TERMS AND CONDITIONS

# **Contract Documents**. The Contract Documents include: (a) the Proposal and any drawings, plans and specifications for the work set forth in the Proposal; (b) these Terms and Conditions; (c) any addenda or Change Orders; and (d) the Exclusive Warranty attached hereto. The Contract Documents form the entire and integrated Contract between Customer and Bone Dry Roofing (“BDR”) and supersede all prior negotiations, representations, or agreements, written or oral.

# **The Work**. BDR shall perform the Work in accordance with the Contract Documents, manufacturer’s specifications, and applicable law. BDR shall have sole control over means, methods, techniques, sequences and procedures to complete the Work. Unless otherwise provided in the Contract Documents, BDR shall provide and pay for all labor, materials, supplies, tools, equipment, and machinery reasonably necessary to complete the Work. Some variation may occur in color, texture and planes of materials. BDR may substitute similar materials if specified materials are unavailable. BDR does not evaluate venting and circulation systems. BDR may utilize subcontractors, vendors, suppliers, or others who are not a party to this Contract to provide labor, services, material, equipment, or machinery in connection with the Work. Neither the Work, nor the contract price, includes any governmental permit, service, or access charge.

# **Changes**. BDR shall be entitled to a Change Order increasing the contract price upon the occurrence of any of the following: (a) Customer requested or ordered changes in the scope of the Work, including selection of materials not specified in the Proposal; (b) discovery by BDR of any deteriorated materials (i.e., decking, fascia boards, roof jackets, ventilators, flashing, etc.), hidden damage or the need for repair or replacement of any condition not specified for repair or replacement in the Contract Documents; (c) any additional work required by government inspectors to make the existing structure code compliant; or (d) any of the contingencies set forth in Paragraph 4 occur and result in additional costs to complete the Work. If the parties cannot agree on the amount of the Change Order, the Customer shall pay BDR at the unit prices set forth in the Proposal, or where there are not unit prices, on a time and materials basis, plus overhead and profit, for the changed work, which amount shall be added to the contract price.

# **Estimated Start and Completion Dates**. Customer acknowledges that the Estimated Start Date and Job Duration provided in the Proposal are estimates only and are based on the expected and usual performance of the Work during normal daytime working hours, Monday – Friday. BDR cannot guarantee that it will complete the Work within the estimated Job Duration. In no event shall BDR be responsible for any damages caused by a failure to complete the Work within the estimated Job Duration. Contingencies that could affect the completion time of the Work include: (a) adverse weather, (b) unforeseen site conditions, (c) unusual building construction, (d) natural disasters or other acts of God, (e) war or acts of terrorism, (f) disputes over boundaries or title, (g) strikes or labor disputes, (h) unavailability of materials or laborers or subcontractors, (i) delays in previously scheduled projects, (j) unavailability of permits, (k) changes in laws or codes not reasonably foreseeable, (l) fire or other casualty, (m) special requirements from governing bodies, (n) changes in the Work, or (o) other causes not the fault of BDR that impact the progress of the Work.

# **Contract Price and Payment Terms**. Customer shall pay BDR the contract price in installments upon completion of each division of work (roofing, gutters, insulation, etc.) or as otherwise set forth in the Proposal. Determination of the balance due and the date of completion are solely the responsibility of BDR. Interest shall accrue at 1.5% per month on all amounts unpaid after thirty (30) days. A $50.00 service fee will be charged for any returned check. A 3% service fee shall be added to the contract price, or any portion thereof, that is paid via credit card. The making of final payment by Customer constitutes a waiver of all claims against BDR, except for claims arising under the Exclusive Limited Warranty attached hereto.

# **Parties and Insurance Coverage**. The parties to this Contract are Customer and BDR. This Contract does not create any relationship between Customer and any other entity. Customer understands that other companies related to BDR may provide Customer with proposals and Customer may enter into separate contracts with those entities. The terms of this Contract do not control those relationships and any other contracts Customer may enter into with those entities do not affect the terms of this Contract. Nothing in this Contract creates a third-party beneficiary relationship. Additionally, Customer may have insurance that provides coverage for the Work. BDR does not and cannot guarantee that Customer’s insurer will provide coverage or pay the contract price in whole or in part. Customer understands and acknowledges that its insurer is not a party to this Contract and that Customer is responsible for paying for the Work regardless of whether its insurer provides coverage. If there is insurance coverage for the Work, Customer agrees to promptly pay to BDR any proceeds received from such insurance on account of the Work up to the amount of the contract price as amended by Change Order. If the insurance proceeds are insufficient to cover the entire contract price for any reason, including, but not limited to, insufficient coverage, coverage decisions by the insurer, or deductibles, depreciation or penalties applied by the insurer, Customer agrees to pay BDR for the Work. Neither BDR, nor any subcontractor, vendor, supplier, or other person or entity who is not a party to this Contract, may initiate or pursue a claim with Customer’s insurance company.

