

## 1. TERMS OF SERVICE

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- 1.1 These Terms are entered into between the Client and In Good Nick. They govern the engagement between the Parties in respect of the Services.
- 1.2 The definitions and rules of interpretation set out in clause 14 shall apply in respect of these Terms.

## 2. SERVICES

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- 2.1 In Good Nick will provide the Services in accordance with these Terms.
- 2.2 In its performance of the Services, In Good Nick shall:
  - (a) exercise due care and skill; and
  - (b) make itself available to discuss a Maintenance Inspection Report as soon as reasonably practicable following any reasonable written request by the Client.
- 2.3 The time frame for the provision by In Good Nick of the Maintenance Inspection Report will be advised when an Inspection is booked. In Good Nick will endeavour to meet the estimated time frame but reserves the right (at its sole discretion) to extend such time frame, including if the Client does not meet its obligations under these Terms, if there is an issue with access to the Property, or if there is a change in the Client's requirements or expectations.

## 3. FEES AND EXPENSES

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- 3.1 In consideration for its provision of the Services, the Client will pay to In Good Nick the Fee.
- 3.2 In Good Nick will invoice the Client as soon as reasonably practicable after the delivery of the Maintenance Inspection Report to the Client.
- 3.3 The Client will reimburse In Good Nick for all Expenses, provided that:
  - (a) the Client has approved the scope or details of any such Expenses before they are incurred; and
  - (b) In Good Nick produces all relevant receipts to the Client in respect of such Expenses.
- 3.4 The Fee and all Expenses incurred by In Good Nick under clause 3.3 will be paid by the Client in accordance with clause 13.3 within five Business Days of receipt of In Good Nick's invoice under clause 3.2.
- 3.5 If a sum required to be paid by the Client under these Terms is not paid to In Good Nick by the due date:
  - (a) the Client shall also pay interest on that sum at the Default Rate for the period beginning on the due date and ending on the date that the sum (including all accrued interest) is paid by the Client; and
  - (b) In Good Nick shall not be obliged to perform further Services unless and until such outstanding amounts are paid in accordance with clause 13.3.
- 3.6 If the Client disputes all or part of an invoice it must promptly notify In Good Nick in writing of this fact, setting out in reasonable detail the reasons for the dispute. The Client must pay any undisputed balance of an invoice. If the Client does not dispute an invoice within three Business Days of receipt, it will be deemed to have accepted the invoice in full.

## 4. INTELLECTUAL PROPERTY

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- 4.1 In Good Nick will own all Intellectual Property in the Maintenance Inspection Report.
- 4.2 In Good Nick hereby grants to the Client a royalty free (subject only to payment of the Fees), non-transferable, license to use the Maintenance Inspection Report in New Zealand for the purposes as set out in the Maintenance Inspection Report.
- 4.3 The Client agrees to take all actions as may be reasonably required by In Good Nick to perfect or enforce In Good Nick's title to its Intellectual Property, which shall include signing and delivering any document required in order to perfect or enforce such title (including, for the avoidance of doubt, a deed of assignment of Intellectual Property).

## 5. WARRANTIES

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- 5.1 In Good Nick warrants to the Client that it will exercise reasonable care in conducting the Inspection and preparing the Maintenance Inspection Report but, to the greatest extent permissible by law, provides no further warranties.

