

## TERMS AND CONDITIONS:

### 1.0 Definitions:

"Client" means the person or company that engages the Consultant to undertake the Services;

"Consultant" means On Point Property Limited (CN7582296) Trading as On Point Property Limited;

"Services" or "Works" means the [Healthy Homes Standards Inspection Report, Healthy Homes Inspection Report, HHS Inspection Report, HHS Report, HHS Inspection, Inspection Report], "including" and similar words do not imply limitation.

"Fee" means the price payable for the works specified inclusive of GST, if any.

"Report" shall mean any written Report supplied by the Consultant to the Client as part of the works.

"HHS" means the Residential Tenancies (Healthy Homes Standards) Regulations 2019.

### 2.0 Consultants Healthy Homes Inspection Report and Services: The Client acknowledges the following clauses define the scope of the Works for any HHS inspection and Report supplied by the Consultant to the Client:

- 2.1 The Consultant's Report is to establish whether the rental property complies with the Residential Tenancies (Healthy Homes Standards) Regulations 2019 for heating, insulation, ventilation, draught stopping, moisture ingress and drainage.
- 2.2 The Consultant's Report is, subject to these terms and conditions including the limitations contained herein, based on an overall visual and non-invasive assessment, as at the date of inspection, of six (6) areas of the building and surrounds which is the subject of the Consultant's inspection: Heating, Insulation, Ventilation, Draught Stopping, Moisture Ingress and Drainage .
- 2.3 The Consultant's Report is not an all-encompassing report detailing every minor defect or minor outstanding maintenance issue. The inspection and the Report are not intended to be technically comprehensive, or to imply that every component was inspected, or that every possible defect was discovered.
- 2.4 Any Consultant's Report supplied will comply with the Residential Tenancies (Healthy Homes Standards) Regulations 2019 or its successors. The Report is based on an "exceptions or information basis" i.e. listing only significant defects.
- 2.5 The Consultant will not carry out any destructive testing, or move any furniture or appliances. No disassembly of equipment, opening of walls, moving of furniture, appliances or stored items, or excavation will be performed. All components and conditions which by the nature of their location are concealed, camouflaged or difficult to inspect (such as, for example, plumbing, drainage, heating, framing, ventilation, insulation or wiring) are excluded from the Consultant's inspection and from the Report.
- 2.6 The Consultant's 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.
- 2.7 The Consultant's Report is not intended to be a warranty or guarantee of the current or future adequacy or performance of the building, its structure, systems, or their component parts.
- 2.8 The Consultant's Report is not:
- 2.9 This report is not a structural, electrical, asbestos, watertight, services, building report or methamphetamine report, nor does it focus specifically on any other aspects of the property other than the six (6) elements that make a HHS inspection (for the avoidance of doubt these are Heating, Insulation, Ventilation, Draught Stopping, Moisture Ingress and Drainage). The Consultant's Report excludes the following matters:  
Geological stability, soil conditions, structural stability, electromagnetic radiation, environmental hazards, building codes, zoning ordinance violations, engineering analysis, water or air contaminants of any kind, toxic molds, termites or other infestations, asbestos, formaldehyde, rotting (non visual), detached buildings, sheds, swimming pools and spas and related piping, private water systems, septic systems, sauna, specialized electronic controls of any kind, elevators, dumb waiters, water softener and purification systems, solar systems, internal system components, system adequacy or efficiency, prediction of life expectancy of any item or system, latent or concealed defects, appraisal of property value, repair estimates, playground equipment, efficiency measurement of insulation, lead paint, toxic or flammable materials, 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), intercoms, security systems, heat sensors, liquefaction zones or flooding plains, neighbourhood amenity issues such as noise and traffic and flight paths, common areas (including roof, foundations or site improvements), legal title including covenants, planning and resource consent issues, long term maintenance planning, rental property tenancy inspections, heritage obligations, areas where reasonable access as defined by these terms and conditions is not provided to the Consultant, compliance with body corporate rules, compliance with any other governmental or non-governmental code or plan or statute or regulation, legal boundaries or other surveying issues, any component or system or item not specifically identified in the Report as having been inspected, and a full and comprehensive weathertightness investigation.
- 2.10 The Consultant will at random not take Non-invasive moisture readings as part of the HHS inspection. For the avoidance of doubt, the Client acknowledges that any building that suffers from rotting, leaky home syndrome and/or toxic mold is not covered by the Consultant's inspection and Report. The Client further acknowledges the Consultant's recommendation to obtain a full weathertightness investigation and report from a suitably qualified weathertightness professional.
- 2.11 For multi- unit properties, the Consultant 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.

