subjected to abuse, misuse, accident, alteration, neglect, unauthorized repair, or the combination of Manufacturer's branded products with other products;
6. Failure of Contractor and/or Owner to follow Manufacturer's recommended installation instructions or failure to install the ColorGard Snow Retention System or component parts in accordance with Manufacturer's S-5! ColorGard Calculator output;
7. System Failure is caused by the overload of the ColorGard Snow Retention System. The following constitutes an overload of the ColorGard Snow Retention System: (1) failure that results from rooftop snow accumulations in excess of the figures entered into the "vertical roof snow load" field of Manufacturer's S-5! ColorGard Calculator, and (2) failure that results from impact loads from higher unprotected roofs;
8. ColorGard Snow Retention System is used on roofing materials that are not compatible with the ColorGard Snow Retention System. Incompatible materials include, but are not limited to copper and lead. Compatible roofing materials include the following: (painted or bare) galvanized steel, (painted or bare) Al-Zn coated steel, including Galvalume™; aluminum, and titanium-zinc;
9. System Failure caused by ice damming; or
10. Manufacturer's distributor ("Distributor") has not received full payment for the ColorGard Snow Retention System or Manufacturer has not received full payment of the Issuance Fee or Re-Inspection fee(s) for this Limited Warranty in accordance with the terms of the Warranty Application Form.

## ***II. Notice of Warranty Claim***

Upon discovery of any System Failure, Owner shall notify Manufacturer within three (3) days of Owner's discovery of such System Failure.

## ***III. Claim Investigation***

Owner agrees to provide Manufacturer with access to Owner's roof so that Manufacturer can perform a system failure investigation ("System Failure Investigation").

## ***IV. Disclaimer of Warranties and Limitation of Liability***

- A. THE ABOVE LIMITED WARRANTY IS THE EXCLUSIVE WARRANTY PROVIDED BY MANUFACTURER. MANUFACTURER MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, AND THERE IS EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- B. NO ORAL, WRITTEN INFORMATION OR ADVICE GIVEN BY MANUFACTURER, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY.
- C. OWNER'S SOLE REMEDY SHALL BE THE REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS. THIS LIMITED WARRANTY INCLUDES THE COSTS OF LABOR. HOWEVER, IN NO EVENT SHALL THE COSTS OF LABOR EXCEED \$2.50 PER LINEAR FOOT. ALSO, IN NO EVENT SHALL TOTAL DAMAGES ASSOCIATED WITH THE FAILURE OF THE COLORGARD SNOW RETENTION SYSTEM EXCEED THE ORIGINAL COSTS OF THE COLORGARD SNOW RETENTION SYSTEM TOGETHER WITH INSTALLATION COSTS.

D. MANUFACTURER SHALL HAVE NO LIABILITY UNDER THIS LIMITED WARRANTY FOR ANY DAMAGES SUFFERED BY OWNER OR ANY THIRD PARTY INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURIES OR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES EVEN IF MANUFACTURER HAS BEEN ADVISED ON THE POSSIBILITY OF SUCH DAMAGES.

THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

***V. Governing Law, Jurisdiction, and Dispute Resolution***

A. This Limited Warranty and the purchase of the ColorGard Snow Retention System shall in all respects be construed, interpreted, and/or enforced in accordance with, and governed by the laws of the State of Colorado. Other than as set forth in this Article, Contractor and/or Owner and Manufacturer irrevocably waive the right to bring or maintain any action or dispute in any court of law arising out of or related to this Limited Warranty or the ColorGard Snow Retention System. Also, Contractor and/or Owner and Manufacturer irrevocably waive any right to a jury trial.

B. Contractor and/or Owner and Manufacturer agree that any dispute arising out of or related to this Limited Warranty or the ColorGard Snow Retention System shall first be mediated before a mediator jointly selected by the parties. The costs of the mediation shall be borne equally by Contractor and/or Owner and Manufacturer. Mediation shall be a condition precedent to arbitrating any dispute. Unless Contractor and/or Owner and Manufacturer agree in writing otherwise, mediation shall take place in Colorado Springs, El Paso County, Colorado. In the event that mediation is unsuccessful, Contractor and/or Owner and Manufacturer may demand arbitration within thirty (30) days of the date of the mediation.

If Contractor and/or Owner or Manufacturer fails to demand arbitration within the specified time Contractor and/or Owner or Manufacturer shall irrevocably waive any and all right to proceed to arbitration and all claims they may have against the other party.

C. Contractor and/or Owner and Manufacturer agree that any dispute arising out of or related to this Limited Warranty or the ColorGard Snow Retention System whether in contract, tort and/or based upon an alleged statutory violation, including any claims against Manufacturer's officers, directors, shareholders and/or employees, shall be resolved by arbitration administered by the American Arbitration Association in accordance with the current Construction Industry Arbitration Rules with an arbitrator appointed by Manufacturer. The costs of the arbitration shall be borne equally by the parties. Unless Contractor and/or Owner and Manufacturer agree in writing otherwise, arbitration shall take place in Colorado Springs, El Paso County, Colorado.

D. An arbitration award obtained pursuant to this Article may only be enforced in the District Court of El Paso County, Colorado. Contractor and/or Owner and Manufacturer hereby submit to personal jurisdiction in said court for the purpose of enforcement of an arbitration award entered pursuant to this Article and irrevocably waive, to the fullest extent of the law, any objection to the laying of venue in such court and irrevocably waive any objection that such court constitutes an inconvenient forum.



**VI. Force Majeure**

Manufacturer shall not be liable for any failure to perform in accordance with the terms of this Limited Warranty, in whole or in part, caused by the occurrence of any contingency beyond its reasonable control, including but not limited to war (whether an actual declaration thereof is made or not), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood or earthquake.

**VII. Assignment**

Manufacturer's Limited Warranty does not extend beyond the original Owner and may not be transferred, assigned or passed through by Owner. Manufacturer, its subsidiaries, and affiliates are intended beneficiaries of this Limited Warranty.

**VIII. Entire Agreement**

All terms and conditions in this Limited Warranty are part of the Warranty Application Form and all of the terms and conditions of the Warranty Application Form are part of this Limited Warranty. By signing or submitting the Warranty Application Form to Manufacturer, Contractor and/or Owner agrees to all of the terms and conditions of the Warranty Application Form and this Limited Warranty. Any terms and conditions of Contractor and/or Owner, including exceptions to Manufacturer's terms or conditions, are deemed to be material alterations of Manufacturer's offer and are rejected by Manufacturer unless expressly agreed to in writing by Manufacturer's authorized representative. Furthermore, where it is appropriate, words used in the singular shall include the plural and words used in the masculine shall include the feminine.

**IX. Limited Warranty Execution**

Manufacturer shall have no obligation or liability in connection with this Limited Warranty or the ColorGard Snow Retention System until both Contractor and Manufacturer sign this Limited Warranty.

Contractor

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

Manufacturer

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