

1. DEFINITIONS

- 1.1 **“Agreement”** means any contract or agreement, whether formal or informal, written, oral or partly written and partly oral, implied or inferred, formed between the Client and Sure relating to the services, including without limitation but pursuant to acceptance of a Quote issued by Sure.
- 1.2 **“Australian Standard”** means the applicable Australian Standard to the Works, including AS4349.1-2007 and AS4349.0-2007 as amended from time to time and any Australian Standard referred to in a Quote.
- 1.3 **“Client”** means the person or entity entering into an Agreement with Sure and includes the Client’s successors and assigns.
- 1.4 **“Defect”** includes **a fault, deterioration, damage or deviation of any material, assembly, or component at the Property.**
- 1.5 **“Hazardous Materials”** means any substance, chemical or material that poses a risk to the health and safety of a person including but not limited to asbestos, mould, or magnesite.
- 1.6 **“Inspector”** means the person or persons employed or engaged by Sure to carry out the Inspection at the Property.
- 1.7 **“Invoice”** means an invoice issued to the Client by Sure for the Service.
- 1.8 **“Notice”** means a notice in accordance with **clause 20.**
- 1.9 **“Party”** means each party to an Agreement, including Sure and the Client, and **“Parties”** has a corresponding meaning.
- 1.10 **“Price”** has the meaning stated in **clause 4.**
- 1.11 **“Property”** means the property nominated by the Client for the provision of the Works.
- 1.12 **“Quote”** means a quote provided verbally or in writing to the Client by Sure, including an online quote obtained by the client from Sure’s website or social media.
- 1.13 **“Report”** has the meaning in **clause 1.14.2.**
- 1.14 **“Service”** means the provision of a Service or Services by Sure to the Client pursuant to an Agreement, on the terms herein including **clause 10.** The Services include but are not limited to:

- 1.14.1 Attendance at the Property to carry out a visual structural inspection of the Property in accordance with the applicable Australian Standard(s) including, where safely and reasonable accessible and subject to these Terms and Conditions, the exterior, interior, roof space, roof exterior, and sub-floor space of the Property, but excluding any common property unless stated otherwise in the Agreement ("**Inspection**"); and
- 1.14.2 The provision to the Client of a written report detailing the Inspection carried out by Sure, including Sure's findings and recommendations, including with respect to any Defects visible at the date and time of the Inspection ("**Report**").
- 1.15 "**Sure**" means Sure Pty. Ltd. (ACN 612 590 888) and (where applicable) each related entity as defined in the *Corporations Act 2001* (Cth) of Sure Pty. Ltd.
- 1.16 "**Terms and Conditions**" means the terms and conditions set out herein.
- 1.17 "**Works**" means Sure's provision of Services pursuant to the Agreement.
- 1.18 Unless context requires otherwise:
 - 1.18.1 The singular includes the plural and vice versa;
 - 1.18.2 A reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
 - 1.18.3 A reference to any gender includes all genders;
 - 1.18.4 A reference to a recital, clause or schedule is to a recital, clause or schedule of or to these Terms and Conditions;
 - 1.18.5 A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
 - 1.18.6 A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - 1.18.7 A reference to a body, other than a Party to the Agreement (including, without limitation, an institute, association or authority), whether statutory or not:
 - a) Which ceases to exist; or
 - b) Whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- 1.18.8 If a party comprises two or more persons, the covenants and Agreements on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- 1.18.9 A reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.18.10 No provision of these Terms and Conditions will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms and Conditions or that provision;
- 1.18.11 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 1.18.12 All references to A\$, \$, dollar, \$, or to currency are references to Australian dollars;
- 1.18.13 "Including" and similar expressions are not and must not be treated as words of limitation; and
- 1.18.14 Headings are for ease of reference only and do not affect the meaning of these Terms and Conditions.

2. OPERATION AND APPLICATION

- 2.1 Sure agrees to provide the Services with reasonable care and skill, subject to and upon these Terms and Conditions.
- 2.2 These Terms and Conditions shall operate to the exclusion of any oral or alleged oral terms and conditions to the contrary effect.

3. PERIOD OF VALIDITY TO BOOK

- 3.1 Unless stated otherwise on the Quote, Sure's Quotes are valid for 7 days from the date of provision of the Quote, and thereafter are subject to confirmation in writing by Sure before entry into any Agreement.

4. PRICE

4.1 Price means:

- a) the price for the Service agreed between Sure and the Client including pursuant to the acceptance of a Quote; and
- b) if a price for the Service has not been expressly quoted or offered by Sure, the Price will be the price for the Service requested or ordered by the Client calculated in accordance with the price information on Sure's website or social media relating to the particular Service requested or ordered by the Client.

4.2 Price includes:

- a) any taxes or card fees applicable in respect of the Services or their payment; and
- b) any varied Price pursuant to [clause 5](#).

5. VARIATIONS

5.1 Any variation to the Works or the Agreement must be agreed to in writing between Sure and of the Client, confirming the:

- 5.1.1 precise scope of the variation; and
- 5.1.2 the amount or means of calculating the amount that the Client is to pay Sure for the variation; and
- 5.1.3 any change to the Price as a result of the variation.

5.2 The Client agrees to pay Sure any amended Price of the Works pursuant to any such variations.

6. PAYMENT

6.1 The Client agrees to pay the Price for the Services on or by the date specified on the Invoice.

6.2 The Client warrants that its nominated payment method has sufficient clear funds available to pay the Price.

6.3 Time of payment is of the essence of the Agreement.

6.4 Where the Client has provided details of a debit or credit card for payment to Sure for the Services Agreement, the Client agrees and authorises Sure to charge or make deductions from the debit or credit card to satisfy the Price or any part of the Price at any time without notice to the Client.