### 3.0 Payments:

- 3.1 Receiving payment prior to commencing the onsite HHS inspection and prior to releasing the report will be required on every occasion, unless prior arrangements have been agreed between the Client and the Consultant.
- 3.2 There may be some instances where by the Consultant determines the Clients scope of work exceeds the online HHS inspection booking fee (HHS inspection particulars). If so then the Consultant reserves the right to issue an invoice for variations work to suit the properties actual particulars.
- 3.3 Furthermore, to clause 2 a variation mileage fee of \$3.10 per km will be required to be paid in the event the HHS inspection address falls outside of the nominated city zoning.
- 3.4 In the event an invoice has been issued to the Client for variation costs in addition to the Consultants fee then the payment must be made no later than 7 days, following the date of Invoice. Receiving payment prior to releasing the report will be required on every occasion, unless prior arrangements have been agreed between the Client and the Consultant.
- 3.5 Payments received will be in cleared funds and in full without any deduction or withholding whatsoever of any kind and be inclusive of Goods and Services Tax.
- 3.6 Overdue accounts will incur a late payment penalty of an interest rate of 10 % per month that is applicable upon the date that the invoice becomes overdue, and reimbursement of all associated collection costs will be required where applicable.

- 3.7 24-hour Cancellation Policy the Consultant requires at least 24 hours' notice for cancellation of a booking. A \$150+GST cancellation Fee will be incurred with less than 24 hours' notice of cancellation.
- 3.8 In the event the client agrees to no longer require the HHS report issued after the inspection has been carried out then client will be entitled to a 20% refund of the HHS inspection value.
- 3.9 Where the signing client is a company, partnership or trust, the Signing authority must be a director, Partner or trustee and each individual person in governance of said entity shall be held jointly and severally liable for any outstanding accounts incurred by said company, partnership or trust.
- 3.10 All reports remain the property of the Consultant until such time full paid is received.
- 3.11 The definition of "One Room" is an individual habitable area within the building of 4m<sup>2</sup> or greater are considered one room which forms the basis of the HHS inspection, with the exception of bathrooms which are occasionally smaller.
- 3.12 Other small utility areas such as Toilets, Laundry's, internal storage areas are not considered rooms and are automatically included in the HHS inspection.
- 3.13 In the event the client has an open plan room with two mixed uses then this will be considered two rooms, such as open plan Kitchen with adjoining Lounge etc.
- 3.14 In the event the client has an open plan room with two same uses then this will be considered one room, such as open plan Lounge with adjoining Dining etc.
- 3.15 Additional rooms will be charge at \$35+GST per room if the inspected building falls outside the selected booking criteria. A garage is classified as an extra room and can be included at the above additional rate if requested by the client.
- 3.16 All Consultants works are located and carried out in the Dunedin area only, zoned within a 12km radius from the St Clair Dunedin coast line. Any properties zoned outside of this area may incur an additional vehicle travel fee of \$3.10+gst per kilometer.

#### 4.0 General Acknowledgement:

The Client Acknowledges that:

- 4.1 These terms and conditions and any provision of that is binding on more than one party will bind such parties jointly and severally.
- 4.2 The failure of or delay by the Consultant in requiring performance of any obligation of the Client pursuant to these terms and conditions is not a waiver of the Consultant right:
- 4.3 to claim damages and/or an indemnity for breach of that obligation; and
- 4.4 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. 14.6 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 Consultant. The Consultant may transfer or assign any of its liabilities or rights under the terms and conditions to any other person.
- 4.5 No variation or amendment to these terms and conditions is effective unless it is in writing and signed by all the parties.
- 4.6 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 Consultant.
- 4.7 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.
- 4.8 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.
- 4.9 The Client warrants that the Client is legally entitled to enter into the terms and conditions.
- 4.10 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.
- 4.11 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.
- 4.12 The Consultants reports do not determine if a home is or is not a 'leaky home'. The Consultants 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.
- 4.13 A non-invasive and invasive testing does not detect dry rot.
- 4.14 The Consultant doesn't give advice about:
- 4.15 Any methods, materials or costs for the repair of any Investigative Issue;
- 4.16 The market value or marketability of a building; and
- 4.17 The advisability or inadvisability of the sale or purchase of a building.
- 4.18 The suitability of a building for any specialised use;
- 4.19 There is no guarantee or warranty given or representation made by that the Services will detect any and all moisture or that the readings obtained are an accurate reflection of the amount of moisture present.
- 4.20 Best practice would be for the Client to undertake invasive inspections of the subject building.
- 4.21 Purpose of Inspection and Scope: The Inspection Report has been prepared to establish whether the rental property complies with the Residential Tenancies (Healthy Homes Standards) Regulations 2019 for heating, insulation, ventilation, draught stopping, moisture ingress and drainage. 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, the Consultant 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).
- 4.22 The timing of the HHS works shall be supplied at approximately the date(s) and time(s) agreed by the Consultant and the Client. However, while the Consultant will make a reasonable effort to supply the Works at the date(s) and time(s) agreed, the Consultant reserves the right to vary the date(s) and time(s) that the Works are supplied at its absolute discretion.
- 4.23 The timing of the HHS report will be submitted within 48hrs after the agreed date(s) and time(s) in clause 5.24 based a standard working week and standard working hours. However, while the Consultant will make a reasonable effort to supply the HHS report at the date(s) and time(s) agreed, the Consultant reserves the right to vary the date(s) and time(s) that the Works are supplied at its absolute discretion. Same day verbal update can be supplied if deemed necessary.

