



REPAIR AND SERVICE WORK GUIDANCE AND FORMS

Although generally considered a good way to keep money flowing and “keep the lights on” in between larger jobs, especially in the current economic climate, repair and service work can lead to disputes similar to those encountered during new construction or reroofing jobs. The most common issues encountered relate to difficulties collecting payment for work and misunderstandings regarding the scope of the work. The most important step a roofing contractor can take to protect himself or herself when performing repair and service work is to require customers to execute written agreements before work begins. Because repair and service work often is less complex and frequently finished in less than one day, many roofing contractors use a one-page authorization form customers are required to sign as a prerequisite to performing the work. The signed authorization form is proof of the customer’s request for the work, and aside from basic contact and location information, should contain only the most essential provisions.

Provisions Relating to Payment

Probably the most common problem encountered by roofing contractors performing repair and service work is difficulty collecting payment. Accordingly, a roofing contractor’s form should include the most pertinent provisions relating to payment, such as per hour charges, material charges, minimum payment per visit and charges for travel time. Inclusion of these items avoids subsequent disputes with customers who may claim billing rates are too high, unexpected or not what was agreed upon. In addition, the form should include a provision regarding timing of payment.

The payment provisions in an authorization form should also contain terms anticipating the possibility of nonpayment. In particular, the form should specify the rate at which interest accrues on unpaid invoices and should further provide that, if the roofing contractor is required to undertake collection efforts to obtain payment, the roofing contractor shall be entitled to costs of collection, including attorneys’ fees. In most states, collection costs and attorneys’ fees are not recoverable unless expressly provided for in the contract. By including this term, the roofing contractor removes a significant obstacle to payment in full—the customer’s knowledge that the roofing contractor does not want to pay an attorney or collection agency to collect on a small invoice—and replaces it with a significant incentive for payment in full—the customer’s knowledge that he or she may be liable for attorneys’ fees that could far exceed the total invoice.

Payment terms addressing time for payment and the roofing contractor’s remedy in the event of nonpayment should be repeated on the invoice sent to the customer at the conclusion of the work.

Warranty Exclusions and Damage Disclaimers

Roofing contractors also should include all appropriate exclusions on the authorization forms. For example, though most new construction or reroofing projects include a one-year contractor’s warranty of workmanship in addition to any manufacturer’s warranty, many roofing contractors do not warrant repair work. The authorization form should include a conspicuous disclaimer of all guarantees and warranties, express or implied, and should expressly state the warranties of merchantability and fitness for a particular purpose are excluded.



An implied warranty, as its name suggests, is a guarantee for the quality of goods or services that does not have to be written or expressly spoken to be applicable. The implied warranty of merchantability provides an item is fit for the ordinary purposes for which it is used. The implied warranty of fitness for a particular purpose provides that, if the seller has reason to know of the buyer's special needs or purposes for the property, that the property is suitable for those purposes. It is common practice for sellers of goods, including suppliers of roofing materials, to exclude or attempt to exclude the warranties of merchantability and fitness for a particular purpose.

Although usually not applicable to roofing contracts because the primary purpose of a roofing contract is provision of services and not provision of goods, it is good practice to exclude the warranties of merchantability and fitness for a particular purpose in an abundance of caution. A proper exclusion should specifically mention those warranties by name because a general waiver of "all implied warranties" is not always sufficient to exclude the warranties of merchantability and fitness for a particular purpose.

As with disclaimers of certain warranties, disclaimers of particular types of damages limit the remedies available to customers. In particular, the authorization form should provide an express waiver of incidental and consequential damages. Consequential damages are losses that do not flow directly and immediately from an injurious act but that result indirectly from the act. Similarly, incidental damages are not direct damages but rather damages that are associated with or related to direct damages. It is common for incidental and consequential damages to be excluded from construction contracts and warranties.

Other Terms and Disclaimers

Assuming there was no prior contract between a roofing contractor and a customer and no purchase order is subsequently issued, the service authorization form will be the only document with terms controlling the parties' relationship. Any other term or requirement important to the roofing contractor should be included in this form. For example, if the roofing contractor has a strong preference for arbitration over litigation in the event of a dispute, arbitration must be specified as the exclusive dispute resolution method. If the roofing contractor performs work throughout the state or in multiple states and wants to ensure any formal disputes are heard in his or her home county, the form should include a "forum selection clause" reciting the agreement that any and all disputes will be heard only by a particular court in a particular county. If the roofing contractor is particularly concerned about mold growth, existing conditions at the site, or any other issue, the time and place to address those issues is in an authorization form signed by the customer before performance of the work.

Invoicing

Promptly following completion of the service or repair work, an invoice should be forwarded to the customer that includes not only a reasonably detailed description of the charges but also the terms relating to late payment or nonpayment. Any provisions regarding accrual of interest and entitlement to recovery of costs of collection and attorneys' fees in the event the invoice is not timely paid should be conspicuously included on the invoice.

