

# Safe As Houses Terms & Conditions

## 1. Definitions

- 1.1 The “Contractor” being the employees, directors and shareholders of Safe As Houses Limited; The Contractor also includes the Contractor’s representatives, contractors and agents.
- 1.2 The “Client” being the person(s) and / or legal entities named or otherwise who has / have accepted these terms and conditions and / or engaged the Contractor in Work.
- 1.3 “Works” shall mean the Works described in the confirmation and invoice provided by the Contractor to the Client save that:
  - 1.3.1 In respect of any building inspection and related Report to be supplied by the Contractor to the Client the scope of the Works is defined in clause 11 below.
  - 1.3.2 In respect of any Methamphetamine sampling and related Report to be supplied by the Contractor to the Client the scope of works is defined in clause 12 below.
- 1.4 “Fee” shall mean, subject to clause 2, the price payable for the Works specified in the clause 1.3 above inclusive of GST, if any.
- 1.5 “Report” shall mean any written Report supplied by the Contractor to the Client as part of the Works.

## 2. Accordance to New Zealand Standards

- 2.1 All “Inspections” completed by the Contractor will be carried out in accordance with the New Zealand Standards. The Clients agrees to be bound by the New Zealand Standards.
- 2.2 The Contractor will ensure a qualified person with a relevant industry qualification and carry out the Inspection in accordance with the New Zealand Standards. Furthermore, the Inspector will ensure both the Inspection and the Report comply with and follow the New Zealand Standards
- 2.3 Weather Tightness will be considered in both the Inspection and Report, however, it will not be measured against appendix A of the Standards or to E2/AS1 of the Building Code, Matrix and Evaluation, as this is subject to a specialist report.
- 2.4 “Significant Fault or Defect” is defined in the Standards as – “A matter which requires substantial repairs or urgent attention and rectification.” A Significant Fault or Defect will be addressed in the Report as maintenance or remedial work in the summary.

### **3. Price & Payment**

- 3.1 Unless otherwise agreed in writing, the Client shall pay the Fee prior to the release of the Report or before the date that the Contractor commences the Works.
- 3.2 The Contractor reserves the right to change the Fee in the event of any variation from the plan of scheduled Works or specifications including, but not limited to, any revisit in terms of clause 12.3, or any variation as a result of additional Works required due to hidden or unidentifiable difficulties beyond the reasonable control of the Contractor. The Contractor will advise the Client of any change to the Fee in writing.

### **4. Time of Supply**

The Works shall be completed at or close to the agreed date(s) and time(s) between the Client and the Contractor. However, while the Contractor will make a reasonable effort to supply the Works at the date(s) and time(s) agreed, the Contractor reserves the right to vary the date(s) and time(s) that the Works are completed at its reasonable discretion.

### **5. Consumer Guarantees Act**

- 5.1 These terms and conditions are subject to the Consumer Guarantees Act 1993 (“the Act”). To the extent that these terms and conditions apply to a “Consumer” as defined by the Act, and are inconsistent with Act, the provisions of the Act shall prevail.
- 5.2 If the Client is acquiring or otherwise being supplied with Works for the purpose(s) of a trade or business, the Client acknowledges that the provisions of the Act do not apply to the supply of those Works by the Contractor to the Client.

### **6. Intellectual Property & Confidentiality**

- 6.1 The Works and the subsequent the Report, is confidential and has been prepared solely for the Client and shall not be relied on by any third parties. The Contractor accepts no responsibility for anything done by any third party in reliance, whether wholly or in part, on any of the Works including, without limitation, the contents of the Report.
- 6.2 The Contractor retains copyright in any written designs, drawings, specifications, processes, Reports and any other documents created as part of, or for the purpose of performing, the Works. The Report, in whole or in part, may not be copied, reproduced or translated in any medium by the Client and shall not be supplied by the Client to any third parties other than the Client’s professional advisers. For the avoidance of doubt, the Contractor may reproduce and sell to a third party a copy of the Report provided that all personal information of the Client shall be removed from such copy.

