

## PROPOSAL FORM

Proposal To: \_\_\_\_\_ (herein "Owner") Date: \_\_\_\_\_

Owner Address/Phone Number: \_\_\_\_\_

For the Project located at: \_\_\_\_\_

Proposal From: \_\_\_\_\_

Contractor Address/Phone Number: \_\_\_\_\_

We (herein "Contractor") propose to furnish:

### GENERAL CONDITIONS

- 1) This contract incorporates all of the agreements of the parties to date. Any changes, alterations or additions thereto shall not be binding or enforceable unless approved in writing by both parties.
- 2) Issuance of a purchase order by Owner will constitute acceptance of each and every term and condition of this contract. Any additional terms or conditions stated in Owner's purchase order, or other written communication accepting this contract, or by alteration by Owner of this contract form, shall not be valid under any circumstances unless specifically adopted or approved by written response of Contractor. Failure to respond by Contractor shall be deemed a denial of any additional terms or conditions stated in Owner's acceptance.
- 3) Should leaks occur after completion of installation of the roofing system, inspections or repairs performed by Contractor shall be treated as warranty matters, and such circumstances shall not be grounds for withholding payment of the contract price; provided, however, if the roof membrane is installed over an existing system, Contractor shall have no responsibility for water penetration or mold growth that occurs as a result of moisture contained in the old, or former, roofing system.
- 4) If roof tear-off is to be performed, Contractor shall not be responsible for damages caused by (a) water penetration into the building resulting from moisture contained or trapped in or under the existing roof surface, which is released during tear-off, and (b) penetration of dust, dirt or mold spores into the building resulting from the tear-off. Unless written arrangements are made in advance, Contractor shall not be responsible for damages from leaks through any area of the existing (present) roof surface where Contractor has not performed tear-off surface preparation work.
- 5) If a warranty of the manufacturer of the roofing system to be installed is to be issued to Owner, a sample copy of such warranty is attached to this contract. Acceptance of this contract by Owner shall constitute acceptance of the terms, conditions and limitations of said warranty.
- 6) Attached hereto and incorporated herein by reference is Midwest Roofing Contractors Association, Inc. Roofing Contractor Warranty Form No. \_\_\_\_\_, which warranty form will be supplied by Contractor to Owner upon completion of this contract. Acceptance of this contract by Owner shall constitute acceptance of the terms, conditions and limitations of said warranty.
- 7) Completion of this contract shall be the date on which Contractor's work is finished, as distinguished from the date of Owner's acceptance thereof.
- 8) If structures of any kind are to be added to and installed on the roof membrane after its application, such installation shall be entirely at the risk of Owner, unless Contractor is given reasonable notice in writing of the time and date of such installation and is permitted to supervise or conduct (at its option) the cutting and sealing of the roof membrane necessary for such installation. Contractor shall be paid on a time-and-material basis for such supervision or work. (See Manufacturer's warranty for requirements after warranty is delivered.)
- 9) Damage occurring to the installed roofing membrane, resulting from acts of other contractors or persons authorized by Owner to conduct operations above or upon the installed membrane, shall be the responsibility of Owner.
- 10) Contractor accepts no liability to indemnify or hold Owner harmless for damages to persons or property, except those that are the direct result of Contractor's negligent error or omission which occur during performance of Contractor's work.
- 11) Contractor reserves the right to cancel this Contract by written notice to Owner within fifteen (15) days of Owner's acceptance thereof, in the event that Contractor, in the reasonable exercise of its judgment, determines that Owner's credit history or rating is deemed insufficient for the purposes of this Contract.
- 12) Each paragraph of the General Conditions and the Contract Conditions shall be construed as an express condition of this contract in consideration of the contract price agreed to herein by Contractor.

