



Dunedin Property Inspections

PEACE OF MIND

Harper Inspections Limited t/a Dunedin Property Inspections (company number 8587073)

Terms and Conditions of Trade

1. Definitions

1.1 Unless otherwise specified, the following definitions apply in these Terms:

- (a) **Business Day** means any day other than a Saturday, Sunday, public holiday (as that term is defined in section 5(1) of the Holidays Act 2003) in Dunedin, New Zealand.
- (b) **Company** means Harper Inspections Limited, a limited liability company incorporated and registered in New Zealand trading as Christchurch Property Inspections with company number 8587073.
- (c) **Confidential Information** means information that:
 - (i) is by its nature confidential;
 - (ii) is marked by a Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
 - (iii) is provided by either Party, or a third party 'in confidence';
 - (iv) a Party knows or ought to know is confidential; or
 - (v) is of a sensitive nature or commercially sensitive to a Party, and includes the Report.
- (d) **Contract** means the contract formed in accordance with clause 3.1, comprising the Terms and the content of the particular Quote.
- (e) **Customer** means the person, firm, trust, company or corporate entity that requests the Services and accepts a Quote from the Company, thereby forming a Contract, in accordance with these Terms.
- (f) **Defect** means a defect or fault at the Property and includes Minor Defects and Significant Defects (as the case may be).
- (g) **Force Majeure Event** means an event that is beyond the reasonable control of the Party immediately affected by the event, including but not limited to:
 - (i) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics, epidemics and any natural disaster;
 - (ii) acts of government authority, whether lawful or unlawful;
 - (iii) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
 - (iv) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or
 - (v) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.For the avoidance of doubt, a Force Majeure Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care nor does it extend to limit a Party's obligation to pay any amount due under these Terms.
- (h) **GST** means goods and services tax payable pursuant to the Goods and Services Tax Act 1985, at the rate prevailing from time to time.
- (i) **HSWA** means the Health and Safety at Work Act 2015 and includes any other relevant health and safety laws, orders, regulations and standards.
- (j) **Inspection** means the inspection of the Property.
- (k) **Inspector** means the Personnel the Company engages to complete the Inspection and provide the Services.
- (l) **Intellectual Property Rights** means all intellectual property rights and interests (whether existing in statute, common law or in equity), including copyright, know-how, trade secrets, trademarks, trade names, domain names, designs, patents and other proprietary rights, recognised or protected by law.
- (m) **Loss** means any loss, liability, damage, compensation, cost, interest, fees, penalty, fine, and expense and Losses shall have a corresponding meaning.
- (n) **Minor Defect** means a Defect which, in view of the age, type or condition of the Property, does not require substantial repairs or urgent attention and rectification and which could be attended to during normal, routine-like maintenance.

- (o) **Parties** means the Company and the Customer and **Party** means either one of them.
- (p) **Personnel** means all individuals engaged by or associated with either Party in relation to these Terms, including a Party's directors, employees, subcontractors and agents.
- (q) **Price** means the price payable by the Customer to the Company for the Services.
- (r) **Property** means the residential property which the Customer engages the Company to provide the Services in relation to and includes the buildings at the Property.
- (s) **Quote** means a valid, written quote provided by the Company to the Customer. Unless stated otherwise in a Quote, Quotes are valid for 30 days.
- (t) **Report** means the written report produced by the Company for the Customer, following the Inspection.
- (u) **Services** means the services specified in a Quote, including the completion of the Inspection and preparation of the Report for the Property.
- (v) **Significant Defect** means a Defect that the Company considers requires substantial repairs or urgent attention and rectification.
- (w) **Terms** means these terms and conditions as amended from time to time.

2. Interpretation

2.1 Unless otherwise specified, the following rules of interpretation apply in these Terms:

- (a) References to the **Parties** include their respective executors, administrators, successors and permitted assignees.
- (b) References to the words **including**, **include** or similar words do not imply any limitation and are deemed to have the words without limitation following them.
- (c) An obligation **not to do anything** includes an obligation not to suffer, permit or cause that thing to be done.
- (d) References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision and shall include all statutes or statutory provisions amending, consolidating or replacing that statute or statutory provision referred to, and any regulations, codes, orders in council and other instruments issued or made under that statute or statutory provision.
- (e) References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).
- (f) References to **time** and **dates** are to time and dates in New Zealand.
- (g) References to **\$** are references to New Zealand dollars.