## 7. Payment

Payment for the Works as agreed in the Engagement Letter is required in full no later than 48 hours after the Works have been completed; and before the Report is released to the Client. The Client agrees to these terms.

## 8. Default

- 8.1 Interest on any unpaid Fee, or part thereof, shall accrue daily from the date when payment of the Fee becomes due, until the date of payment, at a rate of 2.5% per calendar month, calculated daily, after as well as before any judgment.
- 8.2 If the Client defaults in payment of any Fee, or part thereof, when due, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including, without limitation, legal costs on a solicitor and client basis and any debt collection agency costs.
- 8.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including the obligation to pay the Fee), the Contractor may, at its election, suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. For the avoidance of doubt, the Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

## 9. Cancellation

- 9.1 The Contractor may cancel any contract at will to which these terms and conditions apply at any time before the Works are supplied by giving written notice to the Client. On giving such notice under this clause, the Contractor shall repay to the Client any sums paid in respect of the Fee. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 The Client must give written notice of cancellation of no less than 24 hours or 1 working day, whichever comes first, before the Works are scheduled to commence. Failure to do so will result in the Client being liable for a cancellation fee equal to the full Fee.

## 10. Privacy Act 2020

- 10.1 The Client authorises the Contractor to collect, retain, use and disclose any personal information about the Client for the following purposes (in addition to any purposes otherwise authorised by law):
  - 10.1.1 To allow the Contractor to perform its obligations pursuant to any contract (including these terms and conditions) with the Client;
  - 10.1.2 Administering, directly or indirectly, any contract (including these terms and conditions) with the Client and enforcing the Contractor's rights;
  - 10.1.3 To allow the Contractor to communicate with the Client.
- 10.2 The Client, if an individual, has a right of access to the Client's personal information held by the Contractor. The Client may request correction of that information and

may require that the request be stored with that information. The Contractor may charge reasonable costs in providing access to that information.

## **11. Scope of Works – Building Inspection & Report**

- 11.1 Any Report supplied by the Contractor will comply with NZS 4306:2005 or its successors. The Report is based on an “exceptions or information basis,” for example, listing only significant defects.
- 11.2 It is the Contractors policy not to give advice verbally. The Client will be provided a written Report. The Contractor shall not be held responsible Any verbal advice given.
- 11.3 The Report is, subject to the terms and conditions including limitations contained herein, based on an overall visual and non-invasive assessment, as at the date of inspection, of 8 areas of the building which is the subject of the Contractor’s inspection:
- (i) Exterior roof
  - (ii) Roof space
  - (iii) External wall cladding
  - (iv) Foundation and subfloor
  - (v) Building interior
  - (vi) Weathertightness
  - (vii) Pest and potential hazard
  - (viii) Site
- 11.4 No destructive testing, moving of furniture or appliances, disassembly of equipment, opening of walls will be performed by the Contractor. Any areas or conditions that are concealed, camouflaged or difficult to inspect (such as, plumbing, drainage, heating, framing, ventilation, insulation or wiring) are excluded from the Contractor’s inspection and from the Report.
- 11.5 A non-intrusive moisture meter may be used at random or in identified risk areas; however, these are an aid only and results are regarded as indicative only. The Client agrees that any building that suffers from rotting, leaky home syndrome and / or toxic mould is not covered by the Contractor’s inspection and Report.
- Where deemed appropriate, the Contractor will recommend a full weathertightness investigation from a suitably qualified weathertightness professional.
- 11.6 The Report is not an all-encompassing report detailing every minor defect or minor outstanding maintenance issue. The Report is not intended to imply that every possible item was inspected, or that every defect was identified. The Report rates the overall concern level.
- 11.7 The Report is intended only as a general guide to help the Client evaluate the overall condition of the building. The Report is not intended to reflect property or building value, or advise towards or against purchase of said property or building.
- 11.8 The Report is not intended to guarantee the past, present or future building performance, its structure, systems, or their elements.

