

Pest Inspection Agreement Form

1: Agreement

1.1 Agreement parts

(1) This agreement consists of the following parts:

- (a) The Inspection Agreement Details.
- (b) These general terms and conditions.
- (c) The Report, (the **Agreement**).

(2) If there is an inconsistency between the parts of this Agreement, the part listed earlier prevails to the extent of the inconsistency.

1.2 Agreement to provide Inspection

The Client has requested, and the Inspection Provider has agreed, that the Inspection Provider undertake the Inspection of the Property in accordance with this Agreement.

2: Purpose of Inspection

The Client has requested that the Inspection Provider undertake an Inspection of the Property for the purpose of providing advice on the condition of the Property at the time of the Inspection in relation to the activity of Timber Pests.

3: Scope of Inspection

3.1 Compliance with Australian Standard

- (1) Australian Standard AS4349.3-2010 (**Standard**) sets a minimum acceptable standard for the Inspection.
- (2) The Inspection will be undertaken by the Inspection Provider in accordance with this Agreement and the Standard.
- (3) The Inspection Provider warrants its compliance with the Standard in undertaking and reporting the Inspection.

3.2 Scope of Inspection

- (1) Subject to clause 3.3, the Inspection will be a Non-Invasive Inspection of the Property for evidence for Timber Pests, Timber Pest activity, and damage caused by Timber Pests.
- (2) The scope of the Inspection and Reporting by the Inspection Provider is limited to the following:
 - (a) Conditions conducive to Timber Pests (i.e. conditions that increase the likelihood of the presence of Timber Pests).
 - (b) Factors that may allow undetected entry by Timber Pests.
 - (c) Opinion regarding the susceptibility of the Property to damage/infestation of the Property by Timber Pests at the time of Inspection.
 - (d) Evidence of the presence of Timber Pests and evidence of damage probably caused by Timber Pest activity (and resultant hazards (if any)) whether or not the Timber Pests are considered active at the time of Inspection (i.e. includes evidence and damage of past or current Timber Pests).
 - (e) Signs of past or present Timber Pest activity or past treatment for Timber Pest activity.
 - (f) If damage is detected, the location of damage, severity of the visible damage (which may not be the full extent of the damage actually present) and identification of the Timber Pests.
 - (g) Recommendations for the reduction of Timber Pest risk on the Property and recommended further investigations.
 - (h) Recommendations for the management of Timber Pests on the Property and further investigations.
 - (i) If the Inspection Provider is of the opinion that there is a major safety hazard to the occupants of the Property due to Timber Pests, the Inspection Provider will clearly identify the hazard in the Report.

3.3 Extended scope of Inspection

- (1) If the Client instructs that the scope for the Inspections under clause 3.2(2) be extended, the extended scope will be set out in the Special Conditions in the Inspection Agreement Details.
- (2) A request by the Client to extend the scope of the Inspection under this Agreement is at all times subject to the approval of the Inspection Provider and can be rejected at the Inspection Providers discretion.

4: Areas for Inspection

4.1 Property to be Inspected

(1) The parts of the Property that will be subject to the Inspection is as follows:

- (a) All accessible areas on the Property, being the areas of the Property where sufficient, safe and reasonable access is available to allow Inspection.
- (b) All buildings on the Property, which includes any detached or semi-detached items and includes Inspection of the interior and the exterior of those buildings.
- (c) All features on the Property.
- (d) All timber within the Property, but does not include timber that is not part of a building and/or features (e.g. furniture, furnishings, stored items and concealed timbers) or that is obstructed from being Inspected.

(2) On a large Property (as reasonably determined by the Inspection Provider), the part of the Property subject to the Inspection will be thirty (30) meters from the main building (as nominated by the Client).

(3) If the Inspection relates to a Property that is part of any kind of strata or company title, the Inspection will be limited to the interior of the nominated residence and the immediate exterior of the building/features being Inspected. The Inspection will not include any of the common areas, any areas not owned by the Client, or documents or records related to the body corporate of the Property.