3. Application of Terms

3.1 A Contract is formed when the Customer accepts a Quote provided by the Company. The Customer can accept a Quote and these Terms verbally or in writing. In addition to these Terms, a Contract includes the terms of each Quote.

3.2 The Customer will be deemed to have accepted these Terms by accepting a Quote as set out in clause 3.1.

3.3 Where there is any conflict or inconsistency between these Terms and the terms in a Quote, the terms in the Quote shall prevail to the extent of the inconsistency.

4. Subcontractors and Personnel

4.1 The Company may engage subcontractors to assist it in performing the Services.

4.2 The Company shall be responsible for the actions of all of its Personnel in performance of the Services.

4.3 The Customer acknowledges that its relationship under the Contract is with the Company and the Customer shall not bring a claim of any nature

against any of the Company's Personnel. The Parties acknowledge and agree that for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act, this clause is made and fully intended to confer a benefit on and be legally enforceable by, the Company's Personnel, notwithstanding that they are not a party.

5. Inspection

- 5.1 The Customer acknowledges that the Inspection is limited to the Inspector undertaking a visual, non-invasive and non-intrusive inspection of the Property that can be reasonably accessed in a safe manner (at the Inspector's sole discretion). The Inspection will not include any invasive or destructive investigations and therefore may not identify any Defects or unseen damage including those which are Significant Defects.
- 5.2 The Customer acknowledges that the Inspector will not move any furniture or chattels at the Property. If Significant Defects are concealed or not visible as a result of personal items, furniture or furnishings preventing visual inspection, the Company will have no liability in respect of that Significant Defect.
- 5.3 The Inspector will not assess parts of the Property that are unsafe or inaccessible (in each case, at the Inspector's opinion) including where:
- (a) the roof or floor space has an inadequate entry access and/or the crawl space is too small;
 - (b) the exterior roof or cladding cannot be accessed because it exceeds suitable ladder access or any other access point deemed to be at an unsafe height;
 - (c) sufficient access hatches are not available on the day of the Inspection;
 - (d) any area is at a height which is unsafe and access is not available;
 - (e) any internal space requires use of a ladder of a length that is too high for safety reasons;
 - (f) the area can only be accessed by disassembling chattels, moving furniture, appliances or stored items, removing screws, nails, bolts, sealants or other fasteners;
 - (g) the under floor space has been treated with chemicals or appears to have been treated with chemicals;
 - (h) the part of the Property can only be accessed or inspected from land adjacent to the Property; and/or
 - (i) the owner, property manager or agent has refused to allow the Inspector to obtain satisfactory access to that part of the Property.
- 5.4 If key areas such as floor or ceiling hatches are unable to be accessed this will be noted in the Report.
- 5.5 If the Customer requires a re-Inspection as the Inspection was unable to be completed pursuant to these Terms, the Company will charge a minimum additional fee of \$150 plus GST.

6. Scope of the Report

- 6.1 The Customer acknowledges that the Services are limited as set out in these Terms and therefore the Report and the Inspection (as the case may be):
- (a) **Significant Defects:** subject to clause 5, is only intended to identify Significant Defects, that are visible at the time of the Inspection;
 - (b) **Minor Defects:** will not identify all Minor Defects;
 - (c) **structural:** will not comment on the structural engineering state of the Property;
 - (d) **landscape:** will not cover all landscape items and minor structures at the Property and will not cover the geological stability, soil conditions, underground services of the Property;
 - (e) **foundations:** does not consider the structural strength of the foundations at the Property or the life expectancy of the foundation materials used at the Property, and the foundation inspection is limited to significant foundation Defects visible at the time of the inspection;
 - (f) **weathertightness:** will not include a weathertightness assessment;
 - (g) **applications:** will not assess the adequacy or life expectancy of any appliances or systems at the Property;
 - (h) **retaining walls:** will not assess the retaining walls at the Property and any comments relating to the retaining walls at the Property will be based on a visual review only;
 - (i) **EQC:** will not include a review of the Earthquake Commission (EQC) documentation relating to the Property and will not identify conclusively if Defects are earthquake related or not;
 - (j) **future:** will not identify all past, present or future Defects;
 - (k) **legislative and regulatory:** is not legislative or regulatory in nature

and does not constitute proof that the Property complies with any applicable laws and regulations including the Building Act 2004 (nor does the Inspection consider this);

