

Contract Terms & Conditions

TERMS AND CONDITIONS:

1 Interpretation: "You" or "Your" or "Customer" means the person or company that engages Us to undertake the Services; "We" or "Our" or "Us" means Heat Seekers Limited (CN4047918) Trading as HS Building Inspections;

"Services" means [Thermal imaging / building inspection, building report or moisture meter readings, methamphetamine testing], "including" and similar words do not imply limitation.

2 Acknowledgement: The Customer acknowledges that:

- (a) Our reports do not determine if a home is or is not a 'leaky home'. Our reports are not a 'weather-tightness' report, as invasive testing would need to be carried through the exterior cladding into the building's framework to get conclusive results.
- (b) A non-invasive moisture reading is not a conclusive indication that moisture is present or not present.
- (c) Both invasive and non-invasive testing does not detect dry rot.
- (d) The outcome of the inspection can be influenced by a variety of factors including hidden metals or chemical preservatives, weather conditions and the depth at which any moisture may be present at.
- (e) Because any thermal imaging or non-invasive moisture reading is only a 'snapshot' at a particular point in time, all inspections and reports are valid for the day of inspection only, due to various conditions outside of our control after the day of inspection.
- (f) A thermal imaging camera does not "see through" walls and it does not detect moisture. The infrared camera detects infrared radiation only.
- (g) We do not give advice about:
 - (i) Any methods, materials or costs for the repair of any Investigative Issue;
 - (ii) The suitability of a building for any specialised use;
 - (iii) The market value or marketability of a building; and
 - (iv) The advisability or inadvisability of the sale or purchase of a building.
- (h) There is no guarantee or warranty given or representation made by that the Services will detect any and all moisture or that the readings and/or images obtained are an accurate reflection of the amount of moisture present.
- (i) Best practice would be for the Customer to undertake invasive inspections of the subject building.
- (j) Purpose of Inspection and Scope: The Inspection Report has been prepared to provide general comments on the condition of the components of the building at the time of the inspection only. The Inspection Report and the inspection are subject to any express instructions received from the Client. The Inspection Report is not a specific structural survey, engineer's report, weathertightness inspection or seismic standard status report. If the Client requires a structural survey, engineer's report, weathertightness inspection or other inspection from a third party specialist, we can assist with arranging such specialist third party inspection upon request.

As the purpose of an inspection is to assess the general condition of the building based on a limited visual inspection, the inspection may not identify all past, present or future defects. Descriptions in this Inspection Report of systems or appliances relate to the existence of such systems or appliances only and not the adequacy or life expectancy of such systems or appliances. Any area or component of the building or any item or system not specifically identified in this report as having been inspected was not included in the scope of the inspection.

Product names, materials and systems are generalised to help in reading and understanding the Inspection Report. All materials and systems are assumed to be standard typical construction or materials when not able to be fully investigated (whether for the reasons stated above or for any other reason).

3 Payments:

- (a) All payments are to be made by the Customer to Us (including for disbursement costs):
 - (i) Within seven (7) days following the date of invoice and prior to release of any written report unless otherwise agreed by Us;
 - (ii) In cleared funds and in full without any deduction or withholding whatsoever of any kind (whether by set-off or counterclaim or otherwise); and
 - (iii) By such method as directed by Us.

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- (b) Goods and Services Tax and any and all other taxes and duties that may be applicable in relation to the Services shall be paid by You to Us with our fees and at the time of supply.
- (c) If the Customer defaults in payment of any amount due to Us, without prejudice to any of Our other rights and remedies, the Customer must pay to Us interest on the unpaid amount at the rate of 10% per month (or part thereof) computed on a daily basis from the date on which such amount should have been paid until the date of actual payment (including after any judgment), compounding monthly.
- (d) The Customer shall pay Us all costs, expenses and charges that are incurred by Us in enforcing or attempting to enforce any of our rights against the Customer including all debt collection and legal expenses (on a solicitor and client basis).
- (e) 24 hour Cancellation Policy We require at least 24 hours notice for cancellation of a booking. A \$300+GST cancellation fee will be incurred with less than 24 hours notice of cancellation.
- (f) This contract will remain valid and enforceable for any further inspections requested by the client on the said property.

4 Services and our Report: Our Report:

- (a) Is prepared following an above ground infra-red/moisture inspection of only the interior areas of the building that we have been instructed to inspect ("Subject Area"). We will not inspect and the "Subject Area" will not include:
 - (i) The external cladding, external building envelope, exterior structures or roofing of any building; (This will be inspected during a Building Report only.)
 - (ii) Any interior area where we do not have direct access or a clear line of sight including any areas covered by anything (including furniture and cupboards); and any area that can not be reached with a hand held moisture meter without the use of any equipment; and
 - (iii) Areas that was not accessible at the time of our investigation;
- (b) Identifies potential thermal temperature and/or moisture anomalies within the Subject Area at the time of our inspection only, could detect the possibility of leaks, or possible moisture and heat loss ("Investigative Issues") and provides an opinion on the presence or absence of the Investigative Issues in the Subject Area; and
- (c) Is a preliminary non-invasive investigation for potential Investigative Issues. If any potential Investigative Issue is detected, we will not do anything further until such further action is requested in writing to Us by the Customer, which additional services will be for by the Customer.

