



## **STAGED PROGRESS BUILDING INSPECTION TERMS AND CONDITIONS**

# PRE-ENGAGEMENT AGREEMENT

### **PURPOSE OF INSPECTION & REPORT**

- 1 The purpose of the staged progress inspection(s) and associated report(s) is to provide advice to the client building a property through an engaged principle contractor regarding the quality of workmanship and construction compliance at various stages of construction as per the NCC/BCA, AS4349.0, other relevant Australian Standards, Guidelines, and product ACM's.
- 2 The inspection report WILL NOT comment or comply with AS4349.1 - 2007, nor will it comment on items listed in Appendix "D" of AS43491.2007. If the property is part of a Strata or Company Title, then Appendix "B" of the Australian Standards applies.
- 3 Copies of the various Australian Standards with appendices may be obtained from Standards Australia ([www.saiglobal.com/shop](http://www.saiglobal.com/shop)) at your cost.
- 4 Upon receipt of this agreement, it will be considered by the firm that you have agreed to the terms and conditions outlined therein and we will proceed with carrying out the required inspections and reports in accordance with this agreement, and you agree to pay for the inspections and reports on or before delivery of the report.
- 5 In ordering the staged progress building inspection services, you agree that the inspections will be carried out in accordance with the following clauses, which define the scope and limitations of the inspection and report.

### **SCOPE OF THE INSPECTION & REPORT**

- 1 The inspections comprise of a visual, non-intrusive assessment of the property at various stages of construction to identify major and minor defects.
- 2 If the property inspected is part of a Strata or Company Title, then the inspection is limited to the interior and the immediate exterior of the particular residence to be inspected. It does not cover the common property. Purchasers should be aware that their liability for the cost of repairing building defects is not restricted only to the particular unit that is being purchased, but may include contribution to the whole of the common property.
- 3 The report applies only to the person named in the CLIENT INFORMATION section of the report and it is assumed and agreed that the person who orders the report is indeed the person engaging the firm to compile the report.

- 4 Subject to safe and reasonable access, the inspection will normally report on the condition of the following areas:
  - The interior
  - The roof space
  - The exterior
  - The subfloor
  - The roof exterior
- 5 The inspector will report individually on major defects, safety hazards, and minor defects evident and visible on the date and time of the inspection.
- 6 Where a major defect has been identified, the inspector will provide an opinion as to why it is a major defect and specify its location.

## TERMS AND CONDITIONS

### 1. This agreement

- a) This document contains all terms of this agreement and anything inconsistent we or you have said or written to each other is excluded.
- b) This agreement defines the scope of our inspection and **limits our liability for any errors or omissions in our work as set out in clause 4(c)**.
- c) If you do not agree with the terms in this agreement, you must tell us within sufficient time to allow us to cancel the inspection, otherwise you agree to all of the terms.
- d) If any term of this agreement is in breach of any law, then that term remains part of this agreement but is to be amended only as much as is necessary to comply with that law.
- e) If any part of this agreement conflicts with Australian Standard AS4349.0, this agreement takes precedence.

### 2. What we will do

- a) We will visually inspect the *Building*.
- b) We will only inspect *Accessible Areas* of the *Building*.
- c) We will not inspect or report on hidden defects.
- d) We will endeavor to provide the report to you on the same day that the inspection is conducted

### 3. What you will do

- a) You will pay us the *Price* at or before the Inspection Time. Where any inspection is performed before the *Price* is paid, we will withhold the *Report* until payment is made and we will not be liable for any consequence of the late delivery of the *Report*.
- b) You acknowledge that the inspector reserves the right to cancel an inspection at any time and will reimburse any moneys paid by you as soon as possible.
- c) You will attain authority for us to access the *Building* for an adequate period at the inspection time and will coordinate access for us.
- d) You will not provide the *Report*, or any part of it, to any other person without our written consent.
- e) If you show the *Report* to another person you will tell them that they must not rely on it.

- f) If the inspection is terminated while it is being conducted prior to its satisfactory completion by any person, including the site supervisor or a trade contractor, we will include this occurrence in the report and you will not hold us responsible for any defects not identified due to areas not being inspected.
- g) If an inspection is terminated as cited in (f) above, you are still required to pay the agreed upon fee in full as per "Terms and Conditions Part 3 (a)".