6.5 Should the Client default in the payment of any monies due under any Agreement, then all monies due to Sure shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand.

- 6.6 Sure shall be entitled to charge the Client interest calculated at 10% per annum, on the balance of all overdue accounts and invoices from the date of due payment until the date of actual payment.

7. CANCELLATION

- 7.1 Any request by the Client to cancel the provision of the Service must be made to Sure in writing ("**Cancellation Request**"). Cancellation fees may be applicable:

7.1.1 Where the inspection has not been completed and where less than 24 hours notice of cancellation is received, a cancellation fee of \$150 (including GST) which is agreed as a reasonable pre-estimate of Sure's loss by reason of the late cancellation, will be applicable for each property address,

7.1.2 Where the inspection has not been completed and where more than 24 hours notice of cancellation is received, payment will not be required or a refund will be provided where payment has been made,

8. COSTS RECOVERABLE

- 8.1 The Client shall pay on an indemnity basis all expenses, costs and disbursements, including debt collection agency fees, commission and any fees paid to Sure's solicitors (on an indemnity basis) incurred by Sure or its appointed agents in recovering payment of any outstanding monies, enforcing its rights under the Agreement, or in successfully defending any action or threatened actions by the client.

- 8.2 The Client hereby charges and mortgages in favour of Sure to secure the repayment of any debt and any monies which may become owed by the Client to Sure under any Agreement all of the Client's present and future estate and interest in all real property.

9. COMPLETION, DELAYS AND EXTENSIONS OF TIME

- 9.1 Any time or date named or accepted by Sure, including in or pursuant to a Quote, for undertaking of delivery of the Services is an estimate only and does not constitute a condition of the Agreement or part of the description of the Services and is not of the essence of the Agreement.

- 9.2 Should the Works or the progress of the Works be delayed by any of the following causes or conditions:

9.2.1 The Property not being suitable for the Works;

9.2.2 On account of variations;

9.2.3 By inclement weather or conditions resulting from inclement weather;

- 9.2.4 By reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works;
- 9.2.5 Any act, default or omission on the part of the Client;
- 9.2.6 Delay on the part of any third party (including a third party engaged by Sure);
- 9.2.7 By any other matter, cause or thing whatsoever beyond the control of Sure including but not limited to unavailability of labour or materials, technical or mechanical issues, or pandemic,

then in any such case, Sure shall be entitled to a fair and reasonable extension of time in which to complete the Works without notice to the Client.

- 9.3 When the Client becomes aware of any matters that are likely to result in a delay to the Works, the Client is to notify Sure in writing of the nature and estimated extent of the delay.
- 9.4 Upon receipt of the Client's notice in [clause 9.3](#) above, Sure will notify the Client of the estimated impact of the delay on:
 - 9.4.1 The time for completion of the Works; and
 - 9.4.2 The estimated extra costs associated with the delay.
- 9.5 Where Sure does not have uninhibited access to carry out the Works pursuant to [clause 13.2.2](#); the Client shall pay for Sure's extra costs and fees necessarily incurred by reason of any delay or extension.

10. THE SERVICES

- 10.1 The Client acknowledges and agrees that:
 - 10.1.1 The Inspection carried out by Sure pursuant to an Agreement is a visual non-invasive inspection only and is therefore limited to the identification of any Defects visible at the date and time of the Inspection;
 - 10.1.2 The Report is not confirmation that the Property complies with any relevant or applicable statute, regulation, ordinance or by-law; and
 - 10.1.3 Sure is not required to identify and will not be liable for failing to identify:
 - a) any Defect that is not visible at the time of the Inspection for any reason whatsoever, including due to weather conditions or because access is obstructed, including but not limited to where access is obstructed by coverings, insulations, furniture, or storage;
 - b) any Defect that requires testing in order to be identified; or

c) any latent Defect.

- 10.2 The Client acknowledges and agrees that Sure will not inspect, or include in its Report any finding, advice, conclusion or recommendation relating to, any part or area of the Property that:
- 10.2.1 Cannot be safely or reasonably accessed by the Inspector, including but not limited to any hole, opening, roof, subfloor, or crawl space;
 - 10.2.2 Is excluded by the Australian Standards or the Quote;
 - 10.2.3 Is obscured or obstructed; including but not limited to where access is obstructed by coverings, insulations, furniture, or storage; or
 - 10.2.4 Would require the Inspector to modify or alter the Property, or to move any furniture, household items, or any other chattels including insulation, in order to access the area or carry out the Inspection. (in each of [clause 10.2 – 10.4](#) “the Excluded Areas”)
- 10.3 The Client acknowledges and agrees that the Excluded Areas do not form part of the Services or the Inspection.
- 10.4 The Client also agrees that Sure is not liable for failing to identify:
- 10.4.1 Defects or latent Defects that appear in the future after the Services are provided;
 - 10.4.2 Any Defect that is not visible at the time of the Inspection for any reason whatsoever, including due to inclement weather conditions and obstructions at the time of the Inspection.

11. FORCE MAJEURE

- 11.1 Sure will not be liable for any breach of the Agreement due to any matter or thing beyond Sure’s control. Furthermore, Sure is excused from performing any term, covenant or condition required by the Agreement during the time and to the extent that performance is prevented when such performance is prevented wholly or in part by circumstances beyond Sure’s control.

