

PROPOSAL FORM

Proposal To: _____ (herein "Second Party") **Date:** _____

Second Party Address/Phone Number: _____

For the Project located at: _____

and owned by: _____ (herein "Owner")

Owner Address/Phone Number: _____

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 Second Party will constitute acceptance of each and every term and condition of this contract. Any additional terms or conditions stated in Second Party's purchase order, or other written communication accepting this contract, or by alteration by Second Party 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 Second Party's acceptance. If this proposal form does not become the written contract for the subject job, this proposal is subject to (1) use of the AGC/ASA/ACS Standard Form Construction Subcontract (1994 or later edition) and (2) incorporation by reference into that subcontract form of the terms and conditions contained in this proposal, which terms and conditions shall take precedence over any conflicting or inconsistent terms in said subcontract form.
- 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.
- 4) 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 Second Party shall constitute acceptance of the terms, conditions and limitations of said warranty on behalf of Owner.
- 5) Attached hereto and incorporated herein by reference is Midwest Roofing Contractors Association, Inc. Roofing Contractor Warranty Form, _____, which warranty form will be supplied by Contractor to Owner upon completion of this contract. Acceptance of this contract by Second Party shall constitute acceptance of the terms, conditions and limitations of said warranty on behalf of Owner.
- 6) Completion of this contract shall be the date on which Contractor's work is finished, as distinguished from the date of Second Party's acceptance thereof.
- 7) 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 Second Party, 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.)
- 8) Damage occurring to the installed roofing membrane, resulting from acts of other contractors or persons authorized by Second Party to conduct operations above or upon the installed membrane, shall be the responsibility of Second Party.
- 9) Contractor accepts no liability to indemnify or hold Second Party harmless for damages to persons or property, except those that are the direct result of Contractor's negligent error or omission during performance of Contractor's work. Contractor disclaims any and all liability for damages to persons or property resulting from mold growth within any part of the building envelope due to moisture entering the building envelope prior to Contractor's completion of installation of the roof membrane or as the result of damage to or penetration of the installed roof membrane by others.
- 10) Contractor reserves the right to cancel this Contract by written notice to Second Party within fifteen (15) days of Second Party'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.

- 11) 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:

- 12) 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 Second Party 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.
- 13) 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.
- 14) 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.
- 15) 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.
- 16) 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 Second Party'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 Second Party pursuant to Paragraph 21 hereof. Contractor disclaims any responsibility for any damage caused by or resulting from said penetrations.
- 17) Contractor shall advise Second Party promptly upon completion of work and submit the same for Second Party's inspection. Contractor, conditioned upon Second Party'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.
- 18) 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.
- 19) Contractor shall take all reasonable safety precautions with respect to its work, shall comply with all safety measures initiated by the Second Party, 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 SECOND PARTY:

- 20) Second Party 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 Second Party. Second Party 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 Second Party on the basis of the work completed per month, based on Contractor's estimate.

- 21) Second Party 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, Second Party will inform Contractor in writing of any deck or subsurface conditions, including specifically electrical and other utility conduit, which could be damaged by penetrations made by Contractor in installing the roofing system.
- 22) At the time Contractor commences its work, Second Party 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 Second Party provides for removal or curing of such conditions.
- 23) Second Party shall obtain permission for Contractor to work on or over adjoining property, if reasonably necessary to perform this contract, at no cost to Contractor. Second Party will arrange for restriction of vehicles on property under Second Party's control in reasonable proximity of the job site to prevent damage while Contractor's work is in progress, if requested by Contractor.
- 24) Second Party 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.
- 25) Second party 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. Second Party agrees to supply all necessary electricity including 220-volt, 30 amp capacity and water. Second Party shall permit ready and convenient access to the building and roof area at all times by stairway or elevator service, if available.
- 26) Second Party 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 Second Party 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.
- 27) 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.
- 28) 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.
- 29) If Contractor's work is to be inspected by Second Party's representative, or an architect, Second Party 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. Second Party designates _____ to execute additional work orders or changes and to act for and on behalf of Second Party to accept completed work.
- 30) 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, Second Party or Second Party'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.
- 31) Second Party agrees to provide at its expense builder's risk insurance for the benefit and protection of Contractor.
- 32) Second Party shall have overall responsibility for job site compliance with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety and health of persons on the job site, and shall have specific responsibility for the following job site requirements:
 - (a) First aid services and provision for medical care;
 - (b) Fire protection except in the immediate vicinity of Contractor's equipment and work area;
 - (c) General housekeeping;

- (d) Illumination;
- (e) Sanitation facilities;
- (f) Barricades and guardrails at floor, wall and roof openings, stairwells and the building perimeter;
- (g) Safety signs;
- (h) Electrical requirements except those unique to the work to be performed by Contractor;
- (i) Approved means of access to every level of construction;
- (j) Ventilation;
- (k) General noise and air contaminant control;
- (l) Trash disposal facilities.

- 33) Contractor shall have the right to inspect the job site prior to commencement of its work to determine if the Second Party has met its job site safety obligations as stated above. If, in the reasonable judgment of Contractor, the job site safety requirements are not met, it shall immediately notify the Second Party and may refuse to commence work on the job site with impunity until such time as job site safety requirements are met by the Second Party.
- 34) Owner agrees to comply with all roofing system design and construction requirements mandated by law which apply to this 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

- 35) 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.
- 36) This document, when accepted by Second Party, 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, Second Party may accept this proposal by executing the same in the place provided and returning to Contractor.
- 37) Second Party accepts the total price of \$ _____ and terms and conditions of this contract on _____, 20____.

ACCEPTED BY:

SUBMITTED BY:

 By: _____
 Second Party

 By: _____
 Contractor

Title: _____

Title: _____

License #: _____ (if applicable)