

Truss Warranty Agreement: Dricon® Fire Retardant Treated Wood

THIS AGREEMENT is made the _____ day of _____, 20____ by and between Arch Wood Protection, Inc. ("Arch"), whose address is 1955 Lake Park Drive, Suite 100, Smyrna, Georgia 30080, and _____ ("Manufacturer"), whose address is: _____

WHEREAS, Arch manufactures DRICON®, a fire-retardant chemical, to be applied by Arch's licensees to wood which is then sold by the licensee under the name DRICON® Fire Retardant Treated Wood ("DRICON FRT Wood"); and

WHEREAS, Manufacturer wishes to purchase DRICON FRT Wood from licensees of Arch for use in the manufacture of trusses; and

WHEREAS, Arch wishes to encourage the purchase of DRICON FRT Wood through the grant of the warranty included in this Agreement;

NOW, THEREFORE, intending to be bound hereby, the parties agree as follows:

1. **Warranty.** Arch warrants to Manufacturer that a truss constructed of DRICON FRT Wood will not structurally fail as a result of the DRICON FRT Wood failing to exhibit the strength qualities reported in ESR-1626 due to exposure to high heat or humidity for a period of ten (10) years from the date of treatment as shown on the third party inspection agency's stamp or other marking appearing on the treated wood incorporated into such truss (the "Warranty Period"), subject to the following limitations and conditions.

2. **LIMITATION ON EXPRESS AND IMPLIED WARRANTIES.** THIS WRITTEN WARRANTY IS ARCH'S SOLE WARRANTY OF THE DRICON FRT WOOD AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. MANUFACTURER'S RIGHTS ARE LIMITED TO THOSE SET FORTH IN THIS WARRANTY. ARCH DISCLAIMS ALL OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3. **Conditions.** Arch shall have no liability to Manufacturer if any of the following conditions are not met:

(a) This warranty applies only to trusses constructed only with DRICON FRT Wood labeled with the stamp of a code-approved inspection agency indicating that the product is DRICON FRT Wood. The DRICON FRT Wood must be handled, stored and installed by Manufacturer and the builder in accordance with the Arch literature current at the time of purchase, which at the execution of this warranty, includes, without limitation, the DRICON FRT Wood Application Guide (DRI-2016).

(b) The building in which the truss is installed must meet all applicable building codes, comply with all appropriate design standards and be approved by the building code authority having jurisdiction.

(c) The truss must be based on designs commonly used in the industry; the truss must be properly designed in accordance with the prevailing National Design Standard for Metal Plate Connected Wood Truss Construction; the truss must be properly engineered utilizing Table 2 of ESR-1626, the DRICON FRT Wood Application Guide DRI-2016, and good design practices incorporating safety margins.

(d) The DRICON FRT Wood must not be contaminated with chemical constituents that are not found in DRICON fire retardant.

(e) The damage to the DRICON FRT Wood or its strength reduction may not be attributable to the negligence or wrongful act or omission of the Manufacturer, the builder or any other third party, or to abnormal conditions, poor quality wood, abuse or poor design, leaks, or failure to follow on-site storage procedures, improper handling or erection techniques, or other causes other than exposure to heat and humidity which are within the heat and humidity limits reported in ESR-1626.

4. **Exclusive Remedy.** If at any time within the Warranty Period the DRICON FRT Wood exhibits a loss of strength in excess of the design values reported in ESR-1626 due to exposure to heat or humidity and if all other conditions of this Agreement are met, Manufacturer's sole and exclusive remedy shall be as follows: Manufacturer shall notify Arch of such loss of strength within sixty (60) days after Manufacturer becomes aware of the same. Manufacturer shall, at the direction of Arch, arrange for an independent testing agency to conduct tests of the DRICON FRT Wood in accordance with appropriate industry testing standards (including ASTM D 143). If the tests determine that the DRICON FRT Wood has exhibited a loss of strength in excess of the design values reported in ESR-1626 due to exposure to heat or humidity, Arch shall (i) at its sole option, either repair or replace the truss, or refund to Manufacturer the costs Manufacturer reasonably incurs in effecting such repairs to the damaged truss as are undertaken by or on behalf of the Manufacturer after Arch's prior written approval and (ii) reimburse the Manufacturer for any costs incurred by the Manufacturer to test the wood as provided herein. If the tests determine that the DRICON FRT Wood has not exhibited a loss of strength in excess of the design values reported in ESR-1626 or that the loss of strength is due to other than exposure to heat or humidity, the manufacturer shall reimburse Arch for any cost to Arch of testing the wood. The foregoing is Manufacturer's sole and exclusive remedy. In no event will Arch be liable for any special, incidental or consequential damages of any kind, whether in contract, tort, strict liability or otherwise, including any damages arising from any use or inability to use the DRICON FRT Wood.

5. **Republication.** The warranty provided under this Agreement is provided only to Manufacturer and shall not create any rights in any third party. Manufacturer shall not republish this Agreement or the terms of the warranty to any third party without the prior written consent of Arch.

6. **Notice.** All notices or other communications required or permitted under this Agreement shall be in writing and personally delivered, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the addresses designated in the preamble of this Agreement or to such other address or addresses as may hereafter be furnished by one party to the other party in compliance with the terms of this Section 6. All such notices and communications shall be deemed to be given for purposes of this Agreement on the day such writing is received by the intended recipient thereof.

7. **Entire Agreement.** This Agreement includes the complete and exclusive agreement between the Manufacturer and Arch with respect to the warranties made by Arch to Manufacturer for DRICON FRT Wood Trusses which are not part of a complete DRICON FRT Wood Roof system and supersedes any and all prior or written representations or agreements made by or between them. Any DRICON FRT Wood previously purchased by Manufacturer shall be covered by the warranty, conditions and limitations contained in this Agreement. This Agreement may not be amended except by a written amendment signed by authorized officers of each party.

8. **Applicable Law.** This Agreement shall be governed by the laws of the State of Georgia without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the day and date first above written

By: _____
For Arch Wood Protection, Inc.

Title: _____

By: _____
For Truss Manufacturer

Title: _____