

FORBS LIMITED ENGAGEMENT TERMS

- 1 Performance standard:** The Consultant will perform the Services exercising the degree of skill, care and diligence normally expected of a competent building surveyor in the same circumstances.
- 2 Consumer Guarantees Act:** Where the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not in trade, nothing in this Agreement will exclude or limit the Client's rights or remedies under the Consumer Guarantees Act 1993, and in particular clause 10 of this Agreement will not apply.
- 3 Information:** The Client will provide as soon as practicable, free of cost, all information reasonably required to enable the Consultant to perform the Services. Unless verification is part of the Services, the Consultant will be entitled to assume and rely on the accuracy and completeness of all information provided by the Client or obtained by the Consultant from public or other reasonable sources.
- 4 Advice:** All advice, information and materials provided by the Consultant ("Advice") are confidential and are prepared solely for the Client for the purpose stated in the Services section of this Agreement. The Client will not use the Advice for any other purpose nor disclose it to any third party without the Consultant's prior written consent. The Consultant will have no liability to any unauthorised third party using or relying on any of the Advice. The Client agrees not to rely on any advice or information provided orally by the Consultant unless and until confirmed in writing by the Consultant and accepts that unless the confirmation occurs, any reliance would be unreasonable and the Consultant will accordingly have no liability for the oral advice or information.
- 5 Fees and payment:** The Client will pay the Consultant for the Services in accordance with the Fees section of this Agreement. All amounts payable by the Client will be paid within 7 days of the relevant invoice being mailed to the Client. Interest will be payable by the Client on all overdue amounts at the rate of 1.5% per month compounding monthly. The Client will also pay all costs incurred by the Consultant in relation to recovering any amount owed by the Client (including legal costs on a solicitor/client basis and the Consultant's internal time and administration costs). Where this Agreement has been entered into by an agent on behalf of the Client (or a person purporting to act as agent), the agent and the Client will be jointly and severally liable for payment of all amounts due to the Consultant under this Agreement.
- 6 Suspension/termination for non-payment:** If the Client defaults on any payment due and the default continues for 14 days, the Consultant may give written notice to the Client specifying the default and requesting payment within 7 days of the date of service of the notice. If the Client fails to remedy the default within that period, the Consultant may withhold documents containing Advice and suspend the Services or terminate this Agreement without further notice, and the Consultant will not be liable to the Client or any other person for any damage or loss arising from the suspension or termination.
- 7 Personal Guarantee:** Where the Client is a company, the person named on the front page of this Agreement as the authorised signatory of the Client hereby irrevocably guarantees the punctual payment of all amounts owed by the Client to the Consultant and acknowledges this guarantee may be enforced directly by the Consultant without first needing to pursue remedies against the Client.
- 8 Consultant's employees/agents:** The Client acknowledges that while the Consultant operates through employees and other individuals, no reliance has been or will be placed on them personally by the Client in connection with this Agreement and that it would be unreasonable to do so. The Client accepts that the Client only relies on the corporate conduct of the Consultant and that its employees, directors, officers and agents have accordingly no personal liability to the Client.