4. **Breaches of this agreement and limitations on liability**

- a) If you fail to pay us the agreed upon *Price* after the inspection has been conducted, or fail to pay any amount due under this agreement following receipt of the report, we can charge you interest on the unpaid money at the rate of the NAB Visa Card interest rate as well as claim any associated debt recovery costs.
- b) If you breach any part of this agreement you will reimburse us in full the amount of any loss or damage we suffer as a direct or indirect consequence, including legal costs and debt recovery costs.
- c) If we breach this agreement or are negligent, including omitting to mention a *Major Defect* or expressing an inaccurate opinion to you, any liability we might have to you for any loss or damage that you suffer is limited to repaying to you the *Price* agreed upon for the inspection.
- d) You agree that we cannot accept any liability for our failure to report a defect that was concealed and you agree to indemnify us for any failure to find such concealed defects.
- e) The person performing the inspection may be our employee or sub-contractor. If so, you agree that they have no personal liability for the inspection or the *Report*.
- f) The Report is not a certificate of compliance that the property complies with the requirements of any Act, regulation, ordinance, local law or by-law, or as a warranty or an insurance policy against problems developing with the building in the future.
- g) You acknowledge that you have been given reasonable opportunity to peruse the relevant Australian Standards.
- h) The Scope of Inspection set out in this Agreement is only indicative as the Inspector is restricted by their ability to access any Area, which is subject to all safety considerations. The Client further acknowledges that the Inspector cannot breach the same to carry out an inspection.
- i) Some Restrictions on an Inspection are foreseeable while others are only recognized at the time of the inspection.
- j) You acknowledge that the Inspector is the only person who can determine, at the time of the inspection, what they are restricted by in regards to safe and reasonable access during the inspection.
- k) You acknowledge that the Inspector is not liable for any Area not inspected due to Restrictions on an Inspection.
- l) You acknowledge that any claim for loss is limited to the cost of the inspection.
- m) You acknowledge that you have read all the terms and have not relied on any representations made by the Inspector or anyone else before entering this Agreement.
- n) You acknowledge that just because a defect is not visible at the time of the inspection does not guarantee that there is no defect affecting the Property.

- o) You will not hold the Inspector liable for any losses suffered on relying on the Inspection Report considering the acknowledgments above and the terms of this Agreement.
- p) You acknowledge that the Inspector does not report on potential latent defects in the property or in the title.
- q) You acknowledge acceptance through performance of this Agreement by way of payment of the agreed-upon Inspection fee.
- r) Any cost estimates in regards to repair / maintenance work that the inspector may, at his / her discretion, provide to you (the client), are to be understood to be opinions only. These estimates are not calculated quotations and are not to be treated as such. This firm, along with their authorised inspector, accepts no liability for any estimates provided in good faith.
- s) The Inspector warrants that they will do everything reasonable to inspect the above Areas thoroughly and responsibly subject to the requirements of the AS4349.0 Australian Standard and any foreseeable or unforeseeable restrictions.
- t) The Inspector warrants that all access limitations encountered will be listed in the report, and you the Client warrant that you will not hold the Inspector liable for any Area that the Inspector could not reasonably inspect due to access restrictions during an inspection.

## **5 Dispute resolution**

- a) Any dispute arising out of this agreement must be referred for expert determination to the Association of Building Consultants (ABC) which will appoint an expert for this purpose.
- b) The Expert Determination Rules of the Institute of Arbitrators and Mediators Australia will govern the expert determination except where they conflict with this agreement which takes precedence.
- c) The expert will decide who should pay the costs of the expert determination but initially both you and we must contribute equally until the expert decides.
- d) The expert's decision is final and binding and cannot be appealed to any court.

## **6 Third Party Disclaimer**

We will not be liable for any loss, damage, cost or expense, whatsoever, suffered or incurred by any person other than you (the client) in connection with the use of the inspection report provided pursuant to this agreement by that person for any purpose or in any way, including the use of this report for any purpose connected with the sale, purchase, or use of the property or the giving of security over the property, to the extent permissible by law. The only person to whom we may be liable and to whom losses arising in contract or tort sustained may be payable by us is the client named on the face page of this agreement.

