



TERMS AND CONDITIONS (Re-Roofing, Repairs and Service)

1. **TERMS.** As noted in the proposal. If not noted, the following terms apply: The amount of this contract is due and payable 30 days upon completion. Interest shall start to accrue 30 days from the date of final invoice on any unpaid balance at 1 ½ % per month (18% per annum) or at the maximum legal rate permitted by law. If legal proceedings are required to collect an unpaid balance, all costs including actual attorney fees shall be added to the unpaid balance. Non-payment in accordance with these terms shall be considered material and cause for termination of performance by Company.

2. **ADDITIONAL CHARGES.** The following shall be an addition to the contract price and charged on a time and material basis, including 30% for overhead and profit: addition or deviation from the specifications herein described; damage to our work by others; temporary protection of the building not originally included in this work order; premature notice to start work causing unnecessary trips; trips back to the job to repair openings created after work is complete; and any labor required to be done outside of normal business hours.

3. **EXCLUSIONS.** The following items are not included in this contract unless otherwise specifically stated in writing: repairs to the roof deck, installation of wood or cant strips, furnishing or installation of sheet metal or roof drains, repairs or alteration to the building other than the roof, identification, abatement and/or removal of asbestos containing or toxic material, or work preparatory or incidental to these items. No interior protection or clean up included. Company shall not be responsible for any damage: (a) due to nails or screws penetrating the roof deck; (b) incurred to anything secured or attached to the roof deck; or (c) due to joists or any other roofing structure member which becomes loose, unsecured or falls as a result of the roofing operations of Company. Company shall not be responsible for any claims, damages or expenses arising from the presence or disturbance of asbestos containing, or toxic materials, or arising out of or in any way related to biological growth, including, but not limited to, all types of mold, or any other type of contamination of the Owner's building.

4. **MATERIALS.** All materials used shall be as stated in the specifications and/or attached Scope of Work.

5. **CUSTOMER'S RESPONSIBILITY.** The Customer is solely responsible for structural suitability of the building in light of specifications of the roofing system to be applied pursuant to this work order, including, but not limited to, load bearing capacity, dew point and vapor transmission calculations. Further, the Customer shall be solely responsible for any damages to any furniture, furnishing, fixtures or contents of the building during the performance of the work, except such damages as may be caused by the sole negligence of Company. Customer is aware that roofing products emit fumes, vapors and odors during the application process. Customer shall be responsible for interior air quality, including controlling mechanical equipment, HVAC units, intake vents, wall vents, windows, doors and other openings to prevent fumes and odors from entering the building and shall hold Company harmless from claims relating to fumes and odors emitted during the normal roofing process.

6. **PERMITS.** Customer shall secure and pay for necessary approvals, permits, easements, assessments and charges required for construction, use or occupancy of permanent structures or permanent changes in existing facilities.

7. **PONDING WATER.** Company is not responsible for location of roof drains, adequacy of drainage or ponding on the roof. It is understood by Customer that a Ponding Water condition is not indicative of defective workmanship under this agreement. Positive Drainage is a design goal and is not always achievable. Company will not be held responsible for a Ponding Water condition that results from a roof structure that is not designed to achieve Positive Drainage as defined by the National Roofing Contractors Association (NRCA). Ponding Water is defined as a roof surface that is incompletely drained. Positive Drainage is a drainage condition with additional roof slope provided to ensure drainage of a roof area with 48 hours after a rainfall.

8. **ACTS OF GOD.** Company shall not be responsible for damage or delay due to strikes, fires, accidents, acts of god, acts of terrorism or war or other causes beyond its reasonable control.

9. **ACCESS.** Company shall be permitted to use driveways, and paved areas leading, or adjacent to, the job site for its equipment without liability to Company occasioned by the negligence of others or by its equipment.

10. **STRUCTURAL SUITABILITY.** Company assumes full responsibility for furnishing roofing materials and for their proper installation in accordance with manufacturer's specifications. Company does not, either itself or through its representatives, practice architecture or engineering and offers no opinion on, and expressly disclaims any

responsibility for, structural integrity, compliance with building codes or design. Opinions of competent structural engineers should be obtained by the Customer as to the structural soundness of the roof deck and its ability to properly support normal roof construction equipment and operations and the completed roof system. Company accepts no liability for any failure of the roof deck, its ability to support the contemplated roof installation, or resultant damages.

11. **FINAL PAYMENT.** The making of final payment shall constitute a waiver of all claims against Company by the Customer except for those arising from (a) unsettled liens stemming from work performed by Company, and (b) terms of any guarantee or warranty issued pursuant to this work order. No guarantee or warranty provided by Company shall be valid until full and final payment is received.

12. **ARBITRATION.** Any controversy or claim arising out of or relating to this work order, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. Notwithstanding the foregoing, in Company's sole discretion, collection of unpaid balances may be sought in any Court having jurisdiction thereof or under this arbitration clause. Any legal claim against Company must be brought no later than one (1) year after Company has completed work.

13. **GUARANTEE AND WARRANTY.** The type of guarantee and extent of coverage shall be as indicated in accordance with written guarantees, if any, offered by manufacturers of materials incorporated into the project. In addition to the manufacturer's guarantees, if so noted in the proposal, and upon receipt of final payment, Company shall guarantee workmanship furnished as part of this work order against defects in such workmanship for a period of one (1) year from the completion of work. ("Warranty") The value of this warranty shall not exceed the work order price. In all cases Company's liability is limited to repairs or roofing and waterproofing work and materials installed by Company, **EXPRESSLY EXCLUDING CONSEQUENTIAL DAMAGES. THERE ARE NO OTHER GUARANTEES OR WARRANTIES EXPRESS OR IMPLIED.**

14. **INSURANCE.** Company agrees to purchase and maintain, as required by law, workers' compensation and general commercial liability insurance to protect the Customer from injuries and/or damages which may arise out of or result from Company's operations under this work order and for which Company may be legally liable, whether such operations be by Company or by anyone directly or indirectly employed by Company, or by anyone for whose acts Company may be liable. **Customer agrees to look solely to Company's appropriate insurance carrier for any and all damages resulting from personal injury or property damage claims including those caused, in whole or in part, by Company.** Customer expressly waives all claims excluded under Company's insurance policies. The Customer agrees to provide sufficient insurance to protect Company against loss of materials installed or on the premises due to fire, windstorm, hail or floods. Customer provided property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, theft, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. If the property insurance requires minimum deductibles the Customer shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. The insurance shall waive rights of subrogation, if any against Company. The Customer shall purchase and maintain such insurance as will insure the Customer against loss of use of the Customer's property due to fire or other hazards, however caused. The Customer waives all rights of action against Company for loss of use of the Customer's property, including consequential damages. If Customer is not the owner of the property then Customer may satisfy its responsibilities hereunder by having the Owner provide the coverage in compliance with this paragraph.

15. **MISCELLANEOUS.** These Terms and Conditions together with the cover page providing the Scope of Work, etc. and any attachments constitute the entire agreement (Agreement) of the parties. Modifications to this Agreement can be made only in writing signed by Company. Customer permitting performance of work indicates acceptance without exception of this Agreement, even if this Agreement is not executed. This Agreement is solely for the benefit of Customer and Company, and is not intended for the benefit of any other parties.