Terms of Service

These terms and conditions are between **Defined Inspections Limited (NZCN 8988273)** (**we**, **us** or **our**) and you, the person or entity stated in the Booking or the Quote (**you** or **your**), together the **Parties** and each a **Party**. Together, these terms and conditions and the Booking or Quote (as applicable) form the entire agreement under which we will provide the Services to you (**Terms**).

1. Acceptance

1.1 We provide a range of services, including:

- (a) Defined Condition Reports (pre-purchase and pre-sale building inspections);
- (b) Construction-Informed Building Assessments;
- (c) Targeted Moisture Assessments, including leak detection and thermal imaging;
- (d) Defined Weathertightness Assessments;
- (e) DIRT-E underfloor inspections;
- (f) Asbestos review and testing;
- (g) Maintenance and Healthy Homes reports; and
- (h) any other services offered to you by us,

together, the **Services**.

1.2 You have requested the Services set out in the Booking or the Quote, and you are taken to have accepted these Terms by the earlier of:

- (a) ticking to accept these Terms when paying for a confirmed Booking or Quote online;
- (b) accepting the Quote (including by email);
- (c) instructing us to proceed with the Services; and
- (d) making any payment of the Price.

2. Services

2.1 As part of providing you with the Services, we may provide you with a PDF report detailing our findings (**Report**). We will not be required to provide you with any Report until you have paid the Price in full.

2.2 Unless agreed in writing under clause 2.6, we will not complete any invasive testing in the course of providing the Services.

2.3 We agree to provide the Services to you in accordance with these Terms, NZS 4306:2005 (Residential property inspection), where applicable, and all applicable laws.

2.4 We may provide the Services to you using our Personnel.

2.5 **Defined Weathertightness Assessment:** Where this service is selected, the inspection will focus on identifying observable weathertightness risks, including cladding systems, flashings, junctions, penetrations and visible evidence of moisture ingress. The assessment may include non-invasive moisture testing and evaluation of relevant construction details, with findings and recommendations

provided in a written Report. The assessment is limited to visible and reasonably accessible areas. It does not include invasive investigation, confirmation of concealed building conditions, or certification that the property is weathertight. All other limitations and exclusions in these Terms continue to apply.

2.6 **Targeted Moisture Assessments:** Where the Quote states, or you agree in writing, that limited invasive testing will be carried out (for example, pin-probe moisture readings or small test holes), you authorise us to do so at the agreed locations. We will take reasonable care to keep any marks small, but we are not responsible for making good, patching or redecorating unless the Quote says otherwise.

2.7 **DIRT-E underfloor inspections:** Where DIRT-E is included in the Booking or Quote, we may use a remote-operated inspection robot to view subfloor areas we cannot safely or reasonably access in person. The inspection is limited to what the robot's cameras and sensors can reach and record. Whether DIRT-E is suitable for a property is confirmed after our review of the Booking, and the Price is adjusted under clause 7.5 if it is added or removed.

3. Time

3.1 We will use our commercial best endeavours to provide the Services and any associated Report at the dates and times set out in the Booking or the Quote.

3.2 You acknowledge that any arrival times specified in the Booking or the Quote are an estimate only and we are not liable to you if we arrive at the Premises after such time.

3.3 Where applicable, we will use reasonable efforts to provide you with a digital version of our Report within 48 hours following our inspection and review of your Premises, or within 24 hours where you have booked a Priority 24-hour Report. We will not be liable for any delay in providing you with the Report.

3.4 We will have no liability (including for a failure to meet any date referred to in clause 3.1) for delays caused by one or more of the following events or circumstances:

- (a) a Variation or deemed Variation;
- (b) an act, omission or breach by you or any of your Personnel;
- (c) traffic or other travel delays;
- (d) prior inspections taking longer than anticipated to complete;
- (e) inclement weather;
- (f) delays in obtaining approvals for the Services from relevant Authorities;
- (g) industrial action, except where caused by us; and/or
- (h) any other event or circumstance beyond our reasonable control (including Force Majeure Events).