- (l) **Residential property inspection standards NZS4306:2005 (Standard):** considers the Standard as a reference point but, for the avoidance doubt, does not comply with the Standard.
 - (m) **consents:** does not advise on building consents or resource consents and is not a code compliance certificate or certificate of acceptance; and
 - (n) **Customer:** is prepared for the Customer only and is not intended to be relied on by any third party.
- 6.2 The Company shall not be liable for any Loss, however arising, from the Customer or any third party relying on the Report that is any way contrary to clauses 5 (Inspection), 6 (Scope of the Report), 7 (Floor Levels) or 8 (Moisture Levels).
- 6.3 The Company does not provide pricing or quotations for repairs or maintenance, nor does it offer repair solutions or advice. An independent person would need to be engaged to provide such services.
- ## 7. Floor Levels
- 7.1 The Services do not include an assessment of the floor level(s) at the Property.
- ## 8. Moisture Levels
- 8.1 The Services do not include a comprehensive assessment of the moisture levels at the Property.
- 8.2 The Company will use a non-invasive moisture recording device to record moisture levels around accessible joinery or identified risk areas. The resulting readings included in the Report are indicative only and not conclusive.
- 8.3 For the avoidance of doubt, the non-invasive moisture recording referred to at clause 8.2 does not extend thermal imaging.
- ## 9. Customer Obligations
- 9.1 The Customer must:
- (a) advise the Company if the Property has sustained significant Earthquake damage; had significant Earthquake repairs completed; or the Property has been subject to any dispute over repairs (including EQC repairs), Defects or otherwise;
 - (b) provide, or procure that the Company is provided, reasonable access to the Property (including access to the subfloor and roof space (if applicable), to enable the Company to complete the Inspection;
 - (c) inform the Company of any risks or hazards that the Company may encounter at the Property while completing the Inspection; and
 - (d) ensure that the Property is safe for Inspection.
- 9.2 The Customer acknowledges that many years have passed since the Canterbury earthquakes and the Company shall not be liable if it transpires that minor or cosmetic items are earthquake-related. The Customer accepts that the Property is subject to typical movement, racking, expansion, general wear and tear, weathering and ground movement.
- 9.3 The Customer acknowledges and agrees that in the event that the Customer has not complied with this clause, the Company shall not be liable for any Loss, however arising, from such non-compliance.
- ## 10. Price
- 10.1 In consideration of the performance of the Services, the Customer will pay the Company the Price. The Price will be:
- (a) the Price included in the Quote (subject to any additional fees pursuant to these Terms); or
 - (b) as noted on the invoice provided by the Company to the Customer.
- 10.2 Where a Quote is given, the Parties agree that the quoted price is conditional on:
- (a) the Customer's instructions being complete and accurate; and
 - (b) no unforeseen circumstances arising.
- 10.3 Unless otherwise specified in writing or in a Quote, GST and any other costs directly related to the provision of the Services will be added to the Price.
- ## 11. Payment
- 11.1 The Company will invoice the Customer following completion of the Inspection.
- 11.2 The Customer will pay the Company's invoice in full, without set-off or deduction, on the first Business Day following the date of the Company's

invoice.

- 11.3 The Report will not be released to the Customer until payment has been received by the Company in cleared funds.
- 11.4 Unless otherwise agreed by the Company, the Customer's payment must be made by credit card or direct credit to the bank account specified in the Company's invoice.

12. Warranties

- 12.1 The Company warrants to the Customer that:
- (a) The Services will comply and conform with any specifications included in a Quote or agreed between the Parties in writing and will comply with all applicable legislation, regulations and codes of practice;
 - (b) the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry.