12. WARRANTY LOSS OR DAMAGE

- 12.1 Sure makes no express or implied warranties to the Client, except those expressly set out in the Agreement and these Terms and Conditions, and subject to [clause 12.2](#).

- 12.2 It is agreed that Sure is subject to any term, condition or warranty, the exclusion of which would otherwise contravene any statute or which might otherwise cause this [clause 12](#), or any part of it or the agreement, to be void, or unforeseeable.
- 12.3 Subject to [clause 12.2](#) Sure will not be liable in any circumstances for any loss or damage whatsoever allegedly incurred and/or arising out of any:
- 12.3.1 Conditions, warranties and terms which but for this provision would be implied by the general law, including custom;
 - 12.3.2 Alleged liability to the Client in contract for consequential or indirect damages arising out of or in connection with the provision of the Services or the Agreement, even if Sure knew they were possible or they were otherwise unforeseeable; and
 - 12.3.3 Liability in negligence for acts or omissions of Sure or its employees, agents, or contractors arising out of or in connection with the provision or the Service or in reliance of the Report beyond a liability on the part of Sure to refund the Price.
- 12.4 Whilst Sure will use its best endeavours to ensure delivery of the Services by the date requested by the Client, including any date or time on Sure's Quote, it does not guarantee delivery on that date and will not be liable for any damages, loss, costs or charges incurred by the Client due to late delivery ensuing from any circumstances whatsoever, either within or beyond the control of Sure or by reason of its negligence.
- 12.5 If any other part of [clause 12](#), or [clause 15.1](#) is held by a court to be unlawful, invalid or unenforceable for any reason, including pursuant to the *Competition and Consumer Act 2010* (Cth), the Client agrees that Sure's total liability to the Client for any loss or damage suffered by the Client in relation to the Services or the Agreement shall not exceed the amount that is the lower of:
- 12.5.1 The amount covered by Sure's insurer specifically for that loss or damage; and
 - 12.5.2 The actual amount received by Sure from its insurer specifically for that loss or damage.
- 12.6 Whilst Sure will use its best endeavours to ensure the Works are carried out in accordance with the applicable Australian Standard(s), the Client agrees that Sure will not be liable where any failure to carry out the Works in accordance with the Australian Standard(s) is due to any matter or thing beyond Sure's control.

13. THE CLIENT'S WARRANTIES

- 13.1 The Client warrants that it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Sure or anyone on its behalf in respect of the Services, other than those that are expressly contained in the Agreement.
- 13.2 The Client warrants that:
- 13.2.1 The Client is entitled to have the Works carried out at the Property;
 - 13.2.2 Sure shall have uninhibited access to the Property for the purposes of carrying out the Works.
- 13.3 In the event that an Inspector, discovers Hazardous Materials or any other matter at the Property during the provision of the Services which, in the Inspector's sole discretion, poses a safety concern to the Inspector Sure may terminate the Agreement pursuant to [clause 16](#) and the Client shall pay Sure in accordance with [clause 16.3](#).
- 13.4 The Client accepts sole responsibility for any act, omission, or decision by the Client or a third party (other than Sure) as a result of, in reliance upon, or in connection with:
- 13.4.1 the Services;
 - 13.4.2 the contents of the Report;
 - 13.4.3 any verbal or written findings, conclusions, recommendations or advice provided by Sure.
- 13.5 The Client warrants that it will not, for any reason whatsoever, rely on the Report after a period of 30 days from the date of the Inspection, without Sure's prior written consent, such consent not to be unreasonably withheld.

14. NO LIABILITY FOR THIRD PARTIES

- 14.1 The Client acknowledges and agrees that Sure is not liable for:
- 14.1.1 any damage or defects attributable to the provision of services by a third party, including a third party engaged by Sure; or
 - 14.1.2 any defects attributable to the manufacture of any goods that are manufactured by third parties.

15. INDIRECT/CONSEQUENTIAL OR OTHER DAMAGE

- 15.1 Sure shall not be liable to the Client or any other party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits, and the Client agrees that Sure may plead these Terms and Conditions as a bar to any such claims whether they arise at law, in equity, under any statute, regulation, or other legislative instrument, or under any contract, deed, or any other instrument made or approved under any law.

16. BREACH AND TERMINATION

- 16.1 If the Client defaults in the due and punctual observe of all or any of its obligations, warranties or covenants under the Agreement or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then Sure may without prejudice to any other right or remedies it has:

16.1.1 Treat as discharged all or any obligation arising from any Agreement;

16.1.2 Retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to Sure; and

- 16.2 In addition to any other rights under the Agreement, Sure may terminate the Agreement by notice in writing to the Client immediately upon any one of the following events:

16.2.1 If, in the Inspector's sole discretion, the Inspector cannot reasonably or safely access the Property or carry out the Inspection;

16.2.2 Any deliberate and substantial prevention of or interference with the provision of the Services or progress thereof caused by the Client whether directly or indirectly;

16.2.3 Substantial interference with the Works or access thereto by any cause beyond the control of Sure including (but without limiting in any way the generality thereof) inclement weather conditions, water, flood, fire, storm tempest, rioting, earthquake, pandemic, civil commotion or industrial action;

16.2.4 Any substantial breach of the Agreement or these Terms and Conditions by the Client;

16.2.5 If the Client shall make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Client's estate;

16.2.6 Any failure by the Client to pay any part of the Price in accordance with [clause 6](#) herein.

16.3 If the Agreement is terminated:

16.3.1 The Client shall pay Sure for all Services provided by Sure, all work done by Sure, and all goods or materials used or procured by Sure and properly chargeable to the date of termination; and