- 4.24 The Client will ensure that the Consultant is legally entitled to have reasonable and unobstructed access to the building that is the subject of the Works including, without limitation, the roof cavity and foundation spaces.
- 4.25 Where the Consultant is required to re-visit a building because access was not gained at the agreed time of inspection, a further fixed charge of \$145+gst, will be added to the Fee.
- 4.26 Where the Consultant is required to carry out a re-inspection at the building due to a previously failed HHS inspection, a further fixed charge of \$145+gst, will be added to the Fee.
- 4.27 Where the Consultant is required to provide quotes to establish the cost associated with ensuring your property becomes compliant, due to a failed HHS inspection, a further fixed charge (quoted), will be added to the Fee.
- 4.28 Due to health and safety restrictions the Consultant will not gain access onto the roof therefore all HHS inspection comments will be based on line of sight observations made from ladder (small A frame >2m) top positions or in the case of two or more story buildings from scaffolding, if present, or from vantage points either on the ground or inside the building.
- 4.29 Areas of the property that have access which is inaccessible, obstructed, not granted or gained, deemed unreasonable, dangerous or has restraints due to health & safety requirements do not form part of this inspection report.
- 4.30 The ceiling space and under floor are sometimes limited due to health & safety restrictions. Such circumstances may include where insulation covers the ceiling joists (unsafe to climb across), confined ceiling and floor spaces, no or restricted man hole access due to inaccessibility, dangerous surrounds and circumstances, obstructions and the like. Therefore, findings are limited to what can be seen from the manhole access and or ladders (small A frame >2m).

## 5.0 Limitations of Report:

The Consultant will prepare any Report or document:

- 5.1 Only for the benefit of the Client. Those documents cannot be relied upon by any other person or party;
- 5.2 Not for the purpose or intention of a structural survey, any other survey or any report as noted in clause 2.9. The Consultant will not uncover, dismantle or undertake any internal inspection of any building;
- 5.3 Not intended or designed to identify potential problems or issues within the Subject Area other than the Investigative Issues and, without limitation, will not:
- 5.4 Identify the presence or absence of any pests including wood damaging organisms, rodents or insects;
- 5.5 Identify the absence or presence of dry rot or any hazardous substance including mold, toxins, cancer causing materials, noise or other contaminants;
- 5.6 Determine the future condition of any equipment or durability, utility, component or system; and
- 5.7 Determine non-compliance or compliance associated with any statutory or regulatory requirement, code, by law, ordinance or other restriction.
- 5.8 Determine the effectiveness of any equipment, utility, component or hazardous substances, moisture, heat loss, dry rot or system installed to control leaks;
- 5.9 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.
- 5.10 Client accepts and understands that the Consultant 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; The Consultant have been given incorrect advice and or information by the Client, the vendor (if any), the real estate agent, or any other person; and/or the fault is/was not apparent on a visual inspection.

## 6.0 Clients Onsite Acknowledgment's:

The Client acknowledges and agrees that the Consultant will not:

- 6.1 Operate any componentry, utility, equipment, or system that is shut down, inoperable or that does not respond to normal operating controls.
- 6.2 Move or Disturb any personal items, equipment, vegetation, panels, furniture, insulation, or other items or materials that obstruct access or visibility to the HHS inspection.
- 6.3 Occupy any area or perform any procedure that will or may damage any part of a building or be dangerous to any of the Consultants employees, Consultants or any other person;
- 6.4 The Consultant will not guarantee or warrant the work of any Consultant 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.