- 9 Contracting out:** Where the Services are supplied and acquired in trade, both parties are in trade and it is fair and reasonable that the parties be bound by this clause 9, the provisions of the Consumer Guarantees Act 1993 will not apply to this Agreement nor will the following provisions of the Fair Trading Act 1986 apply to either party's infringing conduct or representations in connection with this Agreement if unintentional: section 9 (misleading conduct), section 12A (unsubstantiated representations), or section 13 (false or misleading representations).
- 10 Liability limitations:** The parties will only be liable to each other for reasonably foreseeable damages, losses, liabilities or expenses caused directly by a breach of this Agreement, except that the parties will not be liable for any loss of profit, loss of use, loss of business opportunity, loss of anticipated savings, or delay loss, whether caused directly or indirectly, and whether arising in contract, tort, or on any other legal basis. The parties will also not be liable to each other for any special, indirect or consequential loss not previously excluded under this clause 10. The maximum total combined amount of either party's liability to the other in relation to all claims, damages, losses, liabilities or expenses is NZ\$250,000 (whether in contract, tort, or on any other legal basis). In addition, if either party is found liable to the other and the claiming party and/or a non-party to this Agreement has contributed to the damage or loss, the liability of the liable party will be limited to the proportional extent of its own contribution to the damage or loss.
- 11 Staged projects/multiple owners:** Where the project to which the Services relate is staged with separate services agreements with the Consultant or concerns a building or buildings with multiple owners, the liability limitation amount in clause 10 will apply in the aggregate to every stage and to all owners as if there was one Client owner and/or one services agreement with the Consultant for all stages.
- 12 Duration of liability:** Without prejudice to any time limitation defence available under a statute, any claim by either party (whether in contract, tort, under statute or on any other legal basis) must be filed in Court, or any Tribunal with jurisdiction to determine such a claim, within six years of the date of this Agreement otherwise a party will have no liability to the other.
- 13 Indemnity:** The Client agrees to indemnify the Consultant against any damage, loss or expense incurred by the Consultant as a result of the Client's breach of its obligations in clauses 4 and/or 14 concerning the unauthorised use or disclosure of the Consultant's advice, information or materials.
- 14 Intellectual Property:** The Consultant will own all intellectual property rights, including copyright, and all other property rights in all documents and other materials of any nature (including in electronic form) prepared by the Consultant in performing the Services ("the Services Materials"). The Client will be entitled to use (including copy) the Services Materials only as reasonably required for the purpose stated in the Services section of this Agreement provided the Client has complied with the terms of this Agreement including payment of fees. If this Agreement is terminated before completion of the Services and provided no Client's obligations are outstanding, the Client's entitlement to use the Services Materials will apply to completed Services Materials only. Any partially completed Services Materials will not be used without the Consultant's prior written consent.
- 15 Additional work:** If while performing the Services additional work is considered necessary or advisable, the Consultant will inform the Client in writing of the scope of the additional work and will obtain the Client's prior written approval to extend the Services. Unless otherwise agreed in writing, the provisions of this Agreement will apply to the additional work with reasonable consequential adjustments to the Fees and Programme of Services.