4. Your Consumer Law Rights

4.1 If you are acquiring the Services for personal, domestic or household use or consumption:

- (a) Certain legislation, including New Zealand Consumer Law and similar consumer protection laws and regulations, may confer on you rights, warranties, guarantees and remedies relating to

the Services which cannot be excluded, restricted or modified (**Consumer Law Rights**). Nothing in these Terms excludes your Consumer Law Rights as a consumer under the NZCL.

- (b) You agree that our Liability for the Services is governed solely by the NZCL and these Terms.
- (c) Subject to your Consumer Law Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis), and all materials, work, goods and services (including the Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.

4.2 If you are acquiring the Services for the purposes of a business, you agree that:

- (a) we are supplying and you are acquiring the Services in trade;
- (b) to the maximum extent permitted by law, the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply to these Terms; and
- (c) it is fair and reasonable that the Parties are bound by this clause.

5. Variations

5.1 All Variations must be agreed in writing between the Parties and will be priced in accordance with the Booking or the Quote, any schedule of rates provided by us, or as otherwise agreed between the Parties.

5.2 You may request a variation or change to the Services, including the timing for the provision of the Services, by providing written notice (including by email) to us, with details of the requested variation or change (**Variation Request**).

5.3 We will not be obliged to comply with a Variation Request unless the Parties agree to the Variation Request (or an amended Variation Request) in writing, including any effect on the Price (**Variation**).

5.4 If we consider that any instruction or direction from you constitutes a Variation, then we will not be obliged to comply with it unless and until a Variation Request has been issued under clause 5.2 and a Variation has been agreed under clause 5.3.

6. Your Responsibilities

6.1 You agree to provide us with accurate and factual information about your Premises and the Services, including the floor area of your Premises, the year it was built, its foundation type, and any other questions we ask you in the course of quoting and providing the Services.

6.2 You agree to provide us (and our Personnel) with unfettered access to the Premises (and the facilities at the Premises), free from harm or risk to health or safety:

- (a) at the times and on the dates agreed in the Booking or the Quote; and/or
- (b) to enable us to comply with our obligations under these Terms or at law.

6.3 Where the Premises is tenanted or being sold, you agree to arrange for the owner, agent or tenants to give us access, and to provide any tenants with notice of the inspection as required by law.

6.4 You acknowledge and agree that we may need to visit the Premises to confirm its floor area so we can confirm the Price, or as otherwise required in the course of completing the Services.

6.5 You are responsible for the acts or omissions, and any goods or services provided by, you or your Personnel. You agree to ensure that you and your Personnel cooperate with us, are polite and respectful to our Personnel and do not interfere with the supply of the Services.

6.6 You agree that any information, documentation, specifications, goods or services provided, or directions given, by you or your Personnel in relation to the Services (**Your Items**) will be:

- (a) provided solely at your own risk, and we will assume no responsibility or Liability for Your Items;
- (b) fit for purpose, of merchantable quality and compliant with all applicable laws; and
- (c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws,

and we will have no liability to you for any Liability, and you waive and release us from any such Liability, arising from Your Items.

7. Price and Payment

7.1 You agree to pay us the Price in accordance with the Booking or the Quote and these Terms.

7.2 **Confirmed price:** Prices shown when you place a Booking are estimates. After reviewing your Booking, we will confirm the final Price to you by email, together with a secure online link to accept these Terms and pay.

7.3 **Payment before the inspection:** You must accept these Terms and pay the confirmed Price in full **no later than 24 hours before the scheduled inspection**. For Quote-based Services, you must pay the quoted Price in full when you accept the Quote, unless the Quote sets out different payment terms. If the scheduled inspection is less than 24 hours away when we confirm the Price, payment is due immediately.

7.4 **Booking confirmed on payment:** Your Booking is only confirmed once we have received payment. If payment has not been received by the time set out in clause 7.3, we may release the inspection time to another client and cancel the Booking, without any fee to you.