## 7.0 Limitation and Exclusion of Liability:

- 7.1 The Consultant or the Consultants directors, employees or Consultants shall be liable to the Client, the Client'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.
- 7.2 The Client depends upon its own knowledge, expertise, skill and judgment in relation to the particular use or suitability of the Consultant's report for the Client's purpose; and
- 7.3 All warranties, descriptions representations or regulations implied by any Act, conditions or otherwise are expressly excluded to the fullest extent permitted by law.
- 7.4 Where the Client is engaging the Consultant to provide the Services for business purposes the Consumer Guarantees Act 1993 ("Act") will not apply. If the Client is a consumer under the Act, to the extent that the Client's rights under the Act have not been excluded above, nothing in these terms and conditions will affect the rights of the Client under the Act.
- 7.5 No claim for damage or loss arising directly or indirectly in connection with the Services shall be brought more than two months after completion of the Services. At that time the Client shall be deemed to have waived and abandoned any and all claims against the Consultants and the Consultants agents or employees and shall not be entitled to bring any claim against the Consultant and the Consultants agents or employees.
- 7.6 Clauses 8.1 to 8.8 of this clause 8.0 are promises that confer and are intended to confer a benefit on the Consultants employees and agents and accordingly the provisions of the Contracts (Privity) Act 1982 apply to each of them.
- 7.7 If, for any reason, the Consultant is found liable to the Client or any other person in connection with the Services and the Consultant is unable to rely on the exclusions of liability set out in these conditions and terms, the Consultant's liability shall in all cases be:
  - 7.7.1 Only be to the Client and not to any third party;
  - 7.7.2 Limited to only that portion of the damage or loss directly caused or contributed to by the Consultant or the Consultants employees or agents;
  - 7.7.3 For direct losses of the Client only and not any third party and not for any loss of profits or any indirect or consequential losses of any nature;
  - 7.7.4 If, for any reason, the Consultant the Consultants agents or the Consultants employees are found liable to the Client the Client or any other person

in connection with this Report and/or the performance or non-performance of the Consultants Services and the Consultant is unable to rely on the exclusions of liability set out in these terms and conditions, the Consultants liability shall in all cases be limited to the price paid or payable by the Client for such Report or Services.

7.8 The Consultants directors, employees and agents are not contracting with, or assuming any duties of care to, the Client and have no liability to the Client whatsoever and howsoever arising.

## 8.0 Confidentiality and Use:

- 8.1 The Works, including without limitation, the Report, is confidential and has been prepared solely for the Client and shall not be relied on by any third parties. The Consultant 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.
- 8.2 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 Client; or distributed or sold, in each case without first obtaining the written approval of the Company.
- 8.3 The Consultant 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 Consultant 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.
- 8.4 The Report is not to be conducted in any litigation except with the prior written approval of the Company.
- 8.5 The inspection and Report is to be used and prepared for the Client solely and exclusively for the Client's own information.
- 8.6 The Client acknowledges and agrees to maintain the confidentiality of the Report and agree not to disclose any part of it to any other person.
- 8.7 The Client acknowledges and agrees to indemnify, defend and hold the Consultant harmless from any third-party claims arising out of any distribution of the report.
- 8.8 The Client may circulate 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. The Consultant will not in any way intend to benefit the Vendor or the real estate agent/s directly or indirectly through the Consultant's report.

## 9.0 Regulations and Compliance:

- 9.1 Unless otherwise stated, The Consultant will not make and have not made 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. The Consultant will 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. The Consultant will accept and acknowledge no responsibility for any error or omission in such information as a result of inaccurate Council records.
- 9.2 The Consultant will 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, Health and Safety in Employment Act 1992, Building Act 2004, 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 the Consultant will 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.
- 9.3 The Consultant in relation to Title and Boundaries will not undertake 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.

## 10.0 Disputes:

- 10.1 The Consultant and Client and any associated parties will meet and discuss in good faith any dispute between them arising out of this agreement.
- 10.2 In the event any dispute arise as a result of the inspection or Inspection Report, it must be submitted to the Consultant 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 the Consultant. In the event of a claim/dispute regarding damage to a home, the Client will allow the Consultant to investigate the claim prior to any repairs to the home being undertaken or completed. The Client agrees that if it does not allow the Consultant 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 the Consultant. 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.
- 10.3 If the discussions referred to in clause 11.1 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:
  - 10.3.1 the mediator will not be acting as an expert or as an arbitrator;
  - 10.3.2 the mediator will determine the procedure and timetable for the mediation; and
  - 10.3.3 the parties will share equally the cost of the mediation.
- 10.4 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 11.1 and 11.3