## CONTRACT CONDITIONS

### DUTIES AND RESPONSIBILITIES OF CONTRACTOR:

- 13) Contractor's price includes furnishing all labor, materials and equipment necessary to complete the contract, subject only to latent conditions of the work area, which could not be reasonably anticipated by the examination of core samples, or the visual inspection ordinarily employed in the roofing trade. If such latent conditions cause or require additional labor or material in the performance of the contract, Contractor shall promptly notify Owner of such condition, and such additional material and work will be supplied and performed on a time-and-materials basis by Contractor, unless the parties agree to a stated price for such additional work. Contractor may recover additional cost, overhead and profit for additional work resulting from changes in applicable laws, ordinances or regulations occurring after the date of this proposal.
- 14) Contractor will perform the work specified herein in accordance with the written specifications, if any, attached to or stated in the contract and the specifications of the Manufacturer of the roofing system to be installed, so that the installation will qualify for the issuance of the Manufacturer's warranty (identified above) to Owner. Contractor shall not be responsible for any defects or deficiencies in said specifications. Contractor EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OR FITNESS FOR ANY PARTICULAR PURPOSE with respect to said specifications.
- 15) Contractor makes no warranty respecting "Wind Uplift Resistance" of the installed roof system. If a "Factory Mutual Insurance Co. Wind Uplift Standard" is specified, Contractor represents only that the roofing system installed is represented by the Manufacturer thereof to meet such specified standard.
- 16) Contractor warrants that the materials and accessories supplied will be those specified for this Contract and will be new and of recent manufacture and free from obvious defects. Contractor shall not be responsible for latent defects in materials and accessories.
- 17) Contractor shall not be responsible for damages arising from delay due to inclement weather (including the threat of inclement weather), strikes, fires, accidents, delays in shipment or delivery of Manufacturer's materials, or other causes beyond its reasonable control; or, if any interruption of Contractor's work occurs by reason of operations of other contractors at the job site, or from Owner's failure to provide Contractor with reasonable access to the job site to perform this contract. Contractor shall exercise reasonable care to avoid causing damage by penetrations made by Contractor in installing the roofing system, in reliance upon the information as to deck or sub-surface conditions provided by Owner pursuant to Paragraph 22 hereof. Contractor disclaims any responsibility for any damage caused by or resulting from said penetrations.
- 18) Contractor shall advise Owner promptly upon completion of work and submit the same for Owner's inspection. Contractor, conditioned upon Owner's prompt inspection and notification to Contractor of any omitted work, or other discrepancies, will remedy the same if required by the specifications or performance standards of the contract.
- 19) Contractor will have Worker's Compensation Insurance in limits required by state law and Comprehensive General Liability Insurance coverage in force for all of its operations under this contract.
- 20) Contractor shall take all reasonable safety precautions with respect to its work, and shall have responsibility for compliance of its equipment and employees with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety and health of persons on the job site. Contractor shall have specific responsibility for housekeeping in its immediate work area, and will remove rubbish and debris caused by its work. Contractor shall not be responsible for the safety and health of any persons present at the job site who are not employees of Contractor.

### DUTIES AND RESPONSIBILITIES OF OWNER:

- 21) Owner will pay Contractor's estimate of (a) the cost of the roofing membrane, insulation and other materials, and (b) labor required for job set-up and delivery of materials, when the same are delivered to the job site, or stored at a suitable location agreed to by Owner. Owner agrees that the balance of all sums due under this contract shall be immediately due and payable upon completion of work by Contractor, and that Contractor may charge interest at the annual rate of eighteen percent (18%), unless a lesser percentage is required by law on any sum due under this contract which is not paid within thirty (30) days of its due date. If payments are not made when due, interest, costs incidental to collection and attorneys' fees (if an attorney is retained for collection) shall be added to the unpaid balance. Progress payments will be made by Owner on the basis of the work completed per month, based on Contractor's estimate.
- 22) Owner represents to Contractor that it has obtained competent engineering advice and that, based upon such engineering advice the roof deck on which the installation is to be made is in a sound weight-bearing condition, sufficient for the purposes of Contractor's work and that all surfaces to be utilized by Contractor for fastening, adhering or attaching the

roofing system will be adequate for the installation to be performed. Promptly after execution of this agreement and prior to commencement of Contractor's work, Owner will inform Contractor in writing of any deck or subsurface conditions, including specifically electrical and other utility conduit that could be damaged by penetrations made by Contractor in installing the roofing system.