- 16 Health & Safety:** The Consultant will not assume any obligations as the Client's agent or on any other legal basis which may be imposed on the Client under the Health & Safety in Employment Act 1992 (or any Act in substitution).
- 17 Disputes resolution:** The parties will try in good faith to resolve any dispute by direct negotiations. If unresolved after 30 days, the dispute will be referred to mediation. This clause will not apply to a recovery claim by the Consultant for any money owed by the Client.
- 18 Governing law:** This Agreement and the parties' relationship will be governed by the laws of New Zealand

Additional Terms – Inspection and Reporting (Non-invasive)

- 19** The Consultant will perform a visual inspection of the building specified in the Services section of this Agreement ('the building') and will provide the Client with a report of the inspection. **The purpose of the inspection will be to assess the general condition of the building based on a limited visual examination.** For residential buildings, the Consultant will not necessarily need to comply with all aspects of NZ Standard NZS 4306 2005 (Residential Property Inspection) in order to meet the performance standard stated in clause 1 of the Engagement Terms.
- 20** The Client will be responsible for identifying the building including identifying any accessory units where the building is part of a multi-unit complex. The Client will arrange for the Consultant to obtain reasonable access to the building including roof space and sub-floor space where reasonably and safely accessible. The Client will disclose to the Consultant any known defects which the Client is aware of, apparent or not, and any problem which may affect the integrity and use of the building or the facilitation of the inspection and reporting.
- 21** The inspection will be non-invasive and limited to those areas of the building which are readily and safely accessible and visible at the time of inspection. The inspection will not include any areas or items which are concealed behind finished surfaces (such as framing, plumbing, drainage, heating, ventilation or wiring) or any areas requiring the moving of anything which may impede access or limit visibility (such as moving floor coverings, insulation, furniture, appliances, personal property, vehicles, vegetation, debris or soil).
- 22** The inspection will focus on identifying significant apparent defects at the time of the inspection. The Client acknowledges and accepts:
- (a) the limited purpose and limited scope of the inspection, and that it may not identify all past, present, or potential future defects;
 - (b) the inspection will not be a compliance assessment against past or current requirements of the Building Code, including the Code's weathertightness requirements or any structural aspects, as this would require specific specialist advice;
 - (c) descriptions in the inspection report of systems or any appliances will relate to existence only and not condition, adequacy or life expectancy;
 - (d) the inspection report will not provide any guarantee or warranty (whether relating to merchantability, fitness for use or fitness for purpose) regarding the building or any item, system or component of the building and will not be relied on as such by the Client.
- 23** While the Consultant may use the visible presence of rot, decay or mould to aid in the assessment of the general condition of the building, the Client acknowledges and accepts that the inspection will not be a compliance assessment against the weathertightness requirements of the Building Code.
- 24** In addition to and without limiting anything stated in clauses 21 to 23 above, the following will be **excluded** from the scope of the inspection:
- (a) any area of the building or site or any item, system or component not specifically identified in the scope of the Services as needing to be inspected;
 - (b) engineering/structural, architectural, geotechnical, geological, hydrological, land surveying or soils examinations;
 - (c) dismantling of any system, structure or component or any invasive or destructive testing or analysis;
 - (d) systems including electrical, plumbing, air conditioning, heating (including fire places and chimneys), security, fire warning and control, sewerage, storm water, ducted vacuum systems;
 - (e) environmental hazards or conditions including the existence of asbestos, electromagnetic radiation, toxic or flammable chemicals, air or water contaminants, geological hazards or floods;
 - (f) sheds, outhouses, detached buildings, swimming pools, spa pools, saunas and associated equipment, or appliances including but not limited to kitchen, leisure and laundry appliances;
 - (g) common property or common areas, systems, structures or components where the building is part of a multi-unit complex unless specifically identified in the scope of the Services as needing to be inspected;
 - (h) acoustical or other nuisance characteristics of any system, service, structure or component of the building or building complex, adjoining properties or neighbourhood;
 - (i) any legal, resource consent or building consent or compliance aspects including title, boundaries, occupational rights, resource and planning consent, building consent, Building Code compliance, building warrant of fitness or heritage obligations.
- 25** Any repair recommendations or indicative repair costings included in the inspection report will be for general guidance only. The Client will not rely on such recommendations or indicative costings in making any decision involving legal or financial commitment or repair work but will obtain specific advice from appropriate specialists. The Client accepts the risk that if defects and/or damage are identified, damage may continue to occur and/or new damage may occur to the building or its systems or components if any recommended repairs are not carried out properly and expeditiously by the Client.
- 26** The Client will give prompt written notice to the Consultant of the discovery of any material defect affecting the building not reported by the Consultant which the Client considers should have been identified. Except in an emergency situation, the Client will allow the Consultant 21 days from the Consultant's receipt of that notice to re-inspect the building prior to any repair work being undertaken. If the Client fails to give such notice and/or allow the re-inspection period, any liability of the Consultant in connection with the defect will be reduced (or extinguished) to the extent of any prejudice to the Consultant due to the Client's failure to comply with this clause.

Additional Terms – Inspection and Reporting (Invasive/Destructive Testing)