16.3.2 Sure may retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to Sure pursuant to [this clause 16](#).

17. CONFIDENTIAL INFORMATION

17.1 The Client acknowledges and agrees that the Report is confidential and that the Client must not disclose the Report to any third party except in any of the following circumstances:

17.1.1 Where disclosure is required to give effect to, or enforce, an Agreement entered into by the Parties;

17.1.2 Where disclosure is with the prior written consent of Sure, including any reasonable conditions upon which Sure's consent to the disclosure is granted; or

17.1.3 Where the Client is legally compelled by law to give such disclosure.

17.2 Without limiting the generality of [clause 17.1](#), all documentation that Sure provides to the Client in carrying out the Works, including but not limited to:

17.2.1 Documents showing Sure's procedures;

17.2.2 Documents showing Sure's methodologies;

17.2.3 Sure's inspection, testing, and reporting templates,

Shall remain the property of Sure and must not be retained, modified, or distributed to any third party by the Client, unless Sure provides its prior written consent.

18. COMPLAINTS

18.1 If the Client believes that the Services are not in accordance with the Agreement the Client must give notice of the alleged defective Services to Sure within 30 days of delivery of the Services, and in the case of the provision of a Report, within 30 days of the date of the Report.

18.2 Sure shall not be responsible or liable for any alleged defect in the Services unless it is reported in accordance with [clause 18.1](#).

19. DISPUTE RESOLUTION

- 19.1 The parties agree not to commence proceedings in relation to any dispute arising in regard to this Agreement or the Services without first following the procedure set out in [clause 18](#) and this [clause 19](#).
- 19.2 Any dispute that may arise between the parties in connection with the Works or the Services shall be attempted to be resolved in the following manner:
- 19.2.1 The party aggrieved, shall serve the other party with a notice in writing identifying and providing details of the dispute ("**Notice of Dispute**");
- 19.2.2 If the Client serves the Notice of Dispute, the Client must allow Sure (which includes any persons nominated by Sure) to visit the property, which must occur within twenty eight (28) days of the notification to Sure and give Sure full access to fully investigate the dispute;
- 19.2.3 Within 28 days of any inspection per [clause 19.2.2](#), the parties must confer in an attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute;
- 19.2.4 If the dispute remains unresolved after the 28 day period referred to in [clause 19.2.3](#), then the parties agree to submit the dispute to mediation, or some other form of alternative dispute resolution, before commencing court proceedings;
- 19.2.5 Unless the parties agree otherwise the mediator shall be a person nominated by Sure from the Institute of Arbitrators and Mediators of Australia and each party will do everything reasonable and necessary to effectuate the appointment including the equal sharing of any fees or expenses.
- 19.2.6 If the dispute is not resolved within 90 days of service of the Notice of Dispute (or any longer period as agreed to by the parties), either party who has complied with this clause may end the dispute resolution process by written notice to the other party and immediately thereafter commence court proceedings in relation to this dispute.

20. NOTICES

- 20.1 A party must give any notice required under these Terms and Conditions or the Agreement in accordance with this [clause 20](#).
- 20.2 A notice must be served at the address or electronic mail address of the party set out in the Agreement.
- 20.3 A party may deliver a notice by hand, post, or by electronic mail.

- 20.4 If before 4.00pm local time in the place of delivery, a party delivers a notice by hand or by electronic mail and the sending party completes the transmission the notice will be taken to be given on the day of delivery or transmission, and in any other case on the next day. If the party gives notice by post the notice will be taken as given on the 7th day in the place of delivery after the notice is posted.
- 20.5 A party may give notice of another address (within Australia) or an electronic mail address for service to the other party, and the new address or the electronic mail address shall be the address for service of the party for the purposes of this clause.

21. MISCELLANEOUS

- 21.1 Sure may assign, sub-contract or sub-let the whole or any part of the Works or Sure's obligations under an Agreement, without seeking the consent of the Client.
- 21.2 The Client may not assign, sub-contract or sub-let any part of the Works, or any of its rights, liabilities, or obligations under any Agreement, without the prior written consent of Sure.
- 21.3 The covenants, agreements and obligations contained in any Agreement and these Terms and Conditions will not merge or terminate upon the repudiation or termination of the Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 21.4 Any waiver by Sure must be in writing signed by Sure. Failure by Sure to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.
- 21.5 If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms and Conditions are not affected.
- 21.6 These Terms and Conditions and the Agreement are governed and are to be construed in accordance with the laws in force in the State of Western Australia.
- 21.7 These Terms and Conditions and the Agreement are subject to the exclusive jurisdiction of the Courts of Western Australia.

22. RECEIPT AND ADVICE

- 22.1 The Client on each occasion it orders a Service from Sure makes the following acknowledgements. The Client acknowledges receipt of these Terms and Conditions and agrees to be bound by them. The Client accepts these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Client further acknowledges that it has had the opportunity of obtaining independent legal advice and that the Client understands the Terms and Conditions outlined above.

