

QUAKECHECK

These are the terms which specifically apply to any “*Quakecheck*” inspection we undertake in the course of our Work for you.

1. **What will we do for you?**
 - 1.1 We will undertake a limited a visual inspection of the dwelling as at the date and time the inspection is carried out on the subject property, including its standard systems and components (“**the Building**”) as part of an investigation to identify *potential threats and failures in and around the Building in the event of an earthquake* (“**the Investigation**”).
2. **How will the work be completed?**
 - 2.1 On completion of the Investigation, we will complete and forward to you a report on the outcome of the Investigation which will cover subjects such as the grounds, foundations, structure, roofing, exterior, seismic restraining of gas bottles, hot water cylinders, header tanks, wood burners, and other large heating systems in relation to the Building. (“**the Report**”).
 - 2.2 NZS 4306:2005 is the New Zealand Standard for residential property inspections and is the benchmark for setting levels of competency (“**the Standard**”). The Investigation will be completed and the Report prepared in accordance with this Standard. A copy of the Standard may be held at our office and may be viewed on request.
3. **Payments**
 - 3.1 We may charge you our full fee if you cancel the Investigation within 24 hours of our intended inspection time. If you cancel the Investigation more than 24 hours before our intended inspection time, we will charge a fee of \$100.00, which you agree to pay.
 - 3.2 We may require that payment for our Work be made before releasing the Report to you.
4. **How should we use the Report?**
 - 4.1 The Report is a general guide to allow you to evaluate earthquake risks to the Building and suggestions for remedial action to reduce the risk of damage to your Building in the event of a significant seismic event.
 - 4.2 You acknowledge that our Investigation is based on a visual inspection of the dwelling as at the date and time the inspection is carried out on the subject property only and that such as inspection may not identify conditions or problems with the Building that are concealed, contained, inaccessible, or cannot be seen due to walls, ceilings, floors, insulation, soils, vegetation, furniture, stored items, systems, appliances, vehicles or other objects. Such aspects are not be inspected and we will have no liability to you for them.
 - 4.3 You also acknowledge that we are unable to detect conditions or problems that have been disguised to prevent detection or obscured by the placement of furniture or other items by the occupant of the Building and that we will have no liability to you for these.
 - 4.4 We will not move any furniture or other items placed on, in or around the Building by the occupants of the Building.
 - 4.5 You acknowledge that our Report cannot be taken to be a definitive or categorical finding in relation to all aspects of the Building. In particular, without limitation, you acknowledge that the Report will not give include advice relating to:
 - (a) Building Code compliance; council zoning and rules; soil conditions; structural stability; engineering analysis; geological or geotechnical stability; environmental hazards; electromagnetic radiation; infestation of insects or rodents; asbestos; formaldehyde; water or air contaminants of any kind; toxic moulds; non-visual rotting of timber; repair estimates; property value matters; detached buildings outbuildings or sheds; the underground condition of pools and/or spas (including piping); saunas; private water or septic systems; specialized electronic controls of any kind; elevators; dumb waiters; water softening and purification systems; solar installations; internal system components (including but not limited to security systems, adequacy or efficiency of systems, prediction of life expectancy of any systems); testing of appliances (including but not limited to ovens, hobs, range hoods, dishwashers, waste disposals, HWC thermostat, element & wiring, ducted vacuum systems); the condition of any floor coverings and window treatments (including but not limited to carpets, vinyl, tiles, blinds & curtains); minor or cosmetic problems, latent or concealed defects.
 - (b) Any items which are indicated in the Report to have not been inspected (which are deemed to be excluded from the scope of this Report and our advice to you).
 - (c) Woodwork or other parts of the structure, which are covered, unexposed or inaccessible to us.
 - (d) The rotting of timbers or toxic moulds and any condition that cannot be detected without the removal of wall linings through invasive techniques (unless we have expressly agreed to do this with the consent of the Building owner).
 - (e) Where a property is inspected as part of a unit title development, cross lease or similar multi-unit complex, any common property or accessory units or any other element of the Building outside the immediate exterior of the Building being inspected.
 - 4.6 You acknowledge that our advice to you will be limited to our findings in respect of those elements of the Building which have been identified in the Investigation and the Report, which must be read subject to any other conditions, assumptions or limitations contained in the Report or otherwise notified by us to you.
 - 4.7 Except as may be expressly stated in the Report, you give no express or implied warranty or guarantee about the condition of the Building or its suitability or fitness for any purpose.
5. **What other terms apply?**
 - 5.1 Our General Terms also apply to any *Work* we undertake for you under these Specific Terms. However, where the General Terms are in conflict, these Specific Terms will prevail.