- 23) At the time Contractor commences its work, Owner will provide Contractor with exclusive access and use of all roof areas where work is to be performed and such additional areas as are reasonably necessary for the Contractor to perform its work without interruption. All roof area work surfaces shall be free of debris and in a dry accessible condition. If preliminary work on the roof area is to be performed by others prior to Contractor's work, such work will be complete. Contractor shall not be required to perform its work while snow or other moisture conditions exist on the roof surface, unless Owner provides for removal or curing of such conditions.
- 24) Owner shall obtain permission for Contractor to work on or over adjoining property, if reasonably necessary to perform this contract, at no cost to Contractor. Owner will arrange for restriction of vehicles on property under Owner's control in reasonable proximity of the job site to prevent damage while Contractor's work is in progress, if requested by Contractor.
- 25) Owner understands and agrees that Contractor shall have no responsibility at any time after completion of the work for damages of any kind to persons or property located below the installed roof membrane, whether or not such damages result from (a) leaks or other weather-oriented sources, or (b) mold growth.
- 26) Owner will furnish on the job site, without cost to the Contractor, a convenient, covered enclosure that can be kept locked, in which to store Contractor's materials and equipment. Owner agrees to supply all necessary electricity including 220-volt, 30 amp capacity and water. Owner shall permit ready and convenient access to the building and roof area at all times by stairway or elevator service, if available.
- 27) Owner shall promptly inspect Contractor's work upon notice of completion, and shall either accept the work or give prompt, written notice to Contractor of omitted work or of other discrepancies. If Owner fails to give such notice to Contractor within seven (7) days from notice of completion, Contractor's performance shall be deemed to be completed for purposes of final payment.
- 28) Owner will rely exclusively upon the warranty, if any, of the manufacturer of any materials that are not specifically described and included in the "sample warranty" attached hereto.
- 29) Owner shall make no changes in the scope of the roof installation described herein or the specifications that would tend to disqualify the installation from the issuance of the Manufacturer's warranty referred to above.
- 30) If Contractor's work is to be inspected by Owner's representative, or an architect, Owner agrees to make firm arrangements to have such person available promptly after notice to make inspection as Contractor's work progresses, so as not to cause delay. Owner designates \_\_\_\_\_ to execute additional work orders or changes and to act for and on behalf of Owner to accept completed work.
- 31) If, in order for Contractor to perform its work under this contract, it becomes necessary to disconnect, remove, relocate or otherwise deal with any mechanical or other equipment located on the deck or other surface on which Contractor's work is to be performed, Owner or Owner's agent shall provide for the disconnection, removal, relocation or other appropriate action with respect to such mechanical or other equipment and further, shall provide for the reconnection, replacement or relocation of such mechanical or other equipment following completion of Contractor's work. Contractor shall have no responsibility with respect to any such rooftop equipment, unless it is specifically provided otherwise in this Agreement.
- 32) Owner agrees to provide at its expense builder's risk insurance for the benefit and protection of Contractor.
- 33) Prior to Contractor's commencement of performance of its work under this contract, an appropriate number of tests of substances and materials above and below the roof deck shall be conducted by, or on behalf of the Owner, at Owner's expense, to determine if (a) asbestos or similar hazardous materials or (b) mold of such type or in such quantity as to require remediation (hereafter "potentially harmful materials") are present, above or below the roof deck, which could be disturbed or otherwise affected by Contractor's work under this contract. If such tests indicate the presence of potentially harmful materials, Contractor may, at its option, (a) terminate this agreement upon written notice by Contractor to Owner; (b) delay commencement of performance of its work under this contract until such potentially harmful materials, and any hazards connected therewith, are located and abated, encapsulated or removed (in which case Contractor shall receive an extension of time to complete its work hereunder and compensation for delays encountered as a result of such situation and correction); or (c) proceed to locate, abate, encapsulate and remove such potentially harmful materials and any hazards connected therewith at a price to be determined by mutual agreement of Contractor and Owner and to be paid by Owner. If Contractor proceeds with its work under this agreement on the assumption that there are no potentially harmful materials present, based upon results of tests conducted prior to commencement of its performance, and does in fact encounter any

