

## GENERAL CONDITIONS

The following terms and conditions form an integral part of this proposal, and of the Contract between the Contractor and the Buyer which results upon their proper signatures to this proposal.

**TERMS OF PAYMENT:** Buyer agrees to pay for the work set forth on the front of this Proposal (the "Work") as follows: Monthly requisitions are due on or before the 10th of the following month, covering value of material and labor and miscellaneous expenses furnished during the preceding calendar month, including materials delivered to the job site and not yet installed. The entire balance of the price quoted on the reverse side of this proposal ("Contract Price") is due upon substantial completion of the work. Payment for Extra Work is due within ten (10) days of invoice. TIME IS OF THE ESSENCE AS TO ALL PAYMENTS DUE HEREUNDER. All payments hereunder shall be in cash or immediately available funds. Buyer agrees that if Buyer shall fail to make timely payment of any installment of the Contract Price when due, Buyer shall pay Contractor interest, costs incidental to collection and reasonable attorneys fees (if an attorney is retained for collection). Interest shall accrue at the rate of 1.5% per month (18% per annum) on the unpaid balance or balances due hereunder. In the event that Buyer shall fail to timely pay any sums due hereunder, Contractor may either suspend the Work until Buyer remits payment of all delinquent amounts, or terminate this Contract. In no event will payment be excused because of any failure of Buyer to receive payment from a third party, or because of any dispute between Buyer and any third party. Contractor will not accept backcharges and Contractor shall not be responsible for any other cost or expense or other charge, unless Contractor shall have received notice thereof prior to being incurred and shall have specifically agreed to the same in writing. In no event shall Contractor be liable for any backcharge for defective work unless Contractor shall have received written notice thereof and shall have been allowed a full and fair opportunity to cure or mitigate the same.

**ADDITIONAL CHARGES; EXTRA WORK:** Unless specifically set forth on the reverse side, the Contract Price does not include any of the following extras or additional work ("Extra Work"): (a) performance or payment bonds; (b) the removal of snow, ice or other debris; (c) punching of structural steel framing, blocking, conduits, wires or cables, etc. required to attach material to structure; (d) roof drain replacement or cleaning to provide proper drainage flow; (e) repair of pre-existing interior or exterior damage; (f) repair of damage to the Work caused by the fault of Buyer or any third parties; (g) any labor required to be done other than during regular working hours; (h) masonry repairs; (i) raising, disconnection and reconnection of mechanical equipment, antennas and satellite dishes; repairs and flashing of additional penetrations; (j) deck repairs; (k) flashing of additional penetrations; or (l) any and all other additions to or deviations from the scope of Work as outlined on the reverse side of this proposal. If Buyer shall request Contractor to perform any Extra Work, Buyer agrees to pay for all such Extra Work on a time and material basis in accordance with Contractor's current schedule of charges. Extra Work shall be deemed to be a part of the Work, the cost of Extra Work shall be added to the Contract Price, and Contractor shall enjoy all rights and remedies provided under this Contract with respect to Extra Work. Buyer agrees to pay for Extra Work within ten (10) days of invoice. Contractor shall not be obligated to perform any Extra Work unless Contractor shall agree to perform the same in writing.

**CONTRACTOR'S REMEDIES:** If Buyer shall fail to timely pay any installment of the Contract Price when due, or if Buyer shall otherwise breach this Contract, then Contractor shall be free to exercise all rights and remedies available under this Contract or at law or in equity. Contractor's remedies shall include (1) the right to file suit against Buyer for the Contract Price and for all other damages resulting from any breach by Buyer, (2) the right to file a mechanics lien, (3) the right to suspend or stop work, (4) the right to terminate this Contract (without discharging Buyer's obligations), and (5) all other rights and remedies provided under this Contract or by law or in equity. Buyer shall pay Contractor's attorneys fees and costs incurred in collection of delinquent payments under this Contract.