13. Termination

- 13.1 If the Customer cancels a Contract:
- (a) more than 24 hours prior to the time the Inspection is due to commence (as confirmed to the Customer in the Quote), the Contract will come to an end and no amount will be payable to the Company by the Customer.
 - (b) less than 24 hours prior to the time the Inspection is due to commence (as confirmed to the Customer in the Quote), the Customer will be required to immediately pay a cancellation fee of \$175 plus GST.
- 13.2 The Company may immediately terminate the Contract if it deems that there is a threat to the safety of the Inspector in completing the Inspection (at the Company's sole discretion). The Company reserves the right to charge a fee of \$150 plus GST if the Contract is terminated pursuant to this clause 14.2.
- 13.3 A Contract may be terminated immediately by either Party giving written notice to the other as a result of:
- (a) the other Party's default under a Contract which is not capable of remedy or where the breach is capable of remedy, but the other Party fails to remedy the breach within 10 Business Days of receiving written notice specifying the breach and requiring it to be remedied; or
 - (b) the other Party becoming insolvent, or being subject to the appointment of a receiver, manager, liquidator, or statutory manager, or committing an act of bankruptcy, or making a scheme of arrangement with its creditors.
- 13.4 Upon termination of a Contract (for whatever reason) the Customer shall, within 10 Business Days of the date of termination, pay to the Company all sums due and owing to the Company under all Contracts. Termination of the Contract will not affect any accrued rights or obligations of either Party.
- 13.5 The Parties agree that the provisions of clauses 13 to 23 survive termination or expiry of the Contract.

14. Force Majeure

- 14.1 The Company will not be liable to the Customer for any failure to perform its obligations under the Contract to the extent the failure is due to a Force Majeure Event.
- 14.2 If the Company wishes to claim suspension of its obligations due to a Force Majeure Event, the Company will notify the Customer as soon as reasonably practicable.
- 14.3 In the event that a Force Majeure Event continues for more than 10 Business Days then either Party may terminate the Contract with immediate effect.

15. Liability

- 15.1 To the fullest extent permitted by law, the Company's liability under a Contract, whether arising in contract, tort (including negligence) or otherwise, is limited to the total Price of the relevant Services paid to the Company by the Customer multiplied by four.
- 15.2 If the Company is held liable to the Customer or any other person for any reason, the Company's total liability under a Contract whether arising in contract, tort (including negligence) or otherwise, is limited to the aggregate sum of \$10,000.00.
- 15.3 Despite anything else in these Terms, neither Party will be liable whether arising in contract, tort (including negligence) or otherwise, for any loss of profits or any indirect or consequential loss or damage arising out of these

Terms.

16. Disputes

- 16.1 The Parties must use reasonable endeavours to resolve any and all disputes arising under or relating to a Contract by negotiation. If a dispute is settled at or following negotiations under this clause 17, such settlement shall be recorded in writing and be signed by the Parties, whereupon it shall be final and binding on the Parties.
- 16.2 Nothing in this clause 17 will prevent either Party from seeking urgent interim relief from the courts:
- (a) for interlocutory relief;
 - (b) to recover a debt payable; or
 - (c) to enforce a settlement agreed to by the Parties.

17. Consumer Guarantees and Fair Trading

- 17.1 The Parties agree and acknowledge that the Consumer Guarantees Act 1993 (CGA), the Fair Trading Act 1986 (FTA), and other statutes may impose warranties, conditions or obligations on the Company which cannot by law (or which can only to a limited extent by law) be excluded.
- 17.2 Other than as expressly provided for in these Terms, the Company excludes all such imposed warranties, conditions or obligations to the extent permitted by law and excludes any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 17.3 Where the Customer is acquiring the Services for the purposes of a business the Parties acknowledge and agree that:
- (a) the Customer is acquiring the Services for the purposes of a business pursuant to sections 2 and 43(2) of the CGA and accordingly the CGA will not apply;
 - (b) the Services are both supplied and acquired in trade for the purposes of the FTA and the Parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), and 13 (false or misleading representations); and
 - (c) all warranties, conditions, and other terms implied by the CGA or sections 9, 12A, and 13 of the FTA are excluded from the Contract to the fullest extent permitted by law and the Parties further acknowledge and agree that it is fair and reasonable that the Parties are bound by this clause 18.