General Terms of Trade

GENERAL TERMS OF TRADE

In these General Terms of Trade ("Terms") we have used "we", "us", and "our" to refer to the particular franchise which has been engaged to carry out the work and "you" to refer to our Customer. By ordering services from us ("Work"), you agree to these Terms to the exclusion of your terms (if any)

1. **Specific terms incorporated**
 - 1.1 Any Specific Terms provided by us in relation to the Work are deemed to form part of these Terms.
 - 1.2 In the event of any conflict between the Specific Terms and the terms set out herein, the Specific Terms will take precedence in relation to the Work the subject of the Specific Terms.
2. **Acceptance of requests for work**
 - 2.1 We are not obliged to accept any particular request to undertake Work from you.
 - 2.2 We may, at our discretion, decline to commence Work until you have signed a document incorporating these Terms.
3. **Quotes**
 - 3.1 We will, wherever practicable, agree in writing to carry out Work or parts of Work for a fixed price (a "Quote").
 - 3.2 Quotes will remain valid for 10 days from the date on which they are issued.
 - 3.3 In the event that you cancel any Work we have agreed to perform prior to completion of Work, you will be liable to pay us the fixed price provided that we may, at our discretion, discount our costs for such uncompleted Work.
4. **Terms of payment**
 - 4.1 We may require you to pay a deposit, being an advanced payment for the Work before we commence the Work.
 - 4.2 We may require you to pay for the Work before releasing to you a copy of any report or advice compiled pursuant to or as part of the Work.
 - 4.3 In all other circumstances, payment for the Work is due on such date as we specify on any Quote, invoice or other document given to us by you or, in the event that we have not specified a date, on the date of completion of the Work ("the Due Date").
 - 4.4 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 5% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
 - 4.5 We may notify you at any time that we have ceased to carry out the Work on credit. This cessation does not relieve you of amounts owing up to the date on which the contract is terminated.
 - 4.6 Payment of all money shall be without set-off or deduction of any kind.
 - 4.7 We will apportion payments to outstanding accounts as we think fit.
 - 4.8 Subject to any other provision of these Terms, where there is any dispute in good faith as to the amount of money owing by you to us, the portion of the amount owing that is not in dispute or otherwise contested or challenged ("**Undisputed Amount**") must be paid within the time required without deduction or set-off, but without prejudice to the parties to contest, challenge or otherwise dispute the appropriate disposition of the remaining.
 - 4.9 An amount shall be deemed an Undisputed Amount if the amount invoiced by us is contested in bad faith by you or if you fail to give notice of a disputed amount within 7 days of receiving our invoice.
 - 4.10 Payment may be made by cash, bank deposit, Visa or MasterCard credit card or such other payment method that we may, at our discretion, allow. If you elect to pay our account by credit card, we may charge you an additional 2% of the amount you pay.
5. **Performance of work**
 - 5.1 You will give reasonable assistance to enable us to perform the Work by:
 - (a) giving clear instructions;
 - (b) promptly provide any information or content required from you for us to complete the Work;
 - (c) providing us with information about any known or potential conditions you are aware of that could materially affect the content of any report or advice we give to you;
 - (d) ensuring that any property or premises for which we are undertaking Work are available to us for the purposes of the Work and that we are authorised by the lawful owner or occupier of the property or premises to do all things necessary to complete the Work.
- 5.2 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arise which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with any breach of your obligations under clause 5.1 above.
- 5.3 If we have given you a timeframe for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence.
- 5.4 If we do not, in our own judgment, consider that any aspect or aspects of any building or property is safe to access for inspection or other purposes then we may, in our sole discretion, decline to access or inspect that aspect or those aspects and may exclude them from any advice or report given by us to you.
6. **Limitation of liability**
 - 6.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
 - 6.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Work from us for the purposes of a business in terms of sections 2 and 43 of that Act.
 - 6.3 Except to the extent that the law prevents us from excluding liability we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work provided by us.
 - 6.4 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arise which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.
 - 6.5 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount charged to you by us for the Work.
7. **Intellectual property**
 - 7.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of the Work:
 - (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms (whether you or us); and
 - (b) any new Intellectual Property will be dealt with in accordance with clause 8.
8. **Intellectual property ownership**
 - 8.1 Subject to clauses 7.1(a) and 8.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) arising from the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
 - 8.2 We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.