## **7 Prohibition on the Provision or Sale of the Report**

The report may not be sold or provided to any other person without our express written permission, unless the client is authorised to do so by legislation. If we give our permission it may be subject to conditions such as payment of a further fee by the other person and agreement from the other person to comply with this clause.

## 8 Release

You release us from any and all claims, actions, proceedings, judgements, damages, losses, interest, costs, and expenses of whatever nature that the person may have at any time hereafter arising from the unauthorized provision or sale of the *Report* by you to a person without our express written permission.

## 9 Bar on claims

The Client is barred from making a claim against the Inspector by virtue of the Client's Acknowledgment of the terms and conditions within this agreement.

## SCHEDULE 1

### 1. Definitions

You should read and understand the following definitions of words used in this agreement and the report. This will help you understand what is involved in a property and building inspection, the difficulties faced by the inspector, and the contents of the report which we will provide you following the inspection.

- a. **Accessible Area** means any area of the *Building* we deem can be safely and reasonably accessed at the time of inspection:
  - i. and extends to include
    1. any roof space with an opening *access hole* at least 400mmx500mm in size and available space for crawling through the roof space of at least 600mmx600mm and where access does not require the use of a ladder of a length greater than 3600mm
    2. any roof exterior accessible by using a ladder 3600mm long, placed on the ground.
  - ii. but does not include any other areas of the *Building* and particularly does not include:
    1. any area that can only be accessed by cutting an *access hole*, removing screws, nails, bolts, sealants or other fasteners;
    2. any under floor space that has been treated with chemicals;
    3. any area at a height at which safe and reasonable access is not available, or where it is not close enough to be seen directly when safely using a ladder 3600mm long placed on the ground;
    4. any part of the *Building* that can only be accessed or inspected from land adjacent to the Inspection Address.
- b. **Access Hole (cover)** means an opening in the structure to allow for safe entry to carry out an inspection.
- c. **Building** means the residence, or other building as set out in the Special Conditions, and does not include any outbuildings, sheds, retaining walls or other structures.
- d. **Building Element** means a portion of a building, by itself or in combination with other such parts, fulfils a characteristic function.
- e. **Building Rules** means the applicable rules from the Building Code of Australia and the Development Act 1993 and its Regulations.

- f. **Client** means the person(s) or other legal entity for which the inspection is to be carried out. If ordered by the person(s)'s agent then it is agreed that the agent represents the person(s)'s and has the authority to act for and on their behalf.
- g. **Limitation** means any factor that prevents full achievement of the purpose of the inspection.
- h. **Major Defect** means a defect severe enough to require rectification in order to avoid unsafe conditions, loss of utility or accelerated deterioration of the *Building*.
- i. **Minor Defect** means a defect other than a major defect.
- j. **Our / Us / We** means the provider of inspection services, being Summerton Building & Inspection Pty Ltd
- k. **Person** means any individual, company, partnership or association who is not a *client*.
- l. **Property** means the structures and boundaries etc. up to 30 metres from the exterior walls of the main building but within the boundaries of the land on which the main building is erected.
- m. **Report** means the document and any attachments issued to you the *client* by Summerton Building & Inspection following our inspection of the property excluding any verbal comment we make to you prior to or during the inspection.
- n. **You / Your** means the party identified on this agreement as the *client*, and where more than one party all such parties jointly and severally, together with any agent of that party.

## 2. **Important exclusions from the Report**

- a. If the *Building* is part of a multiple dwelling *building*, such as an apartment block, a strata titled unit, or a community titled dwelling, we will only report on that part of the *Building* and will not report on any common or community parts of the *Building*.
- b. We will not move any builder's materials or equipment, plants, or soil.
- c. We will not obstruct the work of any tradespersons during the inspection/s.
- d. We will not cut *access holes* or remove access covers.
- e. We will not cut, scrape, or destroy anything to inspect or test it.
- f. We will not make any enquiry of the local Council or any other authority.
- g. We will not test any electrical equipment, appliances, smoke alarms, air conditioning, swimming pool plant, security systems or similar unless relevant to the specific staged inspection or specifically requested to do so in writing by you, The Client.
- h. The inspection and report will not comment on any defects which may not be apparent due to prevailing weather conditions at the time of inspection. Such defects may only become apparent in differing weather conditions.
- i. We will not inspect, test or report on any of the following unless specified by the relevant staged progress building inspection:
  - i. Footings below ground (only at stage 1.1)
  - ii. Concealed damp-proof course.
  - iii. Electrical installations, light switches and fittings, TV, sound and communications, intercom systems or security systems.
  - iv. Concealed plumbing.