such potentially harmful materials in the course of performing its work, or if such potentially harmful materials are encountered by any other firm performing work at the job site, and Contractor determines that such potentially harmful materials present a hazard to its employees, Contractor shall have the right to discontinue its work and remove its employees from the job site until such potentially harmful materials, and any hazards connected therewith, are located and abated, encapsulated or removed, or it is determined that no hazard exists (as the case may be), and Contractor shall receive an extension of time to complete its work hereunder and compensation for delays encountered as a result of such situation and correction.

34) To the extent permitted by law, Owner shall defend, indemnify and hold Contractor harmless from any and all penalties, actions, liabilities, costs, expenses and damages arising from or relating to the presence of (a) asbestos or similar hazardous materials or (b) mold of such type or in such quantity as to require remediation (hereafter "potentially harmful materials") at this work site, including without limitation, installation, disturbance or removal of any product containing potentially harmful materials or violation of governmental regulations relating to such potentially harmful materials. Owner releases Contractor from all claims and liabilities relating to such potentially harmful materials at this work site, including claims for subrogation. Should Contractor undertake to locate, abate, encapsulate and remove any potentially harmful materials present at this work site, provided Contractor conducts its operations in accordance with applicable requirements established by the Occupational Safety and Health Administration and the Environmental Protection Agency, Owner agrees to exonerate, indemnify, defend and hold harmless Contractor from and against all claims, demands and lawsuits and all damages, expenses and losses incurred by Contractor's removal of potentially harmful materials from Owner's building and work site. Without limitation of the foregoing, this indemnification shall include any and all claims, damages, fines, judgments, penalties, costs, response costs, liabilities, or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys, consultant and expert fees) incurred by Contractor resulting from Contractor's removal, transportation and disposal of potentially harmful materials from Owner's building and work site, and specifically including any and all costs incurred because of any investigation of the site at which such materials are disposed of by Contractor or any cleanup, removal, remediation or restoration of such site mandated by a federal, state, or local agency or political subdivision. As used herein, the term "hazardous substances" means:

- a. any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and any regulations promulgated thereunder;
- b. any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; and
- c. any substance that is or becomes regulated by any federal, state, or local governmental authority.

35) Owner agrees to comply with all roofing system design and construction requirements mandated by law which apply to this re-roofing project, whether brought to Owner's attention by Owner's representative or architect, or by Contractor, or otherwise, including specifically all applicable building code requirements.

**ARBITRATION, ACCEPTANCE AND EXECUTION**

36) All disputes, claims and questions regarding the rights and obligations of the parties under the terms of this Agreement are subject to arbitration. Either party may make a demand for arbitration by filing such demand in writing with the other party within thirty (30) days after the dispute first arises. Thereafter, arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.

37) This document, when accepted by Owner, will constitute the entire agreement between the parties hereto, there being no promises or agreements, written or oral, except as herein set forth. Within thirty (30) days from the date hereof, but not thereafter, Owner may accept this proposal by executing the same in the place provided and returning to Contractor.

38) Owner accepts the total price of \$\_\_\_\_\_ and terms and conditions of this contract on \_\_\_\_\_, 20\_\_\_\_.

**ACCEPTED BY:**

**SUBMITTED BY:**

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Contractor

Title: \_\_\_\_\_

Title: \_\_\_\_\_

License #: \_\_\_\_\_ (if applicable)