- 11.9 The Report does not constitute any express or implied warranty of merchantability or fitness for use regarding the condition of the building and it should not be relied upon as such. Any opinions expressed regarding adequacy, capacity, or expected life of components are general estimates based on information about similar components and occasional wide variations are to be expected between such estimates and actual experience.
- 11.10 The Report should be seen as a reasonable attempt to identify significant faults or visible defects at the time of the visual Inspection rather than an all-encompassing Report dealing with every possible aspect of the building. The reporting of any significant fault or defect is on an exceptional basis, rather than reporting on items, which are in acceptable condition for their age.
- 11.11 Inspections of the building systems, including but not limited to plumbing, hot water, electrical systems, air conditioning, appliances or aerials, are outside of the scope of the Report. The Inspector will, however, conduct a cursory inspection of the hot water system, the plumbing system, the electrical system (including testing the accessible power points and lights in each room). Any comments on such investigation are the opinion of the Inspector, who is not a qualified plumber, electrician or gas fitter.

Furthermore, any area or component of the building or any item or system not specifically identified in this report as having been inspected is excluded from the scope of the Inspection.

- 11.12 The Report is not:
- (i) An electrical, plumbing or gas report;
  - (ii) A geological or geotechnical report (including any report on foundation integrity or soil conditions);
  - (iii) Any kind of engineering report (including any report on current or future structural aspects);
  - (iv) A survey report (including, any report regarding legal boundaries);
  - (v) A building inspection or report (including any inspection or report on compliance with building codes or regulations, weathertightness requirements, legal authority standards, body corporate rules, council or consent concerns);
  - (v) A weathertightness report or any kind;
  - (vi) An earthquake or other natural disaster damage assessment;
  - (vii) A code of compliance certificate or Safe & Sanitary report or certificate;
  - (viii) A property valuation;
  - (ix) A building warrant of fitness report or certificate; or guarantee of the buildings systems or their component parts
- 11.13 Matters specifically excluded from the Report under the New Zealand Standards include, but are not limited to: electromagnetic radiation, health or environmental hazards, zoning ordinance violations, water or air contaminants of any kind, toxic moulds, termites or other infestations, asbestos, presence of formaldehyde, non-visual rotting, swimming pools and spas and related piping, private water systems, septic systems, sauna, specialized electronic controls of any kind, elevators, dumb waiters, water systems, solar systems, system adequacy or efficiency, prediction of

life expectancy of any item or system, latent or concealed defects, repair estimates, playground equipment, efficiency measurement of insulation, lead paint, toxic or flammable materials (including asbestos), heating and cooling equipment (including heat pumps and fireplaces), internal or underground drainage or plumbing, any systems which are shut down or otherwise secured, water wells (water quality and quantity), fire detection systems, intercoms, security systems, heat sensors (any comments about these systems are information only and do not represent inspection), neighbourhood amenity issues such as noise and traffic and flight paths, legal title including covenants, planning and resource consent issues, heritage obligations, compliance with any other governmental or non-governmental code or plan or statute or regulation, and any component or system or item not specifically identified in the Report as having been inspected.

- 11.14 Any opinions expressed regarding adequacy, capacity, or expected life of components are general statements based on information about similar components and occasional variations are to be expected between such estimates and actual experience.
- 11.15 For multi-unit properties, the Contractor will inspect and assess only the condition of the interior and accessible parts of the immediate exterior of the particular unit. For the avoidance of doubt, for multi-unit properties the Report will not include comment, advice and/or other statements in relation to common areas including any roof, foundation, site improvements and/or accessory units.

## 12. Scope of Works – Methamphetamine Sampling

- 12.1 The Contractor will obtain random samples from the subject building. Those samples will be forwarded to an IANZ laboratory, Hill Laboratories – R J Hill Laboratories Limited (“Hill Labs”). Hill Labs shall process the samples and produce a Report. The Contractor shall supply a Report to the Client.
- 12.2 The Client acknowledges that any samples collected by the Contractor including, methamphetamine and asbestos samples, during the Works, are random samples and may not be representative of the presence or absence of methamphetamine or asbestos throughout the entire building or other areas of the building where samples have not been collected.
- 12.3 Furthermore, samples taken during any Works and the resulting Report, is not a guarantee or warranty of the presence or absence of methamphetamine or asbestos in the building, its structures, systems, or component parts.
- 12.4 The sample collection by the Contractor and the Report produced does not constitute any express or implied warranty of merchantability or fitness for use regarding the condition of the building and it should not be relied upon as such.
- 12.5 For multi-unit properties, the Contractor will collect samples from the particular subject unit only.