Regular invoices should be sent every month, showing accrued interest charges, until the balance is paid in full or the charge is written off. Failure to continue sending invoices to a nonpaying customer may affect entitlement to full recovery of all attorneys' fees and interest in a subsequent dispute. Therefore, invoices should continue to be sent regardless of expectation of payment, until payment is received or a final decision is made to forego pursuit of the outstanding balance.

Generally, interest on outstanding balances for roofing work is simple interest that is not compounded monthly. Accordingly,



interest charges should be the same from month to month without the customer being charged interest on interest. To clearly show how the final balance was calculated, each monthly charge of interest should be given a separate line on the invoice.

Conclusion

The best way for a roofing contractor to protect himself or herself when performing repair and service work is to require customers to sign written agreements before work begins. The terms and conditions in this written agreement do not need to be exhaustive or overly lengthy. Instead, by setting forth only the most pertinent provisions regarding payment, disclaimers and scope of work, a roofing contractor can protect himself or herself from the most common disputes arising from repair and service work. To illustrate incorporation of these terms, a sample authorization form and invoice are attached. It is important to note that rights and requirements, including the rate at which interest may be charged, vary from state to state, and roofing contractors should consult with their attorneys to develop authorization forms and invoice forms that comply with the requirements of the state in which a project is located. In addition, these forms and recommendations are intended for commercial, industrial and institutional projects only. Many states have particular or additional requirements for residential contracting. Attorneys can provide more information and assistance regarding residential projects.

Acknowledgement and Disclaimer

NRLRC gratefully acknowledges the law firm of Hendrick, Phillips, Salzman & Flatt, Atlanta, Ga., who contributed their time, effort and expertise to develop the Repair and Work Guidance service and sample forms.

The guide addresses commercial, industrial and institutional projects only; many states address particular requirements for forms and agreements for residential projects. A roofing contractor always should contact an attorney for state-specific information and assistance regarding residential projects.



ZYX ROOFING COMPANY

1234 Main Street
Any Town, USA 10101
Telephone: (555) 555-5555
Fax: (555) 555-5556
www.zyxroofing.com

COMMERCIAL SERVICE AUTHORIZATION FORM

Please return a signed copy of this form by fax. We cannot process your request until we have received a completed, signed form.

Owner/Customer: _____ Date: _____

Address: _____ Suite: _____

City: _____ State: _____ ZIP: _____

Contact Name: _____ Telephone: _____ Fax: _____ E-mail: _____

Type of Roof: _____ Size of Roof: _____

Detailed Description of Problem: _____

Need Service: ASAP Next Business Day Within one Week Other: _____

Purchase Order Required? No Yes* P.O. No.: _____

**If a purchase order is required, acceptance of this contract is limited to the terms stated herein. All other terms on Customer's documents that are additional to or inconsistent with this form are objected to and rejected and shall be deemed a material alteration.*

SERVICE FEE: \$85 per technician, per hour

Hourly fees are calculated from the time our technicians leave our shop to the time they return and are subject to change. There is a minimum charge of \$85 per visit. Hourly rates quoted are based on the work being performed during ZYX Roofing Company's regular work hours. Extra charges will apply to work performed outside these hours.

Customer agrees to make payment no later than 30 days after receipt of an invoice. If ZYX Roofing Company is not timely paid, ZYX Roofing Company shall be entitled to interest at the rate of 1 percent per month plus costs of collection, including attorneys' fees.

Authorized on Behalf of Customer by:

Signature _____ Print Name _____ Date _____

The repairs performed by ZYX Roofing Company are based on ZYX Roofing Company's visual inspection and investigation of the area of the reported problem. ZYX Roofing Company will not perform infrared or nuclear scans or destructive testing or water testing before commencing work unless specifically requested and paid for by Customer. Unless otherwise agreed, ZYX Roofing Company will only perform a visual inspection and cannot guarantee that no additional problems will be discovered once repairs begin. Customer acknowledges and understands that after ZYX Roofing Company commences its work, new or additional problems may be uncovered that were not discovered by ZYX Roofing Company's visual inspection and that the price and time to complete the repairs may be increased as a result of such problems. Customer further acknowledges and agrees that ZYX Roofing Company is not responsible for damages or leaks caused by existing conditions or existing sources of leakage simply because ZYX Roofing Company started work or performed repair work.

NO WARRANTIES, EXPRESS OR IMPLIED, ARE PROVIDED BY ZYX ROOFING COMPANY IN CONNECTION WITH SERVICE WORK UNLESS OTHERWISE AGREED IN WRITING. UNLESS OTHERWISE AGREED, ALL SUCH WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED. ZYX ROOFING COMPANY SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR INJURIES INCLUDING ALLEGED DAMAGE TO THE BUILDING OR ANY COMPONENTS OR CONTENTS THEREOF, MOLD, MILDEW, LOSS OF USE, RENTAL INCOME OR PERSONAL PROPERTY.