**LIMITED WARRANTY:** Contractor's work will be warranted by Contractor in accordance with its standard warranty, which is made a part of this proposal and contract and incorporated by reference. A copy of Contractor's standard warranty is attached or, if not, will be furnished upon request. Contractor SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. The acceptance of this proposal by the Customer signifies his agreement that this warranty shall be and is the exclusive remedy against Contractor for all defects in workmanship furnished by Contractor. A manufacturer's warranty shall be furnished to Customer if a manufacturer's warranty is called for on the face of this proposal. It is expressly agreed that in the event of any defects in the materials furnished pursuant to this contract, Customer shall have recourse only against the manufacturer of such material.

Contractor shall not be responsible or liable under any circumstances for damages caused by or repairs or replacements required due to any of the following: acts of omissions of other trades or contractors or third parties; lightning, winds of peak gust speeds of 55 m.p.h or higher measured at 10 meters above ground, hail storm, flood, earthquake or other unusual phenomena of the elements; structural settlement; failure, movement, cracking of chimneys, skylights, vents, supports or other parts of the building; vapor condensation beneath the roof; penetrations

for pitch boxes; erosion, cracking and porosity of mortar and brick; dry rot; stoppage of roof drains and gutters; penetration of the roof from beneath by rising fasteners of any type; fasteners that penetrate and are visible at the underside of all roof deck areas; inadequate drainage, slope or other conditions beyond the control of contractor which cause ponding or standing of water; termites or other insects; rodents or other animals; fire or other casualty; vandalism, abuse or misuse; failure to maintain the roof and gutters in good order and repair; settlement or deflection of walls or deck or other structural problems; normal wear or tear; or harmful chemicals, oils, acids, and the like that come in contact with the roofing system and cause a leak or otherwise damage the roof system. EXCEPT AS SET FORTH HEREIN OR IN THE WRITTEN LIMITED WARRANTY OF ITS WORKMANSHIP WHICH HAS BEEN SEPARATELY PROVIDED, CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS WHATSOEVER. CONTRACTOR SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY INCIDENTAL, SPECIAL, EXCEPTIONAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, DAMAGE TO THE BUILDING, DAMAGE TO CONTENTS OF THE BUILDING OR OTHER SUCH DAMAGES) REGARDLESS OF WHETHER SUCH DAMAGES MAY ARISE OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, OR UNDER ANY OTHER THEORY OF LAW.

**BUYER'S SOLE AND EXCLUSIVE REMEDY:** THE RIGHTS AND REMEDIES OF BUYER ARE LIMITED AS FOLLOWS: Contractor agrees to repair or replace defective work in accordance with the terms and conditions (and subject to the limitations and restrictions) of its separate written Limited Warranty; provided that in the alternative, Contractor may elect in its sole discretion to refund part or all of the Contract Price for defective work. THE ABOVE CONSTITUTES THE SOLE AND EXCLUSIVE REMEDY OF BUYER. IN NO EVENT SHALL THE LIABILITY OF CONTRACTOR FOR DEFECTIVE WORK EXCEED THE AMOUNT OF THE CONTRACT PRICE ACTUALLY PAID TO CONTRACTOR UNDER THIS AGREEMENT. The separate written Limited Warranty sets forth the procedures which Buyer must follow in order make any claims against Contractor, and Buyer hereby agrees to follow such procedures.

