



## **Lifetime Limited Warranty for SLIPS® Dolphin™ Marine Paint**

Your SLIPS® Dolphin™ Paint is covered by a Lifetime Limited Warranty, subject to the terms and conditions set forth herein. This limited warranty gives you specific legal rights, and you may also have other rights which vary by state.

### **A. Products Covered by this Limited Lifetime Warranty**

This limited warranty extends solely to the SLIPS® Dolphin™ Paint manufactured by Adaptive Surface Technologies, Inc. (“AST”) and purchased directly from AST.

### **B. Who this Limited Lifetime Warranty Extends To**

This limited warranty extends to the original purchaser of any SLIPS® Dolphin™ Paint. The “original purchaser,” for the purposes of this warranty, is the first purchaser of SLIPS® Dolphin™ Paint from AST who owns their marine vessel and who applies (or who has a painting contractor apply) the SLIPS® Dolphin™ Paint to their marine vessel. The “original purchaser” may also be any boatyard or service provider who purchases the SLIPS® Dolphin™ Paint from AST and subsequently applies it onto their customer’s vessel. All references to “you” or “your” herein refer only to original purchasers. AST limited warranties are not transferable. All AST warranties, including any implied warranties, are valid only for the period of time the original purchaser of the SLIPS® Dolphin™ Paint owns their marine vessel. A copy of your purchase receipt is required to determine warranty applicability.

### **C. AST’s Limited Lifetime Warranty and Responsibilities**

AST warrants the SLIPS® Dolphin™ Paint in its original packaging sold to you against the Defects (as defined in Section D below), for so long as you own and regularly use your marine vessel, if the SLIPS® Dolphin™ Paint is used normally in accordance with the label instructions.

### **D. What this Lifetime Limited Warranty Covers**

THIS LIFETIME LIMITED WARRANTY APPLIES SOLELY TO THE FOLLOWING DEFECTS:

- Cracking, chipping, blistering, or peeling from properly prepared surfaces; and
- Wearing down to expose the underlying surface of properly prepared surfaces (collectively, the “Defects”).

### **E. What this Lifetime Limited Warranty Excludes**

THIS LIFETIME LIMITED WARRANTY DOES NOT COVER:

- Normal color fading, gloss loss, or chalking caused by exposure to sunlight, wind, or water;
- Abrasion or burnishing due to scrubbing, traffic, impact, or other wear and tear;

- Cracking, chipping, blistering, or peeling caused by structural expansion and contraction, settling, or other movement of marine vessel components, by excessive heat exposure, or by water intrusion;
- Film degradation or discoloration due to mold or mildew; or
- Damages resulting from improper surface preparation or coating application, extraordinary or catastrophic events, or failure to perform recommended maintenance. Recommended maintenance of painted surfaces includes frequent periodic inspection (at least once every six months), cleaning to remove dirt on exterior surfaces, and touch-up or repair as needed in order to maintain the integrity of painted surfaces over time.

#### F. Your Sole and Exclusive Remedy and AST's Sole and Exclusive Liability

In the event of a Defect, AST's sole and exclusive liability to you in accordance with the terms hereof, and your sole and exclusive remedy under this limited warranty is, at AST's option, to provide replacement SLIPS® Dolphin™ Paint for the defective SLIPS® Dolphin™ Paint or a refund of the purchase price for the defective SLIPS® Dolphin™ Paint, provided that you shall not be entitled to any remedy hereunder unless you have fulfilled all of your obligations in Section G, "Your Responsibilities," set forth below. Any replacement or refund by AST shall constitute a full settlement and release of all claims of the original purchaser for damages or other relief, and shall be a complete bar to any litigation filed subsequently to the original purchaser's acceptance of such remedy.

#### G. Your Responsibilities

In the event of a Defect and in order to get the benefit of this limited warranty, (i) you must provide AST with proof of the original date of purchase in the form of a copy of your purchase receipt, and (ii) as expressly set forth in Section C, "AST's Limited Warranty and Responsibilities," you must have used the SLIPS® Dolphin™ Paint in accordance with the label instructions, including but not limited to:

- Proper prep such that surface areas are clean, dry, and free from any dust, oil, mildew, wax, and other substances, any loose or peeling paint is sanded or scraped, any cracks, holes, or imperfections are repaired, and glossy surfaces are dulled with fine grit sandpaper to ensure proper adhesion;
- Sufficient dry time and wait time between coats; and
- Use of both SLIPS® Tie Coat and SLIPS® Dolphin™ top coat, and use of a barrier primer if painting on a metal vessel.

