

EMPERVIOUS™

RIGID WATERPROOF SHOWER SYSTEM

EMPERVIOUS SHOWER SYSTEM 10 YEAR LIMITED WARRANTY

WHAT DOES THE LIMITED WARRANTY COVER:

Emser Tile, LLC (“Emser” hereon) warrants only to the original consumer owner of the premises into which Emser’s Empervious Shower System is installed (the “Buyer” hereon), and the manufactured foam-based products, drains, and niches comprising the installed system (the “Product” hereon) will, on the date of shipment, be free from any defects in materials or workmanship, subject to the exceptions listed below. Accordingly, Emser hereby warrants the Product will not break down, or excessively deteriorate under normal use for the duration of this limited warranty provided the Product is used and installed in accordance with specifications and instructions detailed in technical data sheets, installation instructions and industry standard guidelines. **Buyer is responsible to inspect the Product at the time of delivery and installation for defects in materials or workmanship.**

HOW LONG DOES THE LIMITED WARRANTY APPLY AND TO WHOM DOES IT APPLY:

This limited warranty applies to the Product for ten (10) years from the date of delivery of the Product to the Buyer. **THIS WARRANTY EXTENDS ONLY TO THE BUYER AND IS NOT TRANSFERABLE EVEN IF THE BUYER SELLS OR OTHERWISE TRANSFERS THE PRODUCT OR THE PREMISES INTO WHICH IT IS INSTALLED TO ANOTHER INDIVIDUAL OR ENTITY DURING THE WARRANTY PERIOD. ANY SUCH SALE OR TRANSFER OF THE PRODUCT OR THE PREMISES WILL VOID THIS WARRANTY.**

WHAT IS NOT COVERED BY THE LIMITED WARRANTY:

This limited warranty does not cover the following:

- 1) Damage or failure to the Product occurring due to improper installation, which includes but is not limited to installation that is not in accordance with the installation instructions provided by Emser, and installation that is not in accordance with industry building standards.
- 2) Damage or failure to plumbing and/or electrical systems, including any lighting or speaker systems.
- 3) Damage or failure to any portion of the premises into which the Product is installed or any personal property contained therein, whether caused by a covered Product failure or by any other cause.
- 4) Damage or failure from structural movement or deflection in the area where the Product is installed.
- 5) Damage or failure determined to be efflorescence, which is the formation of a powdery deposit on the surface of brickwork, rock, or other material as a result of loss of moisture upon exposure to air. Per industry standards, efflorescence is common and expected when using cement-based materials such as those used in the Product, and therefore shall not be considered a defect under this limited warranty.
- 6) Damage or failure resulting from misuse of the Product occurring before, during, or after installation.
- 7) Damage or failure resulting from accidents, Acts of God, acts of war (including terrorism), actions of any government agency, actions of any utility company, fires, floods, and any other cause which is beyond the reasonable control of Emser.
- 8) Lost profits and/or consequential damages, including but not limited to losses due to delay of shipment of the Product.

This is not an exhaustive list and in no event shall Emser be liable for incidental or consequential damages resulting from damage or failure of the Product, or for breach of this limited warranty. Please note some States do not allow the exclusion or limitation of incidental or consequential damages. In those States, such limitation will not apply to Buyer; however, the remaining exclusions not prohibited by State law shall still apply. In the event that any provision of this limited warranty is found to be void or unenforceable, all other provisions of this limited warranty will remain in full force and effect.

HOW TO FILE A CLAIM UNDER THIS LIMITED WARRANTY:

If the Buyer believes this limited warranty has been breached, the procedure detailed below must be followed to file a claim.

- 1) The Buyer must notify Emser of its claim in writing. The writing must contain a detailed explanation of the Buyer’s claim under this limited warranty, including but not limited to the alleged defect in material or workmanship of the Product. This can be done via email to EMPERVIOUSwarranty@emser.com, or via standard mail, postage paid to:

EMPERVIOUS Warranty Claim
c/o Emser Tile, LLC
8431 Santa Monica Blvd.
Los Angeles, California 90069-4209

Although the Buyer has discretion as to whether to file a claim electronically or via standard mail, if the Buyer elects to send the claim via standard mail, Emser highly recommends that the Buyer does so via certified mail or through some traceable form of delivery, return receipt requested, in order to prove delivery to and receipt by Emser as some timelines related to processing claims under this limited warranty are triggered by the date of receipt by Emser.

- 2) The following documentation must be submitted with the Buyer's written claim:
 - a. Original proof of purchase bearing the date the Product was purchased,
 - b. The Product installation information, including:
 - i. The date the Product was delivered and the date the installation was completed, and
 - ii. The contact information for the installer of the Product including the installer's name, address, and telephone number, and
 - iii. An invoice or other document itemizing the costs for installation of the Product.
- 3) The Buyer must submit written notification of the claim within thirty (30) days of discovery of the alleged defect in material or workmanship of the Product.
- 4) Any photographic evidence substantiating the Buyer's claim should also be submitted with the claim.