23. CONTACT

- 23.1 If you have any questions about the SURE Terms and Conditions, contact us anytime via email to: inspect@sure.net.au

REVISION CONTROL

Version 1.3

Date Published 06 September 2021

1. DEFINITIONS

- 1.1 **“Agreement”** means any contract or agreement, whether formal or informal, written, oral or partly written and partly oral, implied or inferred, formed between the Client and Sure relating to the services, including without limitation but pursuant to acceptance of a Quote issued by Sure.
- 1.2 **“Australian Standard”** means the applicable Australian Standard to the Works, including AS4349.0, AS4349.3-2007 and AS3660.1-2014 as amended from time to time and any Australian Standard referred to in a Quote.
- 1.3 **“Client”** means the person or entity entering into an Agreement with Sure and includes the Client’s successors and assigns.
- 1.4 **“Damage”** means **damage to the timber at the property. Including wood decay, rot or fungi and damage caused by Timber Pests.**
- 1.5 **“Hazardous Materials”** means any substance, chemical or material that poses a risk to the health and safety of a person including but not limited to asbestos, mould, or magnesite.
- 1.6 **“Inspector”** means the person or persons employed or engaged by Sure to carry out the Inspection at the Property.
- 1.7 **“Invoice”** means an invoice issued to the Client by Sure for the Service.
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- 1.13 **“Report”** has the meaning in **clause 1.14.2.**
- 1.14 **“Service”** means the provision of a Service or Services by Sure to the Client pursuant to an Agreement, on the terms herein including **clause 10.** The Services include but are not limited to:
 - 1.14.1 Attendance at the Property to carry out a visual timber pest inspection of the Property in accordance with the applicable Australian Standard(s) including the

identification of Timber Pest activity and Damage including, where safely and reasonable accessible and subject to these Terms and Conditions, the exterior, interior, roof space, roof exterior, and sub-floor space of the Property, but excluding any common property unless stated otherwise in the Agreement ("**Inspection**"); and

- 1.14.2 The provision to the Client of a written report, prepared in accordance with the relevant Australian Standard(s), if any, detailing the Inspection carried out by Sure, including Sure's findings relating to Timber Pest activity and/or Damage visible at the date and time of the Inspection ("**Report**").
- 1.15 "**Sure**" means Sure Pty. Ltd. (ACN 612 590 888) and each related entity as defined in the *Corporations Act 2001* (Cth) of Sure Pty. Ltd.
- 1.16 "**Terms and Conditions**" means the terms and conditions set out herein.
- 1.17 "**Timber Pest**" means subterranean and dampwood termites, chemical delignification, fungal decay, and wood borers.
- 1.18 "**Works**" means Sure's provision of Services pursuant to the Agreement.
- 1.19 Unless context requires otherwise:
 - 1.19.1 The singular includes the plural and vice versa;
 - 1.19.2 A reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
 - 1.19.3 A reference to any gender includes all genders;
 - 1.19.4 A reference to a recital, clause or schedule is to a recital, clause or schedule of or to these Terms and Conditions;
 - 1.19.5 A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
 - 1.19.6 A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - 1.19.7 A reference to a body, other than a Party to the Agreement (including, without limitation, an institute, association or authority), whether statutory or not:
 - a) Which ceases to exist; or

b) Whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- 1.19.8 If a party comprises two or more persons, the covenants and Agreements on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- 1.19.9 A reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.19.10 No provision of these Terms and Conditions will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of these Terms and Conditions or that provision;
- 1.19.11 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 1.19.12 All references to A\$, \$, dollar, \$, or to currency are references to Australian dollars;
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- 1.19.14 Headings are for ease of reference only and do not affect the meaning of these Terms and Conditions.

2. OPERATION AND APPLICATION

- 2.1 Sure agrees to provide the Services with reasonable care and skill, subject to and upon these Terms and Conditions.
- 2.2 These Terms and Conditions shall operate to the exclusion of any oral or alleged oral terms and conditions to the contrary effect.

3. PERIOD OF VALIDITY TO BOOK

- 3.1 Unless stated otherwise on the Quote, Sure's Quotes are valid for 7 days from the date of provision of the Quote, and thereafter are subject to confirmation in writing by Sure before entry into any Agreement.

4. PRICE

4.1 Price means:

- a) the price for the Service agreed between Sure and the Client including pursuant to the acceptance of a Quote; and
- b) if a price for the Service has not been expressly quoted or offered by Sure, the Price will be the price for the Service requested or ordered by the Client calculated in accordance with the price information on Sure's website or social media relating to the particular Service requested or ordered by the Client.

4.2 Price includes:

- a) any taxes or card fees applicable in respect of the Services or their payment; and
- b) any varied Price pursuant to [clause 5](#).

5. VARIATIONS

5.1 Any variation to the Works or the Agreement must be agreed to in writing between Sure and of the Client, confirming the:

- 5.1.1 precise scope of the variation; and
- 5.1.2 the amount or means of calculating the amount that the Client is to pay Sure for the variation; and
- 5.1.3 any change to the Price as a result of the variation.

5.2 The Client agrees to pay Sure any amended Price of the Works pursuant to any such variations.

6. PAYMENT

6.1 The Client agrees to pay the Price for the Services on or by the date specified on the Invoice.

6.2 The Client warrants that its nominated payment method has sufficient clear funds available to pay the Price.

6.3 Time of payment is of the essence of the Agreement.

6.4 Where the Client has provided details of a debit or credit card for payment to Sure for the Services Agreement, the Client agrees and authorises Sure to charge or make deductions from the debit or credit card to satisfy the Price or any part of the Price at any time without notice to the Client.

6.5 Should the Client default in the payment of any monies due under any Agreement, then all monies due to Sure shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand.

- 6.6 Sure shall be entitled to charge the Client interest calculated at 10% per annum, on the balance of all overdue accounts and invoices from the date of due payment until the date of actual payment.