7.5 **Price adjustments:** Where the Price is based on the floor area, age, foundation type or other details of the Premises, you agree to provide accurate information. If the information provided is materially wrong, or an add-on Service (such as DIRT-E) is added or removed, we may, acting reasonably, adjust the Price. Any increase must be agreed by you before the inspection, or invoiced afterwards if it only becomes apparent on site.

7.6 **GST:** The Price and any other amounts payable to us are stated in New Zealand dollars and include GST, unless otherwise stated.

7.7 **Payment method:** Online payments are processed securely by our payment provider (Stripe). We do not see or store your full card details.

7.8 **Unpaid amounts:** If any amount payable under these Terms is not paid when due, we may:

- (a) withhold the Report until the amount is paid in full;
- (b) recover the amount as a debt due and immediately payable, together with our reasonable costs of recovery (including legal fees, debt collector fees and mercantile agent fees);
- (c) require payment in full upfront for any future Services; and/or
- (d) terminate these Terms under clause 10.

7.9 You agree that we may set off or deduct from any money payable to you under these Terms any amounts payable by you to us.

8. Warranties and Representations

8.1 Each Party represents, warrants and agrees that:

- (a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under them, and to carry on its business;
- (b) these Terms constitute a legal, valid and binding agreement, enforceable in accordance with their terms; and
- (c) if applicable, it is registered for GST purposes.

8.2 You represent, warrant and agree that:

- (a) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stated in these Terms;
- (b) you will cooperate with us, and promptly provide us with all documentation, information, instructions, facilities and access (including access to the Premises) reasonably necessary to enable us to provide the Services;
- (c) the information you provide to us is true, correct and complete;
- (d) you will not infringe any third party rights in working with us and receiving the Services;
- (e) you will tell us before the inspection about any known hazards at the Premises; and
- (f) you are responsible for obtaining, at your cost, any access and Approvals from third parties necessary for the Services to be provided.

9. Cancellation, Rescheduling and Refunds

9.1 **Cancelling more than 24 hours before:** You may cancel or reschedule a Booking by written notice (including by email) given more than 24 hours before the scheduled inspection time. We will refund your payment, less any non-refundable payment processing fee, or move your Booking to another available time at no charge.

9.2 **Cancelling within 24 hours:** If you cancel less than 24 hours before the scheduled inspection time, a late cancellation fee of **20% of the Price** applies. We will refund the balance. If you reschedule instead of cancelling, we will waive the fee for the first reschedule of that Booking.

9.3 **No access:** If we attend the Premises at the agreed time and cannot carry out the inspection because access is not available, or the Premises is unsafe to inspect, a fee of **20% of the Price** applies. We will refund the balance, or apply it to a rescheduled inspection.

9.4 **Cancellation by us:** If we need to cancel or reschedule because of illness, a Force Majeure Event, or any other reason, we will offer you another available time or a full refund.

9.5 **After the inspection:** Once the inspection has been carried out, the Price is not refundable, except as required by your Consumer Law Rights.

9.6 **Quote-based Services:** For Quote-based Services, this clause 9 applies from the time you accept the Quote, unless the Quote sets out different cancellation terms.

9.7 **Refunds:** Refunds are made to the original payment method, usually within 5 to 10 business days. Payment processing fees charged by our payment provider are not refundable, except where we cancel under clause 9.4. Nothing in this clause limits your Consumer Law Rights.

10. Termination

10.1 These Terms commence on the Commencement Date and continue until the earlier of:

- (a) the Services being supplied to you in accordance with these Terms; and
- (b) these Terms being cancelled or terminated under clause 9 or this clause 10

(**Term**).

10.2 These Terms will terminate immediately on written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 business days of the Defaulting Party being notified of it; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.

10.3 We may terminate these Terms immediately by written notice if:

- (a) you fail to pay the Price in accordance with clause 7; or
- (b) you or your Personnel are rude, abusive, disrespectful or violent towards our Personnel.