Evidence of a Defect and any claims, and proof of your original date of purchase, must be mailed to AST at the following address: AST, 85 Bolton Street, Suite 122, Cambridge, MA 02140.

#### H. DISCLAIMER, LIMITATION ON LIABILITY, EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES

TO THE EXTENT PERMISSIBLE BY APPLICABLE LAW, THE PAINT IS PROVIDED "AS IS" AND THIS WARRANTY CONSTITUTES YOUR EXCLUSIVE WARRANTY FROM AST FOR THE PAINT. TO THE FULLEST EXTENT PERMITTED BY LAW, AST DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE

ABOVE LIMITATION MAY NOT APPLY TO YOU. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NO OTHER WARRANTY WILL BE MADE BY OR ON BEHALF OF AST OR BY OPERATION OF LAW OR BY USAGE OF TRADE OR COURSE OF DEALING WITH RESPECT TO THE PRODUCT OR ITS INSTALLATION, STORAGE, HANDLING, MAINTENANCE, USE, REPLACEMENT OR REPAIR. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS SET FORTH IN THIS LIMITED WARRANTY, IN NO EVENT WILL AST OR ITS SUPPLIERS BE LIABLE FOR PROCUREMENT OF SUBSTITUTE PRODUCTS OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THE PAINT OR ITS USE, MISUSE, OR INABILITY TO USE BY YOU OR ANY THIRD PARTY, OR FROM DEFECTS IN THE PAINT, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. THIS LIMITATION WILL APPLY EVEN IF AST HAS BEEN ADVISED OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. AST'S TOTAL LIABILITY IN CONNECTION WITH THE PAINT WILL NOT EXCEED THE PURCHASE PRICE PAID BY YOU FOR THE PAINT GIVING RISE TO SUCH LIABILITY.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

#### I. Modifications and Alterations of Product

AST shall have no responsibility hereunder for defective SLIPS® Dolphin™ Paint subjected to further processing, modification or other alteration after shipment.

#### J. Arbitration

- In the event a dispute arises between you and AST arising out of this limited warranty ("Dispute"), such Dispute will be determined and settled solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding. You and AST agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this limited warranty, and that you and AST are each waiving the right to a trial by jury or to participate in a class action.
- As limited exceptions to Subsection 1 of Section J above: (i) you may seek to resolve a Dispute in small claims court if it qualifies; and (ii) you and AST each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights.
- The arbitration will be conducted by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules (the "AAA Rules") then in effect, except as modified by this limited warranty. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at [www.adr.org](http://www.adr.org). If your claim is for U.S. \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by

the AAA Rules. Any arbitration hearings will take place in the county (or parish) where you live unless you and AST both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

- Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. AST will pay for all filing, administration and arbitrator fees and expenses if your Dispute is for less than \$10,000, unless the arbitrator finds your Dispute frivolous or that the Dispute was filed for purposes of harassment. If AST prevails in arbitration AST will pay all of our attorneys' fees and costs and won't seek to recover them from you. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law.
- YOU AND AST AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties' Dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Arbitration section shall be null and void.
- With the exception of any of the provisions in Subsection 5 of this Section J of this limited warranty ("Class Action Waiver"), if an arbitrator or court of competent jurisdiction decides that any part of this limited warranty is invalid or unenforceable, the other parts of limited warranty will still apply.
- You must seek arbitration for disputes arising out of this limited warranty prior to exercising any rights or seeking any remedies created by Title I of the Magnuson Moss Warranty Act.

#### K. Governing Law and Forum Choice

This limited warranty and any action related hereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section J, "Arbitration," the exclusive jurisdiction for all Disputes that you and AST are not required to arbitrate will be the state and federal courts located in the Commonwealth of Massachusetts, and you and AST each waive any objection to jurisdiction and venue in such courts.