4.2 Accessibility

- (1) The Inspection will only include accessible areas of the Property as determined by the Inspection Provider at the time of the Inspection.
- (2) The Inspection Provider is not responsible for arranging entry to the Property or any part of it.
- (3) The Client must, at all times during the Inspection:
 - (a) supply all information reasonably requested by the Inspection Provider to allow it to undertake the Inspection; and
 - (b) arrange and permit a right of entry to all parts of the Property to enable the Inspection Provider to undertake the Inspection.
- (4) If sufficient access to enable Inspection is not available, the Inspection Provider will make recommendations for gaining access and, if that access is not achievable, the area that cannot be accessed will not form part of the Inspection.

5: Limitations of Inspection

The limitations under this clause 5 are reasonably expected to be present or may occur as part of the Inspection and may therefore restrict the full achievement of the Client's purpose of the Inspection.

5.1 Access limitations

- (1) The Inspection will not include the following areas of the Property:
 - (a) Areas that the Inspection Provider reasonably considers unsafe or inaccessible.
 - (b) Areas that cannot be accessed due to temporary or permanent obstruction or temporary or permanent restricted access (e.g. locked doors, security systems etc.)
- (2) Limitations in accessing parts of the Property for Inspection may include:
 - (a) the Client not owning the Property and therefore not having the legal right to grant the Inspection Provider access to parts of the Property; and
 - (b) the Client not being present at time of the Inspection to allow the Inspection Provider access to parts of the Property.
- (3) If the Property is furnished, the Inspection will not include those areas of the Property that cannot be Inspected due to furniture, furnishings, stored items etc. The Inspection does not include the Inspection Provider moving any furniture, furnishings or stored items to conduct its Inspection.
- (4) Reasonable access does not include the cutting of access holes or the removal of screws and bolts or any other fastenings to access covers, removal of any sealants to access covers or removal of coverings or cladding.
- (5) In respect to the determination of whether sufficient space is available to allow safe access to confined areas, the Inspection Provider will determine whether access is possible in its reasonable opinion, which includes the Inspection Provider considering the following criteria:
 - (a) Roof interior must be accessible from a 3.6m ladder and the roof exterior must be accessible from a 3.6m ladder placed on the ground.
 - (b) Roof Interior: access hole 400mm x 500mm and crawl space 600mm x 600mm.
 - (c) The ability to access areas of the Property due to height, narrow boundary clearance, thick vegetation, small roof space, small subfloor crawl space etc.

5.2 Non-Invasive Inspection limitations

As the Inspection is a Non-Invasive Inspection of the Property:

- (1) the Inspection is not a guarantee that Timber Pests do not exist at the Property;
- (2) the Inspection does not prevent Timber Pests or Timber Pest activity and damage occurring in the future;
- (3) the Inspection does not use specialist tools, equipment, techniques or the performance of specialist timber pest inspections such as thermal imaging, intrusive or movement detecting devices;
- (4) it is not possible to conclusively determine that the Property is free of Timber Pests and damage, as Timber Pest existence and damage may be concealed and can only be detected by invasive and probing techniques;
- (5) the extent of damage probably caused by Timber Pest activity will not be determined by the Inspection and can only be determined by intrusive techniques and the involvement of third party experts;
- (6) non-detectable Timber Pest activity and damage may be present at the time of Inspection.

5.3 General limitations

- (1) An estimate for the cost of treatment of Timber Pests or for repairs for any damage caused by Timber Pests is not included in this Agreement.
- (2) If the Inspection Provider is of the opinion that an invasive or destructive test is to be conducted or particular proprietary or specialist equipment is to be used, such inspection and work must be undertaken under a separate inspection agreement between the Client and the Inspection Provider.
- (3) The Inspection is solely for the purpose of identifying Timber Pests and therefore any other pests present in or on the Property are not covered by the Inspection.
- (4) The conduct of the Inspection and issue of the Report is at all times subject to and conditional upon:
 - (a) weather conditions;
 - (b) the accuracy of information provided by the Client;
 - (c) deliberate concealment of Timber Pest activity or resultant damage; and
 - (d) any other fact limiting the Inspection and preparation of the Report.