10.4 On expiry or termination of these Terms:

- (a) we will immediately stop providing the Services;
- (b) any refund will be made in accordance with clause 9;
- (c) you must pay for all Services provided before termination, including Services not yet invoiced, and all other amounts due under these Terms; and
- (d) if we terminate under clause 10.2 or 10.3, you must also pay our additional costs reasonably incurred and arising directly from the termination (including legal fees, debt collector fees and mercantile agent fees).

10.5 We will retain your documents (including copies) as required by law or regulatory requirements. Your agreement to these Terms authorises us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of these Terms.

10.6 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

11. Liability

11.1 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law and subject to your Consumer Law Rights:

- (a) neither Party will be liable for any Consequential Loss;
- (b) our maximum aggregate liability for any Liability arising from or in connection with the Services and these Terms is limited to us re-performing the relevant Services or, at our discretion, repaying you the Price paid for the relevant Services;
- (c) a Party's liability will be reduced proportionately to the extent the Liability was caused or contributed to by the acts or omissions of the other Party (including a failure to take reasonable steps to mitigate it); and
- (d) we will not be liable for any loss or damage which is an inevitable and unavoidable part of performing the Services, including any marks from testing agreed under clause 2.6.

11.2 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you release us from, any Liability caused or contributed to by, arising from or connected with:

- (a) your or your Personnel's acts or omissions;
- (b) your failure to provide us with access to the Premises as required by these Terms;
- (c) any use of the Services or the Report by a person or entity other than you, or other than as reasonably contemplated by these Terms;
- (d) any works, services, goods, materials or items which do not form part of the Services, or which have not been provided by us;
- (e) defects or conditions that were concealed, inaccessible or not reasonably visible at the time of the inspection; and/or
- (f) any event outside our reasonable control.

12. Intellectual Property

12.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms transfers or assigns any Intellectual Property Rights in Our Materials or Your Materials.

12.2 All Intellectual Property Rights in any New Materials (including Reports) or Improvements vest in us on creation. To the extent they do not automatically vest in us, you agree to do all things reasonably necessary to assure our title.

12.3 We grant you a non-exclusive, revocable, non-sublicensable and non-transferable licence to use Our Materials, the New Materials and Improvements provided to you, solely for the purposes for which they were prepared and for your use of the Services.

12.4 This clause 12 survives the termination or expiry of these Terms.

13. Confidentiality

13.1 Subject to clause 13.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, the other Party's Confidential Information.

13.2 Clause 13.1 does not apply to Confidential Information that:

- (a) must be disclosed for a Party to comply with its obligations under these Terms;
- (b) the disclosing Party has authorised to be disclosed;
- (c) is in the public domain, other than through a breach of these Terms; or
- (d) must be disclosed by law or by a regulatory authority, including under subpoena.

14. Reports and Third Parties

14.1 The Report is prepared for you only. You may share it with your lawyer, lender, insurer or family, but no other person may rely on it without our written consent.

14.2 The Report records the condition of the Premises at the time of the inspection only. It is not a guarantee of the Premises, a building warrant of fitness, or a certificate of compliance with the Building Code.

15. General

15.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from or in connection with these Terms (**Dispute**) without first meeting with a senior representative of the other Party to try, in good faith, to resolve it. If the Dispute is not resolved at that meeting, either Party may refer it to mediation. If the Parties cannot agree on a mediator, either Party may ask the New Zealand Law Society to appoint one. The mediator will decide the time, place and rules for mediation, and its costs will be shared equally. Nothing in this clause prevents a Party from seeking urgent injunctive or equitable relief, or prevents you from going to the Disputes Tribunal.

15.2 **Email:** You agree that we may communicate with you by email. To the maximum extent permitted by law, you release us from any Liability arising from unauthorised copying, reading or interference with any email after transmission, any delay or non-delivery, or any damage caused to your systems by a transfer.

15.3 **Force Majeure:** Neither Party will be liable for any delay or failure to perform its obligations under these Terms caused or contributed to by a Force Majeure Event. This clause does not apply to an obligation to pay any amount that is due and payable.

15.4 **Governing law:** These Terms are governed by the laws of New Zealand, and each Party submits to the exclusive jurisdiction of the New Zealand courts.