**DISCLAIMER OF DAMAGES:** Buyer understands that it will take time for Contractor to perform the Work and that water damage may continue to result from existing roof conditions beyond the immediate work area. Accordingly, Buyer agrees that Contractor shall not be responsible for any interior or exterior water damage (consequential or otherwise) that may occur prior to completion of its Work and issuance of the manufacturer's warranty. Buyer will furnish Builder's Risk Coverage at Buyer's expense, prior to the starting date; and Buyer agrees to indemnify and hold Contractor harmless from and against all damage to and loss of the Work or materials to be incorporated into the Work as may result from any hazard whatsoever. Contractor shall not be liable for any damage to buildings or contents thereof resulting from any conditions, nor for any damage or breakage of roofing materials caused by structural changes on the building, and Buyer agrees to maintain its own insurance to cover such damage and loss. Damage occurring to the Work after completion which is not covered by warranty, shall be repaired only if Buyer requests Contractor to perform such repairs and agrees to pay for such repairs as Extra Work at Contractor's regular charges

**MOLD DISCLAIMER AND INDEMNITY:** For the purposes of this paragraph, "Mold" shall mean and include any mold, fungus or other similar agent, and the spores, toxins, and byproducts thereof. Buyer agrees that Contractor is not responsible for roof leaks, water entry or excessive moisture which occurred before Contractor completed its Work, or which resulted from the acts or omissions of third parties, from scheduling conflicts, or due to any other cause or thing which is excluded under the Contractor's Limited Warranty. Buyer is responsible after completion of the work to make periodic inspections for roof leaks, water entry and excessive moisture, and Buyer agrees to promptly notify Contractor of any such condition. As a result of any such roof leaks, water entry and/or excessive moisture, Mold may grow in the building. Mold has been reported to cause health problems for building occupants, and can cause damage to building materials. Buyer agrees that Contractor is not responsible for indoor air quality in the building. Buyer agrees that Contractor's work does not include replacement of building materials which may have been damaged by roof leaks, water entry or excessive moisture. Buyer agrees that Contractor's Work does not include detection, evaluation or removal of Mold and does not include repair of damages caused by Mold. Such work is Buyer's sole responsibility. Buyer may consult with a mold remediation expert if Buyer is concerned about the presence of Mold in the building. CONTRACTOR MAKES NO WARRANTY CONCERNING THE PRESENCE OR ABSENCE OF MOLD IN BUYER'S BUILDING, EITHER EXPRESS OR IMPLIED OR OF FITNESS FOR A PARTICULAR PURPOSE, AND CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES CONCERNING MOLD OF WHATSOEVER KIND OF NATURE. CONTRACTOR HEREBY DISCLAIMS LIABILITY FOR PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, DAMAGE TO THE ROOF OR THE BUILDING, POOR INDOOR AIR QUALITY, AND ALL OTHER LOSS, DAMAGE AND LIABILITY ARISING FROM OR IN CONNECTION WITH THE

**PRESENCE OF MOLD (“MOLD LIABILITY”).** Buyer hereby agrees to indemnify, defend and hold Contractor harmless from and against any such Mold Liability, including legal fees and other costs of defense. Buyer hereby releases Contractor from all such Mold Liability, and agrees not to assert any such Mold Liability against Contractor in any legal proceeding or otherwise. In no event shall Contractor be liable for consequential, punitive or exemplary damages, regardless of whether Contractor had notice thereof, and the same are hereby disclaimed. Nothing contained in this Paragraph shall be deemed to waive, modify or abridge the other conditions, exclusions and limitations hereof or of Contractor’s Limited Warranty, and this Paragraph shall instead be deemed to enhance and clarify the same.

**ASBESTOS DISCLAIMER AND INDEMNITY:** For the purposes of this section, “Asbestos” shall mean asbestos and asbestos-containing materials in whatever form, friable or otherwise. Owner acknowledges that Contractor is not a qualified Asbestos abatement contractor. Owner agrees that Contractor’s Work does not include detection, evaluation, abatement, removal or disposal of Asbestos. Owner agrees that Contractor is not responsible in any way for Asbestos or for indoor air quality in Owner’s building. Owner agrees that Contractor’s Limited Warranty does not cover Asbestos or personal injury, death or property damage resulting from Asbestos. Owner understands that it is Owner’s sole responsibility to engage other contractors to handle Asbestos abatement and removal, in order to prevent personal injury, death or property damage which may result from Asbestos in Owner’s building. **CONTRACTOR MAKES NO WARRANTY CONCERNING THE PRESENCE OR ABSENCE OF ASBESTOS IN BUYER’S BUILDING, EITHER EXPRESS OR IMPLIED OR OF FITNESS FOR A PARTICULAR PURPOSE, AND CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES CONCERNING ASBESTOS OF WHATSOEVER KIND OR NATURE. CONTRACTOR HEREBY DISCLAIMS LIABILITY FOR PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, DAMAGE TO THE ROOF OR THE BUILDING, POOR INDOOR AIR QUALITY, AND ALL OTHER LOSS, DAMAGE AND LIABILITY ARISING FROM OR IN CONNECTION WITH THE PRESENCE OF**