## 6. CLIENT ACKNOWLEDGEMENT

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- 6.1 The Client acknowledges that:
  - (a) In Good Nick will conduct a non-invasive visual Inspection at the Property and will not inspect any structural or weathertightness issues. In Good Nick will not report on issues which cannot be identified in an Inspection due to blockage, camouflage, issues with access to the Property or because the ability to conduct the Inspection was otherwise impeded.
  - (b) Maintenance Inspection Reports are not structural reports. A Maintenance Inspection Report is intended to assist Clients to identify the Property's maintenance requirements only. The Maintenance Inspection Report will raise any obvious structural issues but is not intended to address the structural aspects of a Property.
  - (c) Maintenance Inspection Reports are completed using the In Good Nick team's expertise in the carpentry trade and are limited as such. Recommendations and observations are expressly only as such, and at no point should any content be considered definitive.
  - (d) Maintenance Inspection Reports are completed in good faith but do not replace the need for specialists such as engineers, weather tightness experts, building surveyors, quantity surveyors, asbestos consultants, or similar.
  - (e) The Client is responsible for providing a safe and healthy site for In Good Nick to conduct the Inspection and shall provide full details of any suspected or actual health and safety issues with the Property prior to an Inspection taking place.

## 7. LIMITATION OF LIABILITY

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- 7.1 The sole liability of In Good Nick and the exclusive remedy for the Client arising out of the performance of Services, whether arising under contract, tort (including negligence), or otherwise shall be the re-performance of the Services or a credit to the Client's account for the cost of the performance of the Services, such remedy to be at In Good Nick's absolute discretion, unless such liability is incurred as a result of In Good Nick's fraud or gross negligence.
- 7.2 In Good Nick shall not be liable for any indirect, consequential or special loss or damage, loss of revenue, economic loss or damage, loss of business or profits or anticipated business or profits, loss of goodwill, loss of anticipated savings or for any business interruption, whether or not that loss was, or ought to have been, contemplated by In Good Nick.
- 7.3 If, despite the provisions of clauses 7.1 and 7.2, In Good Nick, its agents, directors, officers, employees or contractors are found to be liable to the Client in any circumstances then the maximum combined amount such person shall be liable for to the Client is an amount equal to the Fee(s) actually paid by the Client in the 3 month period immediately prior to the liability arising.

## 8. SUBCONTRACTING

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- 8.1 In Good Nick may subcontract any person to provide all or any part of the Services without the Client's prior consent.

## 9. TERMINATION

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- 9.1 The Parties may at any time mutually agree in writing that these Terms will terminate.
- 9.2 The Client may cancel delivery of Services within three Business Days of the date of this document subject to the payment of a cancellation fee of 25% of the Fee.
- 9.3 If a Party commits a material breach of these Terms that:
  - (a) is not remediable; or

- (b) is remediable, and the defaulting Party does not remedy that breach within five Business Days of being required to do so in writing by the non-defaulting Party, then the non-defaulting Party may terminate these Terms with immediate effect by giving written notice to the defaulting Party.
- 9.4 Either Party may terminate these Terms with immediate effect by giving written notice to the other Party if that other Party:
- becomes insolvent or bankrupt or otherwise cannot pay its debts as and when they fall due;
  - has a receiver, administrator or liquidator appointed in relation to all or a material part of its assets;
  - fails to comply with a statutory demand made in accordance with section 289 of the Companies Act 1993;
  - commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or enters into any composition or arrangement with its creditors generally; or
  - has an order made or a resolution passed for its liquidation, dissolution or winding-up.
- 9.5 Upon the termination of these Terms (for whatever reason):
- the Client shall, within five Business Days, pay to In Good Nick all sums due and owing to In Good Nick under these Terms;
  - all rights granted under these Terms shall immediately cease, except where they are expressed to survive termination under clause 13.9; and
  - all non-completed instructions to conduct an Inspection and/or complete a Maintenance Inspection Report will be deemed to be terminated.
- 9.6 Termination of these Terms will not affect any accrued rights or obligations of any of the Parties.