15.5 **Joint and several liability:** Where you are two or more individuals or entities, you are each jointly and severally liable under these Terms.

15.6 **Notices:** Any notice under these Terms must be in writing and sent by post or email to the address last notified by the recipient. A notice is deemed served 48 hours after posting, or at the time of transmission by email.

15.7 **Online acceptance:** These Terms may be accepted online through our website or any third party booking, payment or document execution service we nominate.

15.8 **Privacy:** We will collect, use and store your personal information in accordance with the Privacy Act 2020.

15.9 **Relationship of Parties:** These Terms do not create a partnership, joint venture, employment or agency relationship between the Parties.

15.10 **Severance:** If any provision (or part of it) is void, invalid, illegal or unenforceable, it is to be read down as narrowly as necessary to be valid, failing which it will be severed without affecting the rest of these Terms.

15.11 **Survival:** Each clause which by its nature survives termination will survive the termination or expiry of these Terms.

16. Interpretation and Definitions

16.1 In these Terms, unless the context otherwise requires:

- (a) a reference to these Terms or any other document includes it as amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation includes subordinate legislation and all amendments, consolidations, replacements or re-enactments;
- (c) a reference to a natural person includes a company, partnership, joint venture, association, government body or other legal entity, and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted it;
- (e) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns;
- (f) words like "including" and "for example" are not words of limitation;
- (g) a reference to time is to local time in New Zealand; and
- (h) a reference to $ or dollars is to New Zealand dollars.

16.2 In these Terms, unless the context otherwise requires:

Approval means any approval, consent, licence, permit, registration or equivalent required from any Authority or under any law in connection with the Services.

Authority means any national or local government department, body or other public authority whose approval is necessary for the provision of the Services.

Booking means the booking for Services you have placed through our website, or by phone or email, as confirmed by us.

Commencement Date means the date you accept these Terms under clause 1.2.

Confidential Information means information disclosed to, or prepared by, a Party in connection with these Terms, or relating to the other Party's business, assets or affairs, whether or not it is marked confidential and however it is received.

Consequential Loss includes any indirect loss, loss of profit, revenue, business, goodwill, opportunity, savings, reputation, use or data, however arising. Your obligation to pay the Price is not Consequential Loss.

Expenses means any disbursements, including parking, travel and third party costs, reasonably and directly incurred by us in providing the Services.

Force Majeure Event means any event beyond a Party's reasonable control, including natural disasters (earthquake, fire, flood, landslide, tsunami), civil unrest, terrorism, war, contamination, pandemic or epidemic, and any government-ordered shutdown.

Improvements means any development, modification, adaptation or improvement of Our Materials or New Materials made by or for either Party during the Term.

Intellectual Property Rights means any industrial or intellectual property rights anywhere in the world, whether registrable or not, including copyright, designs, trade marks, know-how, processes and software.

Liability means any expense, cost, liability, loss, damage, claim, demand, proceeding or judgment, however arising (including under statute, contract, equity, tort including negligence, or indemnity), whether direct or indirect, present or future.

New Materials includes any Reports, and means all Intellectual Property developed or created by or for either Party in connection with these Terms or the Services, but excludes Our Materials and Your Materials.

NZCL or **New Zealand Consumer Law** means the consumer laws of New Zealand, including the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, as amended or replaced from time to time.

Our Materials means all work, processes, technologies, materials, information and documentation we provide to you under these Terms.

Personnel means, in respect of a Party, its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Premises means the property at which the Services are to be provided.

Price means the price for the Services set out in the Booking or the Quote, as confirmed and adjusted under these Terms, and includes all Expenses.

Quote means a quote we have provided to you for the Services (including through our website or by email) to which these Terms are attached or referred.

Services means the services to be provided by us to you under these Terms, as set out in the Booking or the Quote, as adjusted under these Terms.

Your Materials means all work, materials, information, documentation and Intellectual Property owned or developed by or for you or your Personnel before the Commencement Date, or independently of these Terms.