**ASBESTOS (“ASBESTOS LIABILITY”).** Buyer hereby agrees to indemnify, defend and hold Contractor harmless from and against any such Asbestos Liability, including legal fees and other costs of defense. Buyer hereby releases Contractor from all such Asbestos Liability, and agrees not to assert any such Asbestos Liability against Contractor in any legal proceeding or otherwise. In no event shall Contractor be liable for consequential, punitive or exemplary damages, regardless of whether Contractor had notice thereof, and the same are hereby disclaimed. Nothing contained in this Paragraph shall be deemed to waive, modify or abridge the other conditions, exclusions and limitations hereof or of Contractor’s Limited Warranty, and this Paragraph shall instead be deemed to enhance and clarify the same.

**FUMES AND EMISSIONS:** Customer and Contractor acknowledge that asphalt may be heated by Contractor, odors and emissions from roofing products will be released and noise will be generated as part of the roofing operations to be performed by Contractor. 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. Customer is aware that roofing products emit fumes, vapors and odors during the application process. Customer shall hold Contractor harmless from claims from third parties relating to fumes and odors that are emitted during the normal roofing process.

**TOLERANCES:** All materials and work shall be furnished in accordance with normal industry tolerances for adhesion, color, variation, thickness, size, weight, amount, finish, texture and performance standards. Specified quantities are intended to represent an average over the entire roof area.

**MATERIAL REFERENCES:** Contractor is not responsible for the actual verification of technical specifications of product manufacturers; i.e., R value or ASTM or UL compliance, but rather the materials used are represented as such by the material manufacturer.

**BUYER’S OBLIGATIONS AND WARRANTIES:** Buyer agrees that Buyer is responsible to ensure that all surfaces shall be in proper condition for the receipt of roofing materials and Contractor assumes no responsibility for the proper grading or structural integrity of roof deck or for ponding water. Buyer is solely responsible for determining the effect, if any, of the new roofing work on the structural integrity of the building. Contractor assumes no responsibility for any required repairs or replacements to the roof deck; provided that Contractor, at the Buyer’s written direction, will remove and replace any defective substrate which is disclosed as the work progresses, and Buyer agrees to pay for such replacement as Extra Work. Buyer agrees to notify Contractor in proper time that structures are ready for work covered by this proposal. Buyer agrees to provide Contractor (without charge) with proper working space, sufficient storage room for all materials and reasonable use of such facilities as elevators, toilets, parking, electricity and water. Buyer further agrees to permit use of driveways and paved areas leading to or adjacent to the project for equipment and material storage without liability to Contractor occasioned by such use.

Buyer shall notify Contractor of all known conditions and defects prior to commencement of the Work. Buyer agrees that Contractor shall not be responsible for damage to concealed lines, such as, but not limited to, electrical, alarm, water or air conditioning lines. Contractor’s price is based upon there not being electrical or other conduit or other materials embedded within the roof assembly or directly attached to the underside of the deck, unless expressly identified on the face of this proposal. Customer will indemnify Contractor from any personal injury, damage, claim, loss or expense resulting from the presence of electrical or other conduit, shall render the conduit harmless so as to avoid injury to Contractor’s personnel, and shall compensate Contractor for additional time, labor and expense resulting from the presence of such materials. Buyer shall notify its tenants of the Work prior to commencement thereof.