5 Limits of Report: Any report or document we prepare:

- (a) Is only for the benefit of the Customer. Those documents cannot be relied upon by any other person or party;
- (b) Is not a structural survey. We do not uncover, dismantle or undertake any internal inspection of any building;
- (c) Is not designed or intended to identify potential problems or issues within the Subject Area other than the Investigative Issues and, without limitation, will not:
 - (i) Identify the presence or absence of dry rot or any hazardous substance including mould, toxins, cancer causing materials, noise or other contaminants;
 - (ii) Identify the presence or absence of any pests including wood damaging organisms, rodents or insects;
 - (iii) Determine the effectiveness of any equipment, utility, component or system installed to control leaks, moisture, heat loss, dry rot or hazardous substances;
 - (iv) Determine the durability or future condition of any equipment, utility, component or system; and
 - (v) Determine compliance or non-compliance with any statutory or regulatory requirement, code, by law, ordinance or other restriction.
- (vi) You the Client accepts that We will not detect some faults because the fault only occurs intermittently; part of the building has not been used for a while and the fault usually occurs after regular use (or detection of the fault would only occur after regular use); the type of weather that would normally reveal the fault is not prevailing at, or around, the time of the inspection; the fault has been deliberately concealed; furnishings are obscuring the fault; We have been given incorrect information by the Client, the vendor (if any), the real estate consultant, or any other person; and/or the fault is/was not apparent on a visual inspection.
- (vii) The Inspection and report are not intended to be used as an exhaustive report. It is not to imply that every component was inspected or that every possible defect of the premises was discovered.

6 What we will not do: The Customer acknowledges and agrees that We will not:

- (a) Enter any area or perform any procedure that will or may damage any part of a building or be dangerous to any of our employees, contractors or any other person;
- (b) Disturb or move any insulation, panels, furniture, personal items, equipment, vegetation or other items or materials that obstruct access or visibility to the thermal / building inspection; and

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- (c) Operate any equipment, utility, component or system that is shut down, inoperable or that does not respond to normal operating controls.
- (d) We do not guarantee or warrant the work of any contractor or service, or the integrity of any product, appliance or fixture, natural or processed or any building system or cladding system applied. The Inspection Report is not a guarantee or warranty as to the state of the building.

7 Exclusion of Liability:

- (a) Neither Us nor our directors, employees or contractors shall be liable to the Customer, the Customer's agents or employees or any other person for any direct, indirect, incidental or consequential damage or loss of any nature howsoever caused (whether based on tort (including negligence), contract or otherwise) including, but not limited to, loss of profits, loss of opportunity, damage to equipment or property (including any costs or loss relating to any invasive inspection) or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance or non-performance of the Services.
- (b) The Consumer Guarantees Act 1993 ("Act") will not apply where the Customer is engaging Us to provide the Services for business purposes. If the Customer is a consumer under the Act, to the extent that the customer's rights under the Act have not been excluded above, nothing in these terms and conditions will affect the rights of the customer under the Act.
- (c) The customer relies upon its own knowledge, skill and judgment in relation to the particular use or suitability of our report for the customer's purpose; and
- (d) All warranties, descriptions representations or conditions implied by any Act, Regulation or otherwise are expressly excluded to the fullest extent permitted by law.
- (e) If, for any reason, we are found liable to the Customer or any other person in connection with the Services and we are unable to rely on the exclusions of liability set out in these terms and conditions, our liability shall in all cases be:
 - (i) Only be to the Customer and not to any third party;
 - (ii) For direct losses of the Customer only and not any third party and not for any loss of profits or any indirect or consequential losses of any nature;
 - (iii) Limited to only that portion of the damage or loss directly caused or contributed to by Us or our employees or agents;
 - (iv) If, for any reason, Us our agents or our employees are found liable to You the customer or any other person in connection with this Report and/or the performance or non-performance of our services and we are unable to rely on the exclusions of liability set out in these terms and conditions, our liability shall in all cases be limited to the price paid or payable by the customer for such Report or services.
- (f) No claim for damage or loss arising directly or indirectly in connection with the Services shall be brought more than two (2) months after completion of the Services. At that time the Customer shall be deemed to have waived and abandoned any and all claims against Us and Our agents or employees and shall not be entitled to bring any claim against Us and Our agents or employees.
- (g) Our directors, employees and agents are not contracting with, or assuming any duties of care to, the Customer and have no liability to the Customer whatsoever and howsoever arising.
- (h) Clauses (a) to (g) of this clause 7 are promises that confer and are intended to confer a benefit on Our employees and agents and accordingly the provisions of the Contracts (Privity) Act 1982 apply to each of them.