7. CANCELLATION

- 7.1 Any request by the Client to cancel the provision of the Service must be made to Sure in writing ("**Cancellation Request**"). Cancellation fees may be applicable:

7.1.1 Where the inspection has not been completed and where less than 24 hours notice of cancellation is received, a cancellation fee of \$150 (including GST) which is agreed as a reasonable pre-estimate of Sure's loss by reason of the late cancellation, will be applicable for each property address,

7.1.2 Where the inspection has not been completed and where more than 24 hours notice of cancellation is received, payment will not be required or a refund will be provided where payment has been made,

8. COSTS RECOVERABLE

- 8.1 The Client shall pay on an indemnity basis all expenses, costs and disbursements, including debt collection agency fees, commission and any fees paid to Sure's solicitors (on an indemnity basis) incurred by Sure or its appointed agents in recovering payment of any outstanding monies, enforcing its rights under the Agreement, or in successfully defending any action or threatened actions by the client.

- 8.2 The Client hereby charges and mortgages in favour of Sure to secure the repayment of any debt and any monies which may become owed by the Client to Sure under any Agreement all of the Client's present and future estate and interest in all real property.

9. COMPLETION, DELAYS AND EXTENSIONS OF TIME

- 9.1 Any time or date named or accepted by Sure, including in or pursuant to a Quote, for undertaking of delivery of the Services is an estimate only and does not constitute a condition of the Agreement or part of the description of the Services and is not of the essence of the Agreement.

- 9.2 Should the Works or the progress of the Works be delayed by any of the following causes or conditions:

9.2.1 The Property not being suitable for the Works;

9.2.2 On account of variations;

9.2.3 By inclement weather or conditions resulting from inclement weather;

- 9.2.4 By reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works;
- 9.2.5 Any act, default or omission on the part of the Client;
- 9.2.6 Delay on the part of any third party (including a third party engaged by Sure);
- 9.2.7 By any other matter, cause or thing whatsoever beyond the control of Sure including but not limited to unavailability of labour or materials, technical or mechanical issues, or pandemic,

then in any such case, Sure shall be entitled to a fair and reasonable extension of time in which to complete the Works without notice to the Client.

- 9.3 When the Client becomes aware of any matters that are likely to result in a delay to the Works, the Client is to notify Sure in writing of the nature and estimated extent of the delay.
- 9.4 Upon receipt of the Client's notice in [clause 9.3](#) above, Sure will notify the Client of the estimated impact of the delay on:
 - 9.4.1 The time for completion of the Works; and
 - 9.4.2 The estimated extra costs associated with the delay.
- 9.5 Where Sure does not have uninhibited access to carry out the Works pursuant to [clause 13.2.2](#); the Client shall pay for Sure's extra costs and fees necessarily incurred by reason of any delay or extension.

10. THE SERVICES

- 10.1 The Client acknowledges and agrees that:
 - 10.1.1 The Inspection carried out by Sure pursuant to an Agreement is a visual non-invasive inspection only and is therefore limited to the identification of any Defects visible at the date and time of the Inspection;
 - 10.1.2 The Report is not confirmation that the Property complies with any relevant or applicable statute, regulation, ordinance or by-law; and
 - 10.1.3 Sure is not required to identify and will not be liable for failing to identify:
 - (a) any Timber Pests, or Damage, that is not visible at the time of the Inspection for any reason whatsoever, including due to weather conditions or because access is obstructed, including but not limited to coverings, insulations, furniture, storage;
 - (b) any Timber Pests that require testing to identify;

- (c) any Damage that requires testing to identify; or
- (d) any latent Defect.

10.2 The Client acknowledges and agrees that Sure will not inspect, or include in its Report any finding, advice, conclusion or recommendation relating to, any part or area of the Property that:

10.2.1 Cannot be safely or reasonably accessed by the Inspector, including but not limited to any hole, opening, roof, subfloor, or crawl space;

10.2.2 Is excluded by the Australian Standards or the Quote;

10.2.3 Is obscured or obstructed; including but not limited to where access is obstructed by coverings, insulations, furniture, or storage; or

10.2.4 Would require the Inspector to modify or alter the Property, or to move any furniture, household items, or any other chattels including insulation, in order to access the area or carry out the Inspection. (in each of [clause 10.2 – 10.4](#) “the Excluded Areas”)

10.3 The Client acknowledges and agrees that the Excluded Areas do not form part of the Services or the Inspection.

10.4 The Client acknowledges and agrees that the following cannot be detected by visual assessment and therefore do not form part of the Services or the Inspection:

10.4.1 The identification of drywood termites; and

10.4.2 The identification of European house borers.

10.5 The Client agree that Sure is not liable for failing to identify:

10.5.1 Timber Pests or Damage that appears in the future after the Services are provided;

10.5.2 Any Timber Pest or Damage that is not visible at the time of the Inspection for any reason whatsoever, including due to inclement weather conditions and obstructions at the time of the Inspection.

11. **FORCE MAJEURE**

11.1 Sure will not be liable for any breach of the Agreement due to any matter or thing beyond Sure’s control. Furthermore, Sure is excused from performing any term, covenant or condition required by the Agreement during the time and to the extent that performance is prevented when such performance is prevented wholly or in part by circumstances beyond Sure’s control.