## 10. DISPUTE RESOLUTION

- 10.1 The Parties must use reasonable endeavours to resolve any and all Disputes by negotiation.
- 10.2 If the Parties cannot resolve their Dispute by negotiations under clause 10.1 within 20 Business Days, a Party may, by written notice to the other, require that the Dispute be dealt with by mediation under the following terms:
- The mediation shall be conducted in accordance with AMINZ's standard mediation agreement.
  - The mediation shall be conducted by a mediator and at a fee agreed in writing by the Parties. Failing agreement between the Parties within 10 Business Days of the notice requiring mediation, the mediator will be selected and his or her fee determined by the chairperson for the time being of AMINZ (or his or her nominee).
  - The mediation shall take place in Auckland, New Zealand at such address as determined by the mediator.
  - The costs of the mediation, excluding the Parties' own legal and preparation costs, will be shared equally by the Parties.
- 10.3 No Party may initiate or commence court or arbitration proceedings relating to a Dispute unless it has complied with the procedure set out in this clause 10, provided that application may still be made to the courts:
- for interlocutory relief;
  - to recover a debt payable; or
  - to enforce a settlement agreed to by the Parties under this clause 10.

## 11. CONFIDENTIALITY

- 11.1 Except as permitted in this clause 11, no Party will disclose, communicate or distribute to any third party any Confidential Information.

- 11.2 Each Party may disclose Confidential Information to its Related Parties, but only where they have agreed in writing to comply with at least the same obligations of confidentiality under this clause 11. The Parties agree that they will be wholly responsible for all acts and omissions of their Related Parties concerning any Confidential Information disclosed to them.
- 11.3 A Party will not have to observe any duty of confidentiality concerning Confidential Information that:
- the other Party gives its prior written consent to the disclosure of;
  - is required to be disclosed by law;
  - is necessary to be disclosed to enable a Party to perform its obligations under these Terms; or
  - at the time of disclosure is in, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality under these Terms.

## 12. NOTICES

- 12.1 All notices and other communications to be given under these Terms must be in writing and be delivered to the physical address or email address from time to time designated by that Party in writing to the other Party for such purpose.
- 12.2 Any notice or communication given under these Terms shall be deemed to have been received:
- at the time of delivery, if delivered by hand;
  - three Business Days after the date of mailing, if sent by ordinary post or courier within New Zealand;
  - 10 Business Days after the date of mailing, if posted, couriered or delivered from overseas;
  - if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.
- 12.3 Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

## 13. GENERAL PROVISIONS

- 13.1 These Terms constitute the entire agreement and understanding of the Parties relating to the matters dealt with in these Terms and supersede and extinguish any previous agreement (whether oral or written) between the Parties in relation to such matters.
- 13.2 In Good Nick's employees, agents or representatives are not authorised to vary these terms or make any representations, statements, conditions or agreements not expressed by a director of In Good Nick in writing, and In Good Nick is not bound by any such unauthorised variations, representations, statements, conditions and/or agreements.
- 13.3 All sums payable by the Client under these Terms must be paid:
- in New Zealand dollars;
  - in cleared funds;
  - into the bank account specified in writing by In Good Nick; and
  - free and clear of any restriction, condition, set-off, deduction or withholding.
- 13.4 The Client may not assign or transfer, or agree to assign or transfer, any of its rights or obligations under these Terms without the prior written consent of In Good Nick.
- 13.5 No Party will be deemed to have waived any right under these Terms unless the waiver is in writing and signed by that Party.
- 13.6 Any amendment of these Terms must be mutually agreed in writing by the Parties.
- 13.7 If any provision of these Terms is found by a court or other

competent authority to be void or unenforceable, such provision will be deemed to be deleted from these Terms and the remaining provisions of these Terms will continue in full force and effect.