5.4 Unexpected and unforeseen limitations

- (1) The limitations set out in this clause 5 are not exhaustive and unexpected and unforeseen limitations may arise upon the Inspection Provider conducting the Inspection.

(2) Should unexpected and unforeseen limitations arise, the Inspection Provider will endeavour to inform the Client as soon as possible upon becoming aware of the limitation and will document the limitation in the Report and how that limitation restricts the scope of the Inspection.

6: Price, invoicing and payment

6.1 Price

The Price for the Inspection is set out in the Inspection Agreement Details.

6.2 Invoice and payment

(1) The Inspection Provider will invoice the Client for the Price.

(2) The Customer must pay the Price on the payment terms directed by the Inspection Provider without set-off or counterclaim of any kind.

7: Risk, indemnity and liability

7.1 Risk and liability

(1) The Client acknowledges and agrees that the Inspection and Report does not conclusively determine that the Property is free of Timber Pests and damage caused by Timber Pests and accepts and relies on the Inspection and Report solely at its own risk.

(2) The Client releases the Inspection Provider from all liability and Claims arising out of or in connection with:

- (a) the Inspection;
- (b) the Report; or

(c) anything arising under this Agreement,

except to the extent that any such liability or Claim arose as a result of the negligence of the Inspection Provider, or a breach of this Agreement by the Inspection Provider.

(3) The Client releases all Third Party Providers from all liability and Claims arising out of or in connection with:

- (a) the Inspection;
- (b) the Report; or

(c) anything arising under this Agreement, except to the extent that any such liability or Claim arose as a result of the negligence of the Third Party Providers.

7.2 Indemnity

The Client indemnifies the Inspection Provider from and against any Claims arising out of or in connection with:

- (1) the Inspection;
- (2) the Report; or
- (3) anything arising under this Agreement,

except to the extent that any such Claim arose as a result of the negligence of the Inspection Provider, or a breach of this Agreement by the Inspection Provider.

7.3 Limitation

To the full extent permitted by law, liability of the Inspection Provider for any breach of this Agreement arising as a result of the negligence of the Inspection Provider or for breach of any conditions or warranty implied in this Agreement or by law is limited to the Price.

7.4 Indirect losses

To the full extent permitted by law, the Inspection Provider will not be liable to the Client for any exemplary, aggravated or punitive damages or any indirect or consequential losses, any rectification costs or third party claims in connection with this Agreement.

8: Complaints

(1) If the Client has a complaint with respect to the Inspection or Report, the Client must contact the Inspection Provider in writing no later than fourteen (14) days after the issue of the Report with any concerns (**Complaint**).

(2) The Client must allow the Inspection Provider access to the Property within twenty-one (21) days of the date of the Complaint in order to further investigate the Complaint. A response will then be provided by the Inspection Provider within a reasonable period after the Inspection Provider's further investigation.

(3) If the Client is not satisfied with the response provided by the Inspection Provider, the Client must, within twenty-one (21) days of receipt of the Inspection Provider's response, refer the matter to a mediator nominated by the Inspection Provider. The mediation costs will be shared equally or as agreed by the mediated settlement.

(4) If mediation fails, the matter may be taken to an Independent Arbitrator for resolution.

(5) Notwithstanding the existence of a complaint, each party will continue to perform its obligations under this Agreement.

(6) The parties must follow the complaint process set out in this clause and those processes have failed to resolve the dispute before commencing any proceedings.

9: General provisions

9.1 Entire agreement

This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

9.2 Amendment

This Agreement may only be amended or supplemented in writing signed by the parties.

10: Definitions

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Inspection Provider - the entity as detailed in Section B

Non-Invasive Inspection means visual inspection supplemented by sounding that does not mark the surface and may include limited use of equipment.

Report means the Visual Timber Pest Inspection Report setting out the results of the Inspection and provided to the Client within a reasonable time after completion of the Inspection by the Inspection Provider.

Third Party Providers means all parties engaged by the Inspection Provider to provide services with respect to, or in connection with, the Inspection, including but not limited to, Formitize Pty Ltd (ACN 163 430 126).

Timber Pests means subterranean and dampwood termites, borers of seasoned timber and wood decay fungi, but not including drywood termites.