12. NO WARRANTY OR LOSS OR DAMAGE

- 12.1 Sure makes no express or implied warranties to the Client, except those expressly set out in the Agreement and these Terms and Conditions, and subject to [clause 12.2](#).
- 12.2 It is agreed that Sure is subject to any term, condition or warranty, the exclusion of which would otherwise contravene any statute or which might otherwise cause this [clause 12](#), or any part of it or the agreement, to be void, or unforeseeable.
- 12.3 Subject to [clause 12.2](#) Sure will not be liable in any circumstances for any loss or damage whatsoever allegedly incurred and/or arising out of any:
- 12.3.1 Conditions, warranties and terms which but for this provision would be implied by the general law, including custom;
 - 12.3.2 Alleged liability to the Client in contract for consequential or indirect damages arising out of or in connection with the provision of the Services or the Agreement, even if Sure knew they were possible or they were otherwise unforeseeable; and
 - 12.3.3 Liability in negligence for acts or omissions of Sure or its employees, agents, or contractors arising out of or in connection with the provision or the Service or in reliance of the Report beyond a liability on the part of Sure to refund the Price.
- 12.4 Whilst Sure will use its best endeavours to ensure delivery of the Services by the date requested by the Client, including any date or time on Sure's Quote, it does not guarantee delivery on that date and will not be liable for any damages, loss, costs or charges incurred by the Client due to late delivery ensuing from any circumstances whatsoever, either within or beyond the control of Sure or by reason of its negligence.
- 12.5 If any other part of [clause 12](#), or [clause 15.1](#) is held by a court to be unlawful, invalid or unenforceable for any reason, including pursuant to the *Competition and Consumer Act 2010* (Cth), the Client agrees that Sure's total liability to the Client for any loss or damage suffered by the Client in relation to the Services or the Agreement shall not exceed the amount that is the lower of:
- 12.5.1 The amount covered by Sure's insurer specifically for that loss or damage; and
 - 12.5.2 The actual amount received by Sure from its insurer specifically for that loss or damage.
- 12.6 Whilst Sure will use its best endeavours to ensure the Works are carried out in accordance with the applicable Australian Standard(s), the Client agrees that Sure will not be liable where any failure to carry out the Works in accordance with the Australian Standard(s) is due to any matter or thing beyond Sure's control.

13. THE CLIENT'S WARRANTIES

- 13.1 The Client warrants that it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Sure or anyone on its behalf in respect of the Services, other than those that are expressly contained in the Agreement.
- 13.2 The Client warrants that:
- 13.2.1 The Client is entitled to have the Works carried out at the Property;
 - 13.2.2 Sure shall have uninhibited access to the Property for the purposes of carrying out the Works.
- 13.3 In the event that an Inspector, discovers Hazardous Materials or any other matter at the Property during the provision of the Services which, in the Inspector's sole discretion, poses a safety concern to the Inspector Sure may terminate the Agreement pursuant to [clause 16](#) and the Client shall pay Sure in accordance with [clause 16.3](#).
- 13.4 The Client accepts sole responsibility for any act, omission, or decision by the Client or a third party (other than Sure) as a result of, in reliance upon, or in connection with:
- 13.4.1 the Services;
 - 13.4.2 the contents of the Report;
 - 13.4.3 any verbal or written findings, conclusions, recommendations or advice provided by Sure.
- 13.5 The Client warrants that it will not, for any reason whatsoever, rely on the Report after a period of 30 days from the date of the Inspection, without Sure's prior written consent, such consent not to be unreasonably withheld.

14. NO LIABILITY FOR THIRD PARTIES

- 14.1 The Client acknowledges and agrees that Sure is not liable for:
- 14.1.1 any damage or defects attributable to the provision of services by a third party, including a third party engaged by Sure; or
 - 14.1.2 any defects attributable to the manufacture of any goods that are manufactured by third parties.

15. INDIRECT/CONSEQUENTIAL OR OTHER DAMAGE

- 15.1 Sure shall not be liable to the Client or any other party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits, and the Client agrees that Sure may plead these Terms and Conditions as a bar to any such claims whether they arise at law, in equity, under any statute, regulation, or other legislative instrument, or under any contract, deed, or any other instrument made or approved under any law.

16. BREACH AND TERMINATION

- 16.1 If the Client defaults in the due and punctual observe of all or any of its obligations, warranties or covenants under the Agreement or these Terms and Conditions, dies, commits an act of bankruptcy, takes or shall have taken against it any action for its winding up, is placed under official management, administration or receivership, then Sure may without prejudice to any other right or remedies it has:

16.1.1 Treat as discharged all or any obligation arising from any Agreement;

16.1.2 Retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to Sure; and

- 16.2 In addition to any other rights under the Agreement, Sure may terminate the Agreement by notice in writing to the Client immediately upon any one of the following events:

16.2.1 If, in the Inspector's sole discretion, the Inspector cannot reasonably or safely access the Property or carry out the Inspection;

16.2.2 Any deliberate and substantial prevention of or interference with the provision of the Services or progress thereof caused by the Client whether directly or indirectly;

16.2.3 Substantial interference with the Works or access thereto by any cause beyond the control of Sure including (but without limiting in any way the generality thereof) inclement weather conditions, water, flood, fire, storm tempest, rioting, earthquake, pandemic, civil commotion or industrial action;

16.2.4 Any substantial breach of the Agreement or these Terms and Conditions by the Client;

16.2.5 If the Client shall make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation (whether voluntary or compulsory except for the purpose of reconstruction or amalgamation) or have a receiver appointed or commit an act of bankruptcy or if a sequestration order is made against the Client's estate;

16.2.6 Any failure by the Client to pay any part of the Price in accordance with [clause 6](#) herein.

16.3 If the Agreement is terminated:

16.3.1 The Client shall pay Sure for all Services provided by Sure, all work done by Sure, and all goods or materials used or procured by Sure and properly chargeable to the date of termination; and

16.3.2 Sure may retain any security given or monies paid by the Client and apply this in reduction of any sum of money owed or owing by the Client to Sure pursuant to [this clause 16](#).