WHAT EMSER WILL DO ONCE A CLAIM IS FILED:

Provided the Buyer has satisfied all the requirements listed above to file a claim under this limited warranty, Emser will acknowledge in writing its receipt of the Buyer's claim within thirty (30) days of its delivery. Such written acknowledgment shall be delivered to the Buyer through the same means in which the claim was submitted; either via electronic means (email) or via standard mail, postage paid. Once a claim is acknowledged in writing, Emser will conduct a thorough investigation of the claim which may include, but is not limited to: inspection of the installation site of the Product, for which Emser shall bear the expense; requesting photographic evidence and/or additional documentation substantiating the claim; and directly contacting the installer of the Product to determine whether it was installed in accordance with specifications and instructions detailed in technical data sheets, installation instructions and industry standard guidelines. Emser shall have ninety (90) days from the date the Buyer's claim is received to conduct its investigation. Emser shall provide the Buyer with a written decision approving or denying the Buyer's claim within one-hundred-and-twenty (120) days from the date the Buyer's claim is received. Emser's written decision shall be delivered to the Buyer through the same means the claim was submitted; either via electronic means (email) or via standard mail, postage paid. Emser shall include with its written decision copies of any photographs, documentation, or other evidence relied upon to reach its decision on the Buyer's claim.

WHAT EMSER WILL DO IF IT DETERMINES THERE IS A BREACH OF THIS LIMITED WARRANTY:

If it is determined the Product fails to satisfy this limited warranty, the Buyer's remedy therefor shall be as follows:

- 1) Emser shall provide replacement of those components of the Product which are ultimately determined to be defective in materials or workmanship at no cost to the Buyer, and
- 2) Except as otherwise excluded herein, Emser shall replace with materials of like value and appearance any finishing materials damaged as a result of a failure of the Product which is ultimately determined by Emser to be caused by a defect in materials or workmanship of the Product, including any finishing materials that are necessarily damaged in connection with the replacement of any component part of the Product required to be replaced pursuant to this limited warranty at no cost to the Buyer, and
- 3) In addition, Emser shall, at its sole and exclusive determination, pay the reasonable costs for the installation of the Product component parts and/or finishing materials identified above, subject to the following:
 - a. Installation shall be performed by an installer agreed upon by both Emser and the Buyer, and
 - b. Regardless of who performs the installation, the total cost therefor shall not exceed the sum of:
 - i. The original purchase price the Buyer paid for the Product,
 - ii. The original purchase price of the finishing materials installed over the Product, excluding all plumbing and electrical systems, including lighting and speaker systems,
 - iii. The original price paid for installation of the covered items.
- 4) In the event that Emser elects to use a third party to perform any covered warranty repair or installation, such third party must provide an estimate calculated based on a per-square-foot basis which shall not exceed the total square footage of the replacement components and finishing materials provided by Emser in accordance with the terms of this limited warranty. ***Emser will not provide any materials for and will not pay for any portion of the installation that is not necessitated by a covered warranty claim.***

REQUIREMENT FOR INFORMAL DISPUTE RESOLUTION BEFORE BUYER CAN FILE SUIT:

If the Buyer disagrees with Emser's decision on the Buyer's claim under this limited warranty, the Buyer must first submit the matter for informal dispute resolution by a neutral third party before the Buyer can file suit in a court of competent jurisdiction. The informal dispute resolution body must meet the following requirements:

- 1) Be adequately funded and staffed to resolve all disputes quickly.
- 2) Be available free of charge to the Buyer and Emser.
- 3) Be able to settle disputes independently, without influence from either the Buyer or Emser.
- 4) Follow established, written procedures.
- 5) Inform both the Buyer and Emser when it receives notice of a dispute.
- 6) Gather, investigate, and organize all information necessary to decide each dispute fairly and quickly.
- 7) Provide the Buyer and Emser the opportunity to present its side, to submit supporting materials, and to rebut points made by the other.
- 8) Inform both the Buyer and Emser of its decision and the reasons supporting it within forty (40) days of receiving notice of a dispute.
- 9) Issue decisions that are not binding so that either the Buyer or Emser remain free to take the dispute to a court of competent jurisdiction if dissatisfied with the decision.
- 10) Keep complete records on all disputes.
- 11) Be audited annually for compliance with the FTC's Rule on Informal Dispute Settlement Procedures.

Emser recommends and suggests using the Better Business Bureau for the purpose of informal dispute resolution as it meets all the requirements above. However, the Buyer may choose an alternate body that also so qualifies.

ADVISEMENT TO BUYER RE: APPLICATION OF STATE LAW:

This limited warranty gives you specific legal rights, and you may have other rights which vary from State to State. You have the right to bring any action at law or in equity to resolve disputes concerning or to enforce the provisions of this limited warranty.

TECHNICAL INFORMATION:

As provided above, ***the Buyer is responsible to inspect the Product at the time of delivery and/or installation for defects in materials or workmanship.***

Technical assistance and information regarding the Product is available at www.EMPERVIOUSSYSTEMS.COM, or may be requested by the Buyer via email to EMPERVIOUSINFO@emser.com, or by written request send via standard mail, postage paid to:

EMPERVIOUS Technical Information
c/o Emser Tile, LLC
8431 Santa Monica Blvd.
Los Angeles, California 90069-4209