General Terms of Trade

- 8.3 You must not attribute the Work to anyone other than us or remove any of our trademarks, signatures, logos or similar from our Work.
- 8.4 This clause 8 shall continue in force as between the parties notwithstanding the termination of these Terms or the completion of the Work.
9. **Privacy of information**
- 9.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
- I. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
- II. to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these terms.
- 9.2 You acknowledge that information produced in the course of the Work may be used by us in the preparation of reports about the properties concerned for other parties. You consent to us using the information in this way.
- 9.3 You authorise us to inform or release any information to any person or authority that we consider appropriate if we, in our discretion, consider that such disclosure is warranted in the interests of public health or safety or if we consider any condition or problem identified by us or to us to pose a significant risk to the health and safety of any persons.
- 9.4 We may share your information with our franchisor and other NZ House Surveys franchisees for any purpose we deem necessary, appropriate or in the best interests of the NZ House Surveys network,
10. **Notices**
- 10.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you.
11. **Variation**
- 11.1 We shall be entitled at any time by notice in writing to you to vary any provision of these Terms and you shall be bound by such variation **PROVIDED THAT** you may terminate our engagement with you should any such variation materially alter your rights under these Terms.
12. **Confidentiality**
- 12.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices and is deemed to include which will be deemed to include any reports prepared by us pursuant to the Work,
- 12.2 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arise which is brought by any person in connection with any breach of your obligations under clause 12.1, including any claims or liability suffered by us in relation to any unauthorised sharing of our reports to you with any third party.
13. **Costs**
- 13.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.
14. **Credit information**
- 14.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.
15. **Assignment**
- 15.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms.
16. **Disputes**
- 16.1 Any claim or dispute arising under these terms shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.
- 16.2 Clause 16.1 will not apply to any dispute regarding your obligation to pay us for Work, with the intent that either party may refer such matter to the Disputes Tribunal or another court instead of arbitration.
17. **Force majeure**
- 17.1 We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our control.
18. **Franchisor and franchisees**
- 18.1 NZ House Surveys is a chain of independent franchisee businesses. You expressly acknowledge that, when requesting Work, you do so from the entity named in these Terms only. You agree that you will bring no claim against our franchisor nor any of our fellow franchisees in relation to the Work performed by us for you. This clause is inserted for the benefit of the NZ House Survey franchisor and the other franchisees of the NZ House Survey system for the time being.
19. **Interpretation**
- 19.1 The rule of construction known as the contra proferentem rule does not apply to these Terms.
- 19.2 Words importing the singular include the plural and vice versa.
- 19.3 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.
- 19.4 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns. References to "us" include our employees, contractors and agents.
- 19.5 References to a statute include references to:
- (a) regulations, orders, rules or notices made pursuant to that statute;
- (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- (c) any statute passed in substitution of that statute. References to "us" include our employees, contractors and agents.