

DMX Foundation Products Warranty

What the warranty covers:

DMX Plastics Limited (“**Manufacturer**”) warrants to the purchaser of the product (“**Purchaser**”) that, under normal use and service, and when installed in accordance with the installation manual shown on the Manufacturer’s website (“**Installation Manual**”), the DMX AG membrane, the DMX Drain 5X membrane or the DMX Drain membrane, as applicable, (“**Product**”) will provide water leakage protection to the foundation walls that are covered by the Product.

DO NOT STORE IN DIRECT SUNLIGHT FOR MORE THAN 30 DAYS. If the Product will be stored outdoors it must be properly covered with a protective tarp to protect against U.V. rays. Failure to do so will result in this warranty being not applicable.

How long the warranty is effective:

The Manufacturer warrants that the Product will be free from defects for a period of 30 years from the original date of purchase (original purchase receipt is required as proof of purchase). If the Product is replaced or repaired by the Manufacturer, only the outstanding amount of warranty on the original Product will remain in effect for the replacement Product.

Who the warranty protects:

This warranty is valid for the Purchaser and may be transferred to subsequent owners provided that all conditions, limitations, exceptions and exclusions of this warranty are accepted by the new owner.

What the warranty does not cover:

This warranty is not applicable if water leakage occurs as a result of any of the following factors or situations:

- Improper installation of the Product that is not in accordance with the Installation Manual.
- Failure or defects in the Product as a result of abuse, misuse, neglect, negligence, accident, improper testing, improper alteration, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by the Manufacturer.
- Failures or defects in the foundation drainage system for whatever reason.
- Storage of the Product in direct sunlight for more than 30 days without a protective tarp.
- Use of interior or exterior drainage systems that do not meet or exceed local construction code.
- Backfill that is not in accordance with local building code requirements.
- Use of the Product with concrete or cinder block walls.
- Improper grading that does not permit drainage away from the building structure, including defective or inadequately functioning downspouts and gutters.
- Elevated water table that rises above the footing of the foundation for whatever reason.
- Condensation occurring on interior foundation walls, vapour barriers or interior finishes.
- Any construction technique performed by a builder, home owner, subcontractor or any person after the initial installation that allows moisture to enter between the Product and the foundation walls.
- Damage to the membrane or building structure as a result of natural disasters including, but not limited to, lightning, flood, hurricane, tornado, earthquake, fire or circumstances deemed to be an Act of God.
- Damage to the membrane or building structure that occurs during initial or any subsequent construction.
- Any structural defects in the foundation, walls or footings of the building structure that allow moisture to enter above, below or behind the Product after the initial installation.

The warranty shall not apply to any water leakage which is covered by new home warranty programs or for which the Purchaser otherwise receives compensation.

How to make a claim:

All claims must be made in writing within 15 days of discovering the water leakage to: DMX Plastics Limited, 300 Walker Drive, Brampton, ON, Canada, L6T 4B3, Attention: Customer Service. All claims must contain the following information:

Name of the Purchaser, address of building structure, date of discovery of water leakage, date of installation, proof of purchase (which must be provided at the time of the claim). For new construction please include the name of the builder or contractor, the Product installer and the building inspector. The Manufacturer may require additional information in order to process a warranty claim. The Manufacturer shall be entitled to conduct an investigation of the source of the water leakage within 30 days from receipt of the problem in writing. If the Manufacturer determines that this warranty does not apply, then the Manufacturer reserves the right to charge for expenses incurred in conducting the investigation. If the Manufacturer determines that the warranty is applicable, then the Manufacturer, at its sole discretion, will replace or reimburse the cost of the portion of the Product that is found to be defective. The Manufacturer is not responsible for the cost of removal, repair or replacement of the building structure, landscaping, driveways, walkways or interior contents (“**Housing Structure and Contents**”) in connection with the replacement of the Product, nor does the Manufacturer have any liability or responsibility for damage or loss to the Housing Structure and Contents as a result of the replacement of the Product.

Limitations and Exclusions:

EXCEPT FOR THIS WARRANTY, THERE ARE NO WARRANTIES, OR GUARANTEES, EXPRESS OR IMPLIED, ORAL OR WRITTEN WITH RESPECT TO THE PRODUCT, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, STATUTE (INCLUDING PURSUANT TO THE SALES OF GOODS ACT (ONTARIO) OR THE UNIFORM COMMERCIAL CODE OF ANY STATE). SOME STATUTES DO NOT PERMIT DISCLAIMERS OF IMPLIED WARRANTIES, SO THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU.

THE LIABILITY OF THE MANUFACTURER ARISING OUT OF THE SALE OR SUPPLY OF THE PRODUCT OR ITS INSTALLATION OR USE, WHETHER OR NOT ARISING AS A RESULT OF THE NEGLIGENCE OR GROSS NEGLIGENCE OF THE MANUFACTURER SHALL NOT EXCEED THE THEN CURRENT PURCHASE PRICE FOR THAT PORTION OF THE PRODUCT WHICH IS BEING REPLACED OR REIMBURSED. THE MANUFACTURER DOES NOT GUARANTEE OR WARRANT IN ANY WAY THAT MOLD, MILDEW, FUNGI, IRRITANTS OR AIR QUALITY PROBLEMS WILL BE REDUCED OR ELIMINATED. THIS WARRANTY EXCLUDES THE MANUFACTURER FROM ANY LIABILITY OR CLAIMED DAMAGES DUE TO MOLD, MILDEW, FUNGI OR IRRITANTS FROM MOISTURE OR OTHER FOREIGN SUBSTANCES OR CONSTRUCTION MATERIALS.

THE MANUFACTURER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES SUSTAINED BY THE PURCHASER OR ANY OTHER PERSON IN CONNECTION WITH THE PURCHASE, INSTALLATION OR USE OF THE PRODUCT, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, DAMAGE TO OTHER PROPERTY OR LOSS OF USE OF THE PRODUCT.

Miscellaneous:

This warranty shall be governed, construed, and enforced in accordance with the laws of the Province of Ontario, including in accordance with the *Limitations Act, 2002*, or its successor legislation. The Purchaser hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

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