## 13. Scope of Works – Healthy Home Assessments

Is something needed here?

## 14. Reasonable Access

- 14.1 The Client will ensure that the Contractor has reasonable and unobstructed access to the building/s that is the subject of the Works including, but not limited to, the roof cavity and foundations.
- 14.2 Reasonable access means access that is safe, unobstructed and adheres to the HSWA requirements including:
- (i) Subfloor – A minimum of 450mm x 400mm opening access door and a minimum crawl space of 500mm vertical clearance from the underside of the bearer.
  - (ii) Roof space – Areas that can be safely accessed from a 3.6m ladder and a minimum crawl space of 600mm x 600mm with manhole access no smaller than 450mm x 400mm; or other means that meet HSWA requirements.
  - (iii) Exterior roofs can be safely accessed from a 3.6m ladder (or if the safe conditions are not available, the area can be subject to a visual inspection only subject to reasonable visibility from the ground).
- 14.3 In the event Reasonable Access is not possible, the area must be within the Inspector's unobstructed line of vision to be included in the Report.
- 14.4 Where the Contractor is required to re-visit a building because access was not gained at the agreed time of inspection, a further charge based on an hourly rate of \$120 per hour (exclusive of GST), will be added to the Fee.

## 15. Limitation of Liability

- 15.1 Notwithstanding anything in these terms and conditions and statutory provisions including but not limited to the Consumer Guarantees Act;
- The Contractor will not be liable for any direct, indirect or consequential loss suffered by the Client arising howsoever from:
- (i) Any breach of these terms and conditions by the Contractor;
  - (ii) The Works including, without limitation, any Inspection and Report published and supplied by the Contractor to the Client;
- 15.2 Should the Contractor become liable to the Client for any reason (including but not limited to loss, damage, harm, or injury) in any way connected with the Inspection and / or Report, the Contractor's liability shall be limited to a sum not exceeding the cost of the Inspection and the Report. Furthermore, the Contractor will not be liable to the Client for any consequential loss of any nature, suffered by any person as a result of the Inspection or the Report. The Client indemnifies the Contractor in respect to any claims concerning such a loss.
- 15.3 The Client shall pay all legal costs incurred by the Inspector and / or the Contractor arising from such claims.

## 16. Use of the Works

- 16.1 Without limiting clause 15.1, the Client acknowledges that because the following matters are outside the scope of the Works, and for the avoidance of doubt:
- 16.1.1 The Contractor shall not be liable for any direct, indirect or consequential loss suffered by the Client arising howsoever from:

- (i) The ingress of water into a building or structure and any physical loss or damage to the building or structure arising directly or indirectly, in whole or in part, from the ingress of water;
- (ii) Rot or other gradual deterioration of a building or structure arising directly or indirectly, in whole or in part, from the ingress of water;
- (iii) Fungus, mould, mildew, yeast, rot or decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms in any building structure or any spore or toxin produced;
- (iv) Any costs or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in any way responding to or assessing the effects of fungus, mould, mildew, yeast, asbestos, rot or decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; and/or
- (v) The failure of any building to meet or conform to the requirements of the Building Act and the Building Code in relation to external water, moisture, durability, liquefaction, ground movement or erosion.