8 Guarantee:

Where the Customer is a company, a trust, or an incorporated or unincorporated entity then the person who engages us to provide the Services on behalf of that entity personally guarantees to Us, as a principal obligor and not as a surety, the due and punctual payment to Us of all moneys unpaid by the Customer to Us.

9 Publication and Use:

- (a) Neither the whole nor any part of this Report or any other report (whether verbal or written) or any reference to this Report or any such other report may be: included in any published document, circular or statement, whether hardcopy or electronic; transferred to any person other than the Customer; or distributed or sold, in each case without first obtaining the written approval of the Company.
 - (i) The Report is not to be used in any litigation except with the prior written approval of the Company.
- (b) The inspection and report is to be conducted and prepared for you solely and exclusively for your own information.
- (c) You agree to maintain the confidentiality of the report and agree not to disclose any part of it to any other person.
- (d) You may distribute copies of the inspection report to the Vendors and the real estate agents directly involved in this transaction, but said persons are not specifically intended beneficiaries of this Agreement or the report. We do not in any way intend to benefit the Vendor or the real estate agent/s directly or indirectly through our report.
- (e) You agree to indemnify, defend and hold Us harmless from any third party claims arising out of any distribution of the report.

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10 Compliance with Statute Regulations, Territorial or Other Relevant Authorities:

- (a) Unless otherwise stated, We have not and will not make any inquiries or undertake any inspections of any third party, territorial or other relevant authority records in respect of the building. The Inspection Report does not replace and is not intended to replace a council issued Land Information Memorandum or Council file search. We recommend a Land Information Memorandum report is obtained and Council file search conducted. If the Inspection Report contains any information obtained from the Council, then such information is only as accurate as the Council information on which such information is based. We accept no responsibility for any error or omission in such information as a result of inaccurate Council records.
- (i) We make no representation that the building complies with the requirements of any legislation (including any act, regulations, by-laws, etc), including but not limited to, the Building Act 2004, Health and Safety in Employment Act 1992, Fire Safety and Evacuation of Buildings Regulations 2006 or the Disabled Persons Community Welfare Act 1975. The Inspection Report is not a site or environmental report and We make no representation as to the existence of or absence of any "contaminant" (as that term is defined in the Resource Management Act) or any "hazard" (as that term is defined in the Health and Safety in Employment Act) in the building or property.
- (b) Title and Boundaries: We have not undertaken a search of the title to the property, or a survey of the property and assumes no responsibility in connection with such matters. Unless otherwise stated it is assumed that all improvements lie within the title boundaries.

11 Disputes:

- (a) **Discussions Between Parties:** The parties will meet and discuss in good faith any dispute between them arising out of this agreement.
 - (i) Should any dispute arise as a result of the inspection or Inspection Report, it must be submitted to Us in writing immediately. The Client agrees that in the event of a dispute, the contents of the Inspection Report may not be used to satisfy any terms of a sale and purchase agreement until the disagreement/dispute has been resolved. The Client agrees that if, after raising a dispute, the Client uses the inspection or Inspection Report to make an unconditional offer or confirm a sale and purchase agreement, the Client shall be deemed to have waived all rights to continue with the dispute, and/or raise any future dispute or claim against Us. In the event of a claim/dispute regarding damage to a home, the Client will allow Us to investigate the claim prior to any repairs to the home being undertaken or completed. The Client agrees that if it does not allow Us to investigate the claims of damage before any repairs are carried out the Client shall be deemed to have waived its rights to continue with and/or make any future claim against Us. 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.
- (b) **Mediation:** If the discussions referred to in clause 11(a) fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the Auckland District Law Society. In the event of any submission to mediation:
 - (i) the mediator will not be acting as an expert or as an arbitrator;
 - (ii) the mediator will determine the procedure and timetable for the mediation; and
 - (iii) the parties will share equally the cost of the mediation.
- (c) **Legal Proceedings:** Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with clauses 11(a) and 11(b)

12 General:

- (a) **Governing Law and Jurisdiction:** This agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of all matters related to this agreement.
- (b) **Entire Arrangement:** This agreement records the entire arrangement between the parties relating to the Services and supersedes all previous arrangements, whether written, oral or both.
- (c) **Partial Invalidity:** Should any provision of this agreement be or become void, such provision will be deemed deleted from this agreement, the remaining provisions of which will remain fully enforceable.
- (d) **Relationship Between the Parties:** Nothing in this agreement will constitute either party as the partner, agent, employee or officer of the other party, and neither party will make any contrary representation to any other person.
- (e) **Counterparts:** This agreement may be executed in one or more counterpart copies which, read together, will constitute one and the same instrument.