- v. Adequacy of roof drainage.
- vi. Gas fittings and fixtures.
- vii. Air-conditioning (only at stage 6)
- viii. Automatic garage door mechanisms (only at stage 6)
- ix. The operation of incinerators, fireplaces or heaters, including chimneys and flues.
- x. Floor coverings (only at stage 6)
- xi. Electrical appliances including hotplates, stoves, dishwashers, ovens, microwave ovens or ducted vacuum systems (only at stage 6)
- xii. Health hazards (e.g., allergies, soil toxicity, lead content, radon, presence of asbestos or urea formaldehyde).
- xiii. Timber or metal framing, sizes, and adequacy (only at stage 2)
- xiv. Concealed tie-downs or bracing.
- xv. Timber pest activity.
- xvi. Mechanical or electrical equipment such as gates (only at stage 6)
- xvii. Soil conditions.
- xviii. Control joints (only at stage 3 & stage 6)
- xix. Sustainable development provisions.
- xx. Concealed framing-timbers or any areas concealed by wall linings/sidings or cladding.
- xxi. Landscaping.
- xxii. Rubbish.
- xxiii. Furniture or accessories.
- xxiv. Stored items.
- xxv. Insulation.
- xxvi. Environmental matters (e.g., BASIX, water tanks, BCA Environmental Provisions).
- xxvii. Energy efficiency.
- xxviii. Lighting efficiency.

### 3. Acceptance Criteria

You agree that you have read and understand the contents of this agreement and that the inspection/s will be carried out in accordance with this document. You agree to pay for the relevant inspection prior to or at completion of the inspection and prior to the delivery of the report.

You acknowledge that this firm takes no responsibility for missing staged progress inspections. It is up to you, the Client, to communicate with your builder to ascertain when inspections will be required, and to organise access of the property for the inspector should it be at lock up stage. Note: This firm will endeavour to visit the site to ascertain build status when possible, and to maintain communication with you, the Client, and your builder as much as possible.

If you fail to cancel the requested inspection via written communication within 24 hours of its scheduled date and time then you agree that you have read and understand the contents of this agreement and that we will carry out the inspection based on this agreement and that we can rely on this agreement and the receipt of your payment as outlined above.

If you cancel a booking within 24 hours of the scheduled inspection, a cancellation fee may be incurred to 50% of the value of the agreed upon price. Should the inspection be re-scheduled, you will be entitled to a rebate of 50% of the cancellation fee which will be reflected in the invoice price for the new inspection.

Should an inspection be scheduled with a representative of the building company post-lock up (e.g. site supervisor), and the representative fails to attend the inspection to grant the inspector access, a cancellation fee will be incurred to 50% of the value of the agreed upon price. Should the inspection be re-scheduled, you will be entitled to a rebate of 50% of the cancellation fee which will be reflected in the invoice price for the new inspection.

The Report has been prepared to comply with Australian Standard AS4349.0-2007 Inspection of Buildings Part 0: General Requirements.

Generally, you should note that:

The report is not a guarantee or warranty but an opinion of the condition of the inspected property

There is no guarantee that the inspector will identify all defects at the time of the inspection. The inspector undertakes to conduct the inspection to the best of their ability.

On acceptance of the booking and receipt of the Pre-Inspection Agreement, the client is considered to have accepted these Terms and Conditions

The Terms and Conditions take precedence over any oral or other written representations by us, to the extent of any inconsistency.

If we refer or recommend other consultants or trades for additional specialist inspections it is done so without liability, you should make your own investigation and judgement regarding their suitability.

Ensure you read the Report and any referenced Appendices in full.

Our liability is limited to the provision of a new inspection and report or the payment of the cost of a new inspection and report at our discretion.

Additional inspection requirements requested by you may incur an additional expense in regard to the cost of the inspection.

*Note: If there is anything in this agreement that you do not understand, then prior to the commencement of the inspection you must contact us by e-mail, phone or in person and have us explain and clarify the matter to your satisfaction. Your failure to contact us signifies that you have read this agreement and fully understand the contents.*