- 27 The Consultant will inspect the building specified in the Services section of this Agreement (“the building”) for the purpose stated in the Services section and will provide the Client with a report of the inspection.
- 28 The Client will be responsible for identifying the building including identifying any accessory units where the building is part of a multi-unit complex. The Client will arrange for the Consultant to obtain reasonable access to the building including roof space and sub-floor space where reasonably and safely accessible. The Client will disclose to the Consultant any known defects which the Client is aware of, apparent or not, and any problem which may affect the integrity and use of the building or the facilitation of the inspection and reporting.
- 29 Unless otherwise agreed in writing, the inspection will:
- (a) be an above ground visual examination augmented by invasive testing by representative sampling as considered appropriate by the Consultant;
 - (b) be limited to those areas and components of the building which at the time of inspection are readily and safely accessible and visible;
 - (c) exclude any areas, components or items which are otherwise concealed behind finished surfaces or which are not immediately accessible and visible because of floor coverings, furniture, appliances, personal property, vegetation, debris, soil and the like.
- 30 The Client consents to the Consultant damaging the building to the extent reasonably necessary to undertake the invasive testing. The testing will commonly require the drilling of small holes and the cutting out of small areas in the exterior cladding and the internal wall linings, but may also require larger cut outs and the taking of samples of timber, building materials and mould for analysis.
- 31 The Client acknowledges and accepts:
- (a) the limited scope of the inspection and that it may not identify all past, present or potential future defects;
 - (b) the inspection will not be a compliance assessment against any past or current requirements of the Building Code unless stated in the scope of Services section and in the inspection report as being such an assessment of aspects specifically identified in the scope of Services and in the report;
 - (c) descriptions in the inspection report of systems or any appliances will relate to existence only and not condition, adequacy or life expectancy;
 - (d) the inspection report will not provide any guarantee or warranty (whether relating to merchantability, fitness for use or fitness for purpose) regarding the building or any item, system or component of the building and will not be relied on as such by the Client;
 - (e) the Client will bear the risk of any damage to the building or to any item, system or component of the building arising directly or indirectly from the invasive testing despite the Consultant exercising reasonable care;
 - (f) while the Consultant will provide temporary fillers or covers to all holes and cut out areas created by the invasive testing, it will be the Client’s responsibility to undertake appropriate permanent repairs expeditiously.
- 32 The Client acknowledges and accepts that the limited scope of the inspection means it will not be a compliance assessment against the weathertightness requirements of the Building Code except to the extent stated in the scope of Services section and in the inspection report regarding aspects specifically identified in the scope of Services and in the report.
- 33 In addition to and without limiting anything stated in clauses 21 to 24 above, the following will be **excluded** from the scope of the inspection:
- (a) any area of the building or site or any item, system, component, or elemental aspect not specifically identified in the scope of the Services as needing to be inspected;
 - (b) engineering/structural, architectural, geotechnical, geological, hydrological, land surveying or soils examinations;
 - (c) systems including electrical, plumbing, air conditioning, heating (including fire places and chimneys), security, fire warning and control, sewerage, storm water, ducted vacuum systems;
 - (d) environmental hazards or conditions including the existence of asbestos, electromagnetic radiation, toxic or flammable chemicals, air or water contaminants, geological hazards or floods;
 - (e) sheds, outhouses, detached buildings, swimming pools, spa pools, saunas and associated equipment, or appliances including but not limited to kitchen, leisure and laundry appliances;
 - (f) common property or common areas, systems, structures or components where the building is part of a multi-unit complex unless specifically identified in the scope of the Services as needing to be inspected;
 - (g) acoustical or other nuisance characteristics of any item, system, structure or component of the building or building complex, adjoining properties or neighbourhood;
 - (h) any legal, resource consent or building consent or compliance aspects including title, boundaries, occupational rights, resource and planning consent, building consent, Building Code compliance (except to any extent specifically identified in the inspection report as having been assessed), building warrant of fitness or heritage obligations.
- 34 Any repair recommendations or indicative repair costings included in the inspection report will be for general guidance only. The Client will not rely on such recommendations or indicative costings in making any decision involving any legal or financial commitment or repair work but will obtain specific advice from appropriate specialists. The Client accepts the risk that if defects and/or damage are identified, damage may continue to occur and/or new damage may occur to the building or its systems or components if any recommended repairs are not carried out properly and expeditiously by the Client.
- 35 The Client will give prompt written notice to the Consultant of the discovery of any material defect affecting the building not reported by the Consultant which the Client considers should have been identified. Except in an emergency situation, the Client will allow the Consultant 21 days from the Consultant’s receipt of that notice to re-inspect the building prior to any repair work being undertaken. If the Client fails to give such notice and/or allow the re-inspection period, any liability of the Consultant will be reduced (or extinguished) to the extent of any prejudice to the Consultant due to the Client’s failure to comply with this clause.