18. Confidentiality and Collection of Information

- 18.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorised access, or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organisation other than:
- (a) if the Contract authorises disclosure of the Confidential Information;
 - (b) to the extent necessary to deliver the Services;
 - (c) if the other Party gives prior written approval to the use or disclosure;
 - (d) if the use or disclosure is required by law;
 - (e) where the Report is a pre-sale report and the Customer provides it to interested buyers; or
 - (f) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.
- 18.2 Each Party will ensure that its Personnel who are involved with delivery of the Services:
- (a) are aware of the confidentiality obligations in these Terms; and
 - (b) do not use or disclose any of the other Party's Confidential Information except as allowed by a Contract.
- 18.3 The Customer consents to the Company's collection, use and disclosure of the Customer's personal information for purposes in connection with the Company's provision of the Services. The Company will comply with its obligations under the Privacy Act 2020 in respect of its collection, use and disclosure of the Customer's personal information and the Company's privacy policy available at <https://www.christchurchpropertyinspections.co.nz/>.

19. Health and Safety

- 19.1 The Parties will:
- (a) each ensure they comply with their respective obligations under the HSWA; and
 - (b) consult, cooperate and coordinate as far as reasonably practicable with each other and any other person who has health and safety obligations in connection with their obligations under the HSWA.

20. Intellectual Property

- 20.1 All Intellectual Property Rights owned by either Party and existing immediately prior to the point on which the Contract was formed will remain the exclusive property of that Party.
- 20.2 The Customer agrees that all new Intellectual Property Rights that arise or are created by the Company or any of the Company's Personnel in the course of supplying the Services (including, for the avoidance of doubt, the Report) will be owned by the Company.

21. Notices

- 21.1 All notices and other communications to be given under a Contract must be in writing in English and be addressed to the Party to whom it is to be sent at the physical address or email address from time to time designated by that Party in writing to the other Party.
- 21.2 Any notice or communication given under a Contract shall be deemed to have been received:
- (a) at the time of delivery, if delivered by hand; or
 - (b) if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.
- 21.3 Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

22. General

- 22.1 A Contract or, if applicable, together with any terms set out in a Quote, comprise the entire agreement of the Parties in relation to the supply of Services and supersedes any previous discussions, arrangements and representations between the Parties.
- 22.2 Nothing in the Contract should be interpreted as constituting either the Company or the Customer, an agent, partner or employee of the other and neither Party will have the authority to act for or to incur any obligation on behalf of the other Party except as expressly provided for in the Contract.
- 22.3 The Company will not be deemed to have waived any right under these terms unless the waiver is in writing and signed by the Company. A failure by the Company to exercise a right, including a delay in exercising any right, will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision of these Terms.
- 22.4 The Customer may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without the prior written consent of the Company.
- 22.5 Each Party warrants and represents to the other Party that:
- (a) it has full power and authority to agree to enter into and bind itself to a Contract;
 - (b) all consents, authorisations and approvals that are necessary or required for that Party in connection with a Contract, and the assumption of rights and obligations under them, have been obtained or effected; and
 - (c) the agreement to and performance pursuant to a Contract does not constitute a breach of any law or obligation by which that Party is bound and which would prevent it from agreeing to or performing its obligations under a Contract.
- 22.6 If any provision of the Contract is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from the Contract and the remaining provisions of the Contract will continue in full force and effect.
- 22.7 The Company may amend these Terms from time to time by giving notice to the Customer in writing. Any amendment to a Contract or these Terms will apply to any subsequent Quote or Contract (as the case may be) after the Company notifies the Customer of the amendment. A Contract or these Terms may otherwise be amended or varied in writing and signed by each Party.
- 22.8 The Contract, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to the Contract or its subject matter or formation or the relationships established by it (including non-contractual claims).