

Chemonite®+B Douglas Fir Railway Tie 25-Year Limited Warranty

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1. **Warranty.** Subject to the terms, conditions and limitations contained in this Warranty, Arch Wood Protection, Inc. ("Warrantor") warrants to the owner of a crosstie, switchtie or railroad timber that has been treated with Chemonite® ACZA wood preservative manufactured by Warrantor and Warrantor's proscribed Borate additive that for a period of twenty five (25) years following the date of original purchase of such tie, such tie will not suffer damage caused by termites or fungal decay that makes the tie structurally unfit for the application for which it was intended as base for railway track. For purposes of this Warranty, the chemical preservative described in this paragraph is referred to as "Chemonite+B" and the wood treated with Chemonite+B is referred to as a "Chemonite+B Tie".

2. **What this Warranty Covers.** This warranty covers Douglas fir crossties, switchties and timber used as a base for a railway track which have been properly pressure-treated with Chemonite+B wood preservative by a treater licensed by Warrantor. This warranty is transferrable and covers the original and all subsequent owners of the warranted Chemonite+B Tie.

3. **What This Warranty Provides.** In the event of a valid warranty claim, Warrantor will, as the sole and exclusive remedy, at its option, either (1) provide a replacement Chemonite+B Tie or (2) reimburse the original price paid for the non-conforming Chemonite+B Tie. The warranty does not cover, and Warrantor shall not be responsible for, installation, repair, construction, labor, disposal or similar costs, or for any costs or damage which may be associated with the natural characteristic of some wood to split, crack, warp, twist, weather or erode.

4. **What this Warranty Does NOT Cover.** Notwithstanding any provision hereof to the contrary, Warrantor shall NOT be liable under this warranty for damage to any Chemonite+B Tie:

- a. resulting from any cause other than termites or fungal decay;
- b. that has been used for any purpose outside of the states of Washington, Oregon, California, Montana, Idaho, Nevada, Wyoming, North Dakota, South Dakota, Colorado, Utah, Arizona, New Mexico, Minnesota and Wisconsin;

c. that was not produced in accordance with (i) the American Wood Protection Association (AWPA) Standards U1 and T1, (ii) the Arch Wood Protection Quality Control Requirements for CHEMONITE®+B Treated Wood Douglas Fir Railway Material 25 Year Limited Warranty and its included referenced documents, and (iii) the Arch Wood Protection Chemonite® ACZA Wood Preservative Manual of Standard Practice; with a minimum assay retention of 0.40 pcf ACZA (Chemonite) and a minimum gauge retention of 0.25 pcf DOT (borate);

d. that does not bear a mark, brand, tag or nail in a form approved in advance by Licensor which identifies Licensee as the treater, the treated wood as a Covered Product and the year of treatment;

e. that has been used in a non-railroad structure or used for an application or in a way that is not consistent with its intended end use of supporting railway track;

f. that was used in a rail bed whose ballast has not been well-maintained to provide drainage underneath and around the Chemonite+B Tie;

g. that has cuts, holes (including open spike holes), notches or damage penetrating the treated zone which have not been field treated with a copper based preservative in accordance with the AWPA Standard M4;

h. that has been moved from its original installed location or otherwise re-used in any application other than that for which it was originally installed.

i. resulting from weathering and surface erosion or normal wear and tear, including without limitation, checks and cracks caused by spikes, plate cutting or respiking;

j. resulting from causes beyond the control of Warrantor, including without limitation: fire, improper storage or installation, alteration from ordered specifications, tampering, modification, insufficient retention or penetration, negligence, wrongful acts or omissions, abuse or poor design, accidents in transit, sudden occurrences of natural forces including without limitation flood, lightning, wind-storm, or frozen precipitation.

5. **How to Make Claims.** All warranty claims must be made in writing to Warrantor prior to the expiration of the warranty period and in any case within thirty (30) days after discovery of damage covered hereunder. All warranty claims must include the original purchase invoice, or other proof showing that the Chemonite+B Tie was purchased from Warrantor's licensed treater or its authorized supplier, and any other supporting documentation that Warrantor may reasonably request. Warrantor may require the owner to submit photographs and/or samples of the wood subject to the claim. At

Warrantor's request, owner must permit Warrantor and its employees, representatives or agents to inspect and test the damaged Chemonite+B Tie to determine the validity of the claim. Claims must be sent to Warrantor at:

Arch Wood Protection, Inc.
Chemonite+B Tie Warranty Claim Administrator
360 Interstate North Parkway, Suite 450
Atlanta, GA 30339

6. **Exclusive Warranty.** BY PURCHASING OR ACCEPTING OWNERSHIP OF A CHEMONITE+B TIE, OWNER ACCEPTS AND ACKNOWLEDGES, AND WARRANTOR HEREBY STATES, THAT THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY AND IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, GUARANTEES, AGREEMENTS, PROMISES, COMMITMENTS, DUTIES OF CARE OR CONDITIONS, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTOR HEREBY SPECIFICALLY DISCLAIMS. THE OWNER'S RIGHTS AND REMEDIES ARE LIMITED TO THOSE SET FORTH IN THIS AGREEMENT. ONLY THE WARRANTOR IS LIABLE UNDER THIS LIMITED WARRANTY AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS SHALL HAVE NO LIABILITY OF ANY KIND WITH RESPECT TO THE PURCHASE OR USE OF CHEMONITE® TIES.

7. **Limitation on Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WARRANTOR BE RESPONSIBLE FOR ANY DIRECT, PUNITIVE, EXEMPLARY, AGGRAVATED, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING ANY DAMAGE FOR FAILURE TO REALIZE SAVINGS, LOSS OF USE, OR LOSS OF PROFITS, IN ANY CASE WHETHER BASED IN CONTRACT, TORT OR STRICT LIABILITY.

8. **Governing Law.** This warranty shall be governed by the laws of the State of Georgia, without regard to its conflict of laws rules.