- 13.8 Unless otherwise expressly provided in these Terms, the rights and remedies set out in these Terms are in addition to, and not in limitation of, any other rights and remedies under or relating to these Terms (whether at law or in equity).
- 13.9 The Parties agree that the provisions of clauses 4, 5, 7, 9 and 11 shall survive the termination of these Terms.
- 13.10 These Terms will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to these Terms.
- 13.11 Where the supply of goods and/or services by In Good Nick is for business purposes, the provisions of the Consumer Guarantees Act 1993 shall not apply and In Good Nick gives no warranty that the Services are suitable for the purpose for which the Client proposes to use them. All terms, conditions and warranties (whether express or implied) whether by In Good Nick and/or its agents or employees, statute or otherwise (other than those mandatory warranties in the Fair Trading Act 1986 and Sale of Goods Act 1908 or other similar legislation) are expressly excluded.
- 13.12 No rule of construction (including the contra proferentem rule) applies to the disadvantage of a Party because that Party (or its relevant advisor) was responsible for the preparation of these Terms or any part of the Terms.
- 13.13 These Terms shall be deemed to have come into legal effect, and be legally binding on the Parties, by:
- (a) the Parties signing any document or form confirming their agreement to these Terms (which may be signed by electronic means in accordance with Part 4 of the Contract and Commercial Law Act 2017); or
  - (b) the Client receiving a copy of these Terms from In Good Nick (which may be via email) and the Client either agreeing to them in writing (which may be via email), the Client clicking a clickwrap acceptance box, or by the Client either purchasing or instructing the preparation of a Maintenance Inspection Report from In Good Nick.

#### 14. DEFINITIONS AND INTERPRETATION

14.1 The following definitions apply in these Terms:

**AMINZ** means the Arbitrators' and Mediators' Institute of New Zealand Inc.

**Business Day** means any day (other than a Saturday, Sunday or public holiday) on which registered banks are open for general banking business in Auckland, New Zealand.

**Client** means the client that is engaging In Good Nick to provide the Services.

**Confidential Information** means these Terms and any non-public financial, business or commercial information relating to a Party (in any form) which the other Party may receive or obtain in connection with these Terms.

**Default Rate** means 10% per annum, calculated daily and capitalised monthly.

**Dispute** means any dispute arising under or relating to these Terms.

**Expenses** means all expenses, costs, charges and disbursements incurred by In Good Nick in performing the Services.

**Fee** means the fee payable to In Good Nick by the Client for provision of the Services, as specified in writing by In Good Nick to the Client.

**Inspection** means the maintenance inspection on the Property which In Good Nick undertakes on behalf of the Client.

**Intellectual Property** means all intellectual property, proprietary and industrial rights (whether existing in statute, at common law or in equity), including:

- (a) all copyright (including in source code, object code and HTML code), rights in databases, know-how, trade secrets, methods (including business methods), technical and non-technical information, processes, characteristics, trade marks, trade names, business names, domain names, inventions, patents, design rights, discoveries, formulae and moral rights;
- (b) all designs, design details and specifications, concepts, sketches, photographs, working drawings, models and presentation materials;
- (c) all improvements and enhancements to any of the foregoing rights; and
- (d) all applications to register, and all renewals of, any of the foregoing rights.

**In Good Nick** means In Good Nick Limited (company number 8160767).

**Maintenance Inspection Report** means the maintenance inspection report prepared by In Good Nick for the Client which reports on the results of the Inspection at the Property.

**Parties** means the Client and In Good Nick and **Party** means either of them.

**Property** means the property at which the Client has requested In Good Nick undertakes its Inspection.

**Related Parties** means, in relation to a Party:

- (a) any director, officer, employee or agent of, or professional adviser to, that Party; and
- (b) any related company (as defined in section 2(3) of the Companies Act 1993) of that Party.

**Services** means the Inspection and preparation of the Maintenance Inspection Report by In Good Nick for the Client.

**Terms** means these terms of service, as amended and/or replaced from time to time.

14.2 The following rules of interpretation apply in these Terms:

- (a) References to **persons** include natural persons and any other body corporates (wherever incorporated).
- (b) References to the **Parties** include their respective executors, administrators, successors and permitted assignees.
- (c) **Headings** have been inserted for convenience only and will not affect the interpretation of these Terms.
- (d) References to **clauses** are to those in these Terms.
- (e) References to the words **including, include** or similar words do not imply any limitation.
- (f) References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).