Prior to roof removal, Buyer shall take and shall require its tenants to take appropriate precautions to protect contents of the building from damage during the course of the Work, including but not limited to removing objects from shelves and walls and covering furniture and other contents with drop cloths. Buyer agrees to fully cooperate with Contractor during the course of the Work. Buyer agrees to indemnify and reimburse Contractor for all damages, delay and overhead costs incurred as a result of Buyer’s failure to cooperate or to properly prepare the job site or to provide the notices as required above.

Buyer warrants and confirms to Contractor that: (a) Buyer is the owner of the building or project where the Work is to be performed, or that buyer has a legally binding Contract with the owner thereof for the Work, (b) the Work is to be performed by Contractor under this Contract is not for personal, household or consumer use, but is commercial work for business purposes, and (c) Buyer has read and understands all of the terms and conditions on both the front and back of this Contract and the separate written Limited Warranty.

**INTERRUPTIONS:** Contractor’s crew normally operate from 7:00 A.M. to 3:30 P.M. Monday through Friday, holidays excluded and weather permitting, until Contractor’s work is completed; subject always to interruptions or delays due to force majeure, accidents, strikes, lockouts, car delays, transportation difficulties, priorities of any kind, mill curtailment, labor shortages or any other scheduling problems beyond the control of Contractor. Buyer agrees to grant Contractor’s crews free access at all times to job site during performance of the Work. If Contractor’s crews cannot work continuously due to interruptions or delays beyond the control of Contractor, Buyer agrees to pay for overtime, waiting time, extra travel expenses and other extra charges as may be incurred by Contractor in meeting Buyer’s schedule, all of which shall be deemed Extra Work hereunder.

**INSURANCE:** Contractor agrees to carry Public Liability and Property Damage Insurance and to comply with applicable Workmen’s Compensation and Unemployment Insurance requirements. Buyer agrees to carry builders risk and general liability insurance to cover all damage to and loss of materials, work-in-progress, and all other personal property, buildings and improvements.

**ASSIGNMENT AND SUBCONTRACTING:** Buyer agrees that Contractor shall have the right to assign or subcontract any part or all of the Work described in this Proposal. Buyer agrees that Contractor may assign this Contract together with all the rights, privileges and conditions herein contained, and Buyer agrees that Buyer shall have no defense to payment of the Contract Price upon demand by the holder/assignee of this Contract. Buyer may not assign this Contract without the prior written consent of Contractor. If Contractor is a subcontractor, the terms of this Contract shall supercede any agreement between Buyer and the owner of the work, unless Contractor shall agree in writing to accept the terms of such other agreement. The warranty(s) provided above shall be to the benefit of the original Buyer named above and no one else. The warranty(s) provided above is/are not transferable to any other person, except with the prior written consent of Contractor. Contractor may charge an additional fee for roof inspection and repairs as a condition to transfer of its warranty(s).

**ARBITRATION:** If a dispute shall arise between Contractor and Customer with respect to any matters or questions arising out of or relating to this Agreement or the breach thereof, such dispute shall be decided by arbitration administered by and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association or through such other arbitration procedure as the parties may agree. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any Court having jurisdiction thereof. Any legal claim against Contractor, including a claim alleging any breach of this contract or negligence by Contractor must be initiated no later than two (2) years after Contractor completed roof installation. Collection matters may be processed through litigation or arbitration at the discretion of Contractor.

**BUYER ACKNOWLEDGES THAT BUYER HAS READ THE FOREGOING TERMS AND CONDITIONS, AND BUYER AGREES THAT THE TERMS AND CONDITIONS ON BOTH THE FRONT AND BACK OF ALL SHEETS OF THIS PROPOSAL/CONTRACT SHALL BE APPLICABLE TO THE AGREEMENT BETWEEN THE PARTIES.**