## 17. General

- 17.1 Any provision of these terms and conditions that is binding on more than one party will bind such parties jointly and severally.
- 17.2 The failure of or delay by the Contractor in requiring performance of any obligation of the Client pursuant to these terms and conditions is not a waiver of the Contractor's right:
  - 17.2.1 To claim damages and / or an indemnity for breach of that obligation; and
  - 17.2.2 To require performance of that or any other obligation under these terms and conditions at any time, unless notice to that effect is given in writing signed by the party entitled to the benefit of that provision or right. Any waiver given in accordance with this clause is effective only to the extent expressly set out in such notice.
- 17.3 These terms and conditions record the entire arrangement between the parties relating to the matters dealt with in the terms and conditions and supersedes all previous arrangements, whether written, oral, or both, relating to such matters.
- 17.4 If any provision of these terms and conditions is or becomes invalid or unenforceable, that provision will be deemed deleted from the terms and conditions and such invalidity or unenforceability will not affect the other provisions of the terms and conditions, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 17.5 No variation or amendment to these terms and conditions is effective unless it is in writing and signed by all the parties.
- 17.6 The Client may not transfer or assign any of the Client's liabilities or rights under the terms and conditions to any other person without the prior written of the Contractor. The Contractor may transfer or assign any of its liabilities or rights under the terms and conditions to any other person.



- 17.7 The terms and conditions will be binding against and for the benefit of each party, its permitted successors and its permitted assigns. Except as expressly provided for in these terms and conditions, a person who is not a party to these terms and conditions will have no rights or remedies under the terms and conditions, including under the Contracts (Privity) Act 1982, to enforce any of its terms.
- 17.8 The Client acknowledges that the Client has entered into these terms and conditions relying on the Client's own judgement and that the Client has not entered into the terms and conditions relying upon any representation (express or implied) made by the Contractor.
- 17.9 The Client warrants that the Client is legally entitled to enter into the terms and conditions.
- 17.10 These terms and conditions are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these terms and conditions and the agreement they record.
- 17.11 The Contractor has no responsibility or liability for any cost, loss or damage arising from:
- (i) any errors or omissions from information, data or documents not prepared by the Contractor, our employees, or other persons under the direct control of the Contractor;
  - (ii) any outcomes and reports from any form of sampling or testing;
  - (iii) any act or omission, lack of performance, negligent or fraudulent act by the Client;
  - (iii) any act or omission, lack of performance, negligence or fraud by any consultant, contractor or supplier to the Client, or any of the Client's employees or agents.
- i.12 The Client accepts that the Contractor may not detect some faults because:
- (i) The fault only occurs intermittently.
  - (ii) Part of the building has not been recently used and detection of the fault would usually occur after regular use.
  - (iii) The type of weather that would normally reveal the fault is not prevailing at, or around, the time of the Works.
  - (iv) The fault has been deliberately concealed.
  - (v) Furnishings are obscuring the fault (see clause 6d).
  - (vi) Incorrect information has been supplied to the Contractor, by any party including the Client or any other person.
  - (vii) The fault is/was not apparent on a visual Inspection.

## 18. Conflict of Interest

The Contractor certifies that the Inspector has no current or planned interest in the property or its improvement and will receive no benefits derived from any sales or improvements. To the best knowledge and belief of the Contractor, all statements and information in the report are true and correct.

## 19. Disputes

- 19.1 The Client shall pay all costs and expenses (including legal costs on a solicitor / Client basis) resulting from any breach of these terms of trade by the Client or the enforcement by the Contractor of these terms of trade.

- 19.2 Any dispute that arises as a result of the Works or Report, must be submitted to the Contractor in writing within 5 working days.
- 19.3 The Client agrees that upon raising a dispute the contents of the report may not be used to satisfy any terms of a sale and purchase agreement until the dispute has been resolved.
- 19.4 The Client agrees that if, after raising a dispute, they use the completed Works or Report to make an unconditional offer or confirm a sale and purchase agreement, that they waive all rights to continue with the dispute, and / or raise any future dispute or claim against the Contractor.
- 19.5 For any claim or dispute regarding building damage, the Client will allow the Contractor to investigate the claim prior to any repairs to the building being undertaken or completed. The Client agrees that if you do not allow the Contractor to investigate the claims of damage before any repairs are carried out that the rights to continue with and / or make any future claim against the Contractor is waived.
- 19.6 In the event of any dispute, the Client agrees not to disturb, repair, or attempt to repair anything that may constitute evidence relating to the dispute, except in the case of an emergency or to ensure safety themselves or others.
- 19.7 Any complaints or disputes will be subject to the Contractors internal complaints process.