17. CONFIDENTIAL INFORMATION

17.1 The Client acknowledges and agrees that the Report is confidential and that the Client must not disclose the Report to any third party except in any of the following circumstances:

17.1.1 Where disclosure is required to give effect to, or enforce, an Agreement entered into by the Parties;

17.1.2 Where disclosure is with the prior written consent of Sure, including any reasonable conditions upon which Sure's consent to the disclosure is granted; or

17.1.3 Where the Client is legally compelled by law to give such disclosure.

17.2 Without limiting the generality of [clause 17.1](#), all documentation that Sure provides to the Client in carrying out the Works, including but not limited to:

17.2.1 Documents showing Sure's procedures;

17.2.2 Documents showing Sure's methodologies;

17.2.3 Sure's inspection, testing, and reporting templates,

Shall remain the property of Sure and must not be retained, modified, or distributed to any third party by the Client, unless Sure provides its prior written consent.

18. COMPLAINTS

18.1 If the Client believes that the Services are not in accordance with the Agreement the Client must give notice of the alleged defective Services to Sure within 30 days of delivery of the Services, and in the case of the provision of a Report, within 30 days of the date of the Report.

18.2 Sure shall not be responsible or liable for any alleged defect in the Services unless it is reported in accordance with [clause 18.1](#).

19. DISPUTE RESOLUTION

- 19.1 The parties agree not to commence proceedings in relation to any dispute arising in regard to this Agreement or the Services without first following the procedure set out in [clause 18](#) and this [clause 19](#).
- 19.2 Any dispute that may arise between the parties in connection with the Works or the Services shall be attempted to be resolved in the following manner:
- 19.2.1 The party aggrieved, shall serve the other party with a notice in writing identifying and providing details of the dispute ("**Notice of Dispute**");
- 19.2.2 If the Client serves the Notice of Dispute, the Client must allow Sure (which includes any persons nominated by Sure) to visit the property, which must occur within twenty eight (28) days of the notification to Sure and give Sure full access to fully investigate the dispute;
- 19.2.3 Within 28 days of any inspection per [clause 19.2.2](#), the parties must confer in an attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute;
- 19.2.4 If the dispute remains unresolved after the 28 day period referred to in [clause 19.2.3](#), then the parties agree to submit the dispute to mediation, or some other form of alternative dispute resolution, before commencing court proceedings;
- 19.2.5 Unless the parties agree otherwise the mediator shall be a person nominated by Sure from the Institute of Arbitrators and Mediators of Australia and each party will do everything reasonable and necessary to effectuate the appointment including the equal sharing of any fees or expenses.
- 19.2.6 If the dispute is not resolved within 90 days of service of the Notice of Dispute (or any longer period as agreed to by the parties), either party who has complied with this clause may end the dispute resolution process by written notice to the other party and immediately thereafter commence court proceedings in relation to this dispute.

20. NOTICES

- 20.1 A party must give any notice required under these Terms and Conditions or the Agreement in accordance with this [clause 20](#).
- 20.2 A notice must be served at the address or electronic mail address of the party set out in the Agreement.
- 20.3 A party may deliver a notice by hand, post, or by electronic mail.

- 20.4 If before 4.00pm local time in the place of delivery, a party delivers a notice by hand or by electronic mail and the sending party completes the transmission the notice will be taken to be given on the day of delivery or transmission, and in any other case on the next day. If the party gives notice by post the notice will be taken as given on the 7th day in the place of delivery after the notice is posted.
- 20.5 A party may give notice of another address (within Australia) or an electronic mail address for service to the other party, and the new address or the electronic mail address shall be the address for service of the party for the purposes of this clause.

21. MISCELLANEOUS

- 21.1 Sure may assign, sub-contract or sub-let the whole or any part of the Works or Sure's obligations under an Agreement, without seeking the consent of the Client.
- 21.2 The Client may not assign, sub-contract or sub-let any part of the Works, or any of its rights, liabilities, or obligations under any Agreement, without the prior written consent of Sure.
- 21.3 The covenants, agreements and obligations contained in any Agreement and these Terms and Conditions will not merge or terminate upon the repudiation or termination of the Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 21.4 Any waiver by Sure must be in writing signed by Sure. Failure by Sure to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.
- 21.5 If any provision contained in these Terms and Conditions is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions in these Terms and Conditions are not affected.
- 21.6 These Terms and Conditions and the Agreement are governed and are to be construed in accordance with the laws in force in the State of Western Australia.
- 21.7 These Terms and Conditions and the Agreement are subject to the exclusive jurisdiction of the Courts of Western Australia.

22. RECEIPT AND ADVICE

- 22.1 The Client on each occasion it orders a Service from Sure makes the following acknowledgements. The Client acknowledges receipt of these Terms and Conditions and agrees to be bound by them. The Client accepts these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Client further acknowledges that it has had the opportunity of obtaining independent legal advice and that the Client understands the Terms and Conditions outlined above.

23. CONTACT

- 23.1 If you have any questions about the SURE privacy policy, contact us anytime via email to:
inspect@sure.net.au

REVISION CONTROL

Version 1.1

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