# **Customer’s Obligations and Commitments**. Customer shall: (a) grant free access to work areas for workers and vehicles; (b) allow storage of materials on Customer’s property; (c) keep driveways clear and available for movement and parking of vehicles during normal working hours, including removal of ice and snow; (d) supply, electric, water, and utilities; (e) arrange for identification of underground utilities before BDR performs any digging; and (f) remove, protect, or secure all satellite dishes, solar panels, sky lights, and other exterior and interior personal property (e.g., shrubs, flowers, wall hangings, etc.) before the Work begins. Customer shall hold BDR harmless from any and all damage to Customer’s personal property, including but not limited to interior fixtures, drywall, plaster wall construction, and decorations, unless caused by BDR’s negligence. BDR shall not be responsible for realigning satellite dishes or solar panels. The Work may require the use of dumpsters, heavy equipment vehicles, and construction equipment on Customer’s property. Customer holds BDR harmless from any damage to Customer’s property caused by weight or movement of such dumpsters, vehicles, or equipment or any damage or injury caused by debris remaining on Customer’s property after completion of the Work. BDR shall not be expected to keep gates and doors closed, and Customer shall hold BDR harmless from claims arising therefrom. Excess construction material shall remain BDR’s property. Customer shall hold BDR harmless from pre-existing conditions on the property discovered during completion of the Work. Performance under this Contract is contingent upon strikes, accidents, or other delays beyond BDR’s control. The contract price may be adjusted due to material or labor price increases caused by unforeseen problems arising after the Work has begun, market supply shortages, or unusual spikes in market demand. BDR is not responsible for removing hazardous material (e.g., lead paint or asbestos) from Customer’s property and may stop Work until it is removed. Customer agrees to hold BDR harmless from damages cause by mold, fungus, or biological material. Customer agrees to indemnify and hold BDR and its employees harmless from and against all liabilities, legal fees, damages, losses, costs and other expenses in relation to any claims or actions brought against BDR arising out of any breach by Customer of these Terms and Conditions or other liabilities arising out of Customer’s negligent acts or omissions.

# **BDR’s Rights**. Customer may not, under any circumstances, withhold amounts, claim an offset, or unilaterally attempt to charge other amounts to BDR. Customer’s failure to tender the full balance due upon notification of completion is a default of Customer’s obligations. If Customer fails to make a payment or commits any other breach of the obligations under this Contract, BDR may immediately stop the Work and, upon seven (7) days’ written notice to Customer, terminate this Contract and recover payment for Work performed, all other costs, damages or expenses, including reasonable attorneys’ fees and other costs and expenses of collection, and the anticipated profit on the balance of the Work not completed. BDR may terminate this Contract for any reason, including for BDR’s convenience, upon seven (7) days’ written notice to Customer, and may recover from Customer payment for Work performed. If BDR’s termination for cause is later found to be wrongful or without cause, such termination shall be considered a termination for convenience.

# **BDR Liability**. BDR warrants that the Work will comply with Bone Dry’s Exclusive Warranty attached hereto. **BDR expressly disclaims any and all other warranties, whether express, implied, or oral, including any implied warranties of merchantability, habitability, workmanship, or fitness for a particular purpose**. Customer expressly waives any special, indirect, incidental or consequential damages, including, but not limited to, delay, disruption, loss of product, loss of anticipated profits, or revenue, loss of use of equipment or property, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power. Customer’s sole and exclusive remedy against BDR for any claim or cause of action arising out of or relating to the Work (whether under theories of breach of contract, breach of warranty, negligence, tort, or other theory) is a claim under the Exclusive Limited Warranty attached hereto. Customer expressly waives all other rights and remedies. All warranties set forth in the Exclusive Limited Warranty are conditioned upon Customer paying BDR in full for the Work. The liability of BDR and BDR’s employees, subcontractors, and consultants to Customer shall not exceed the lesser of $10,000 or the amount actually paid by Customer to BDR pursuant to this Contract, regardless of the legal theory.

# **Dispute Resolution**. If a dispute arises concerning the Work or money due BDR, the method of binding dispute resolution shall be arbitration or litigation, at BDR’s sole election. If BDR elects arbitration, Customer consents to such arbitration as the exclusive form of binding dispute resolution, which arbitration shall be held in Indianapolis, Indiana, under the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) or the Alternative Dispute Resolution (ADR) of the Better Business Bureau (BBB) at BDR’s sole discretion. In either arbitration or litigation, BDR shall be entitled to recover its costs related to such a dispute, including reasonable attorney’s fees, if BDR prevails.

# **Customer Inquiries**. Customer problems or inquiries may be directed to BDR’s customer service department at the phone number, address, or email address set forth on the Proposal.

# **Miscellaneous**. This Contract shall be construed and interpreted according to the laws of the State of Indiana. Customer agrees that he/she has read and understands the written terms of this Contract. Customer agrees that the written terms of this Contract define the relationship between Customer and BDR. Customer further agrees that Customer is not relying upon any statements, advertisements, or representations not explicitly included in this Contract. If any of these Terms and Conditions should be determined to be invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction then such Term or Condition shall be severed and the remaining Terms and Conditions shall survive and remain in full force and effect and continue to be binding and enforceable.

BONE DRY’S EXCLUSIVE WARRANTY

# **Manufacturers’ and Suppliers’ Warranties.** Upon receipt of payment in full of the Contract Price, BDR shall turn over, assign to or otherwise pass through to Customer all warranties and guarantees, if any, given or made by manufacturers or suppliers of appliances, equipment, systems, or materials installed as part of the Work. BDR shall have no responsibility on or with respect to such warranties or guarantees, and Customer shall look solely to the manufacturers and suppliers extending such warranties for their satisfaction thereunder.

# **Warranty Date.** The term “Warranty Date” when used in this Exclusive Limited Warranty means the earlier of (a) the commencement date of any warranties provided by manufacturers or suppliers; or (b) the date by which the Work is substantially completed so that Customer can occupy and use the Property as contemplated by the Contract.

# **Extended Labor Warranty.** Subject to the exclusions, conditions and limitations set forth in Paragraph 4 below, BDR warrants to Customer that the workmanship provided during the installation of roofing system by BDR will be free from labor defects for the length of time not to exceed the original manufacturer’s warranty; and that BDR will repair or replace, at its option, any work proven to be defective due to workmanship under the terms of this Extended Labor Warranty. In the event of a repair or replacement pursuant to the terms of this Extended Labor Warranty, the Extended Labor Warranty shall apply to the repair or replacement and will extend for the balance of the warranty period in effect at the time of the repair or replacement. The Extended Labor Warranty set forth in this Paragraph 3 is expressly subject to the following exclusions, conditions and limitations:

## *Transferability.* This Extended Labor Warranty is transferable by the Customer to a subsequent property owner. The warranty will transfer upon receipt by BDR of a recorded copy of the deed transferring ownership, payment in full of the contract price, and a $25 administrative fee. The subsequent property owner shall be entitled only to the remaining balance of the warranty provided to the original Customer.

## *Inspection.*A roof inspection is required every five (5) years. This inspection will be provided at no charge to the original purchaser/owner or their first subsequent property owner, so long as all transferability requirements have been met. It is the customer’s responsibility to contact BDR within 60 days before or after 5 years from the original installation date and every 5 years thereafter. This Extended Labor Warranty is null and void if the 5-year inspection is not performed as required. Contact us at warranty@bonedryroofing.com to schedule your 5 year inspection.

## *Pro-Ration.* The first 10 years of the Extended Labor Warranty will include labor at 100% of cost and will be pro-rated for the remaining years of the Extended Labor Warranty to reflect the amount of use you have received from your roof. The amount of use will be calculated by dividing the number of months which have elapsed since installation by the number of months in the warranty term.

## *Expiration.* The Extended Limited Warranty will expire upon expiration of the warranty provided by the manufacturer of the shingles used on the Project.

# **Exclusions, Conditions and Limitations on all Warranties.** All warranties are null and void if: (a) Customer fails to pay BDR in full for the Work; (b) Customer, or its successors or assigns, engages any other contractor to perform any repairs on the roof system without BDR’s written consent; or (c) Customer fails to notify BDR in writing within 30 days of becoming aware of the presence of any roof damage or possible defect in the Work. None of the warranties set forth herein provide protection against failure, defect or damage caused by situations and events beyond normal exposure conditions, including but not limited to:

## Winds, including gusts greater than those listed in the warranty agreement a provided by the shingle manufacturer, lightening, hurricane, tornado, hailstorm, earthquake, fire, explosion, flood or falling objects.

## Distortion, cracking or other failure, or movement of the base material over which the shingles are applied, or of the roof deck, or of the walls or foundation of the building itself.

## Damage caused by structural changes, alterations or additions or by the installation of equipment to the structure after the original shingles have been applied.

## Damage to the roof deck or the structure caused by ice backup or damming.

## Damage due to faulty or aged siding, chimney deterioration, or step flashing not replaced prior to completion of the project.

## Damage to property caused by failure to replace old or damaged skylights.

## Damage to property caused by substandard ventilation.

## Damages caused by mold or mildew.

## Ponding water on flat roofs does not necessarily reflect a defective condition, and under dry conditions, should evaporate within 48 – 72 hours.

Manufacturers reserve the right to discontinue or modify their products, including the color of the shingles, and as a result, BDR is not liable in the event replacement material varies in color in comparison to the original product as a result of normal weathering. If BDR replaces material under this warranty, it may substitute products designated to be of comparable quality or pricing in the even the initially installed product has been discontinued or modified by the manufacturer.

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