



TOP DOG  **TM**

Pest Control

Terms and Conditions

General Terms & Conditions

1. QUOTES, CONTRACTS AND TERMS

1.1 A quote or proposal given by the Company does not constitute an offer to provide any Services.

1.2 A quote or proposal is valid for thirty (30) days only and the Company reserves the right to withdraw or amend it at any time.

1.3 A contract will only be formed after the Company accepts an order from a Client (whether by issue of the Company's standard work order, performance of the Services set out in the order or otherwise) and will be subject to these Terms.

1.4 These Terms replace all trading terms and conditions which may have applied between the Company and the Client.

1.5 These Terms apply to the exclusion of any conditions or terms of purchase which the Client may use or purport to apply to the Contract.

1.6 The Company may vary these terms at any time by giving notice to the Client.

2. DESCRIPTION OF THE SERVICES

2.1 Any quantities, weights or dimensions included in any quote, catalogues, advertisements, illustrated matter or price lists are approximates only and will not be binding unless and to the extent only that such details are specified in a contract with a Client.

3. OWNERSHIP OF DRAWINGS

3.1 Technical documents, specifications or drawings submitted to a Client before a contract is formed remain the property of the Company at all times and may not be transmitted to a third party, copied, reproduced or used by the Client unless the prior written permission of the Company is obtained.

4. WARRANTIES

4.1 The Services comprise the Company's assessment of the best way to manage the Client's needs. Any expected results from the Services communicated by the Company to the Client are the Company's assessment of the most likely outcome for the Client and do not and shall not be deemed to constitute a warranty or guarantee by the Company that any expected results will in fact be achieved by the Services.

4.2 Subject to the provisions of the Contract, all and any express or implied terms, conditions, warranties and representations with respect to the standard, quality, condition, fitness, durability or suitability of the Services (except those expressly contained in these Terms or otherwise expressly agreed to in writing by the Company) are to the extent that the same may be excluded by law, hereby expressly negated and excluded.

4.3 The Client must satisfy itself as to the standard, quality and suitability of the Services and the fitness of the Services for the purpose(s) for which the Services are being purchased and as to its compliance with the description (if any) of such Services. Any description shall be by way of identification only and the use of a description shall not of itself make any Contract a contract of sale by description.

4.4 These Terms shall not exclude restrict or modify or have the effect of excluding restricting modifying the application in relation to a Contract of all or any of the provisions of Division 1 of Part 3-2 of Schedule 2 to the Competition and Consumer Act 2010 ("the Act") or the exercise of right conferred by such a provision or any liability of the Company for breach of a guarantee implied by such a provision but all other guarantees, conditions or warranties which would or might otherwise be implied are hereby expressly excluded and negated.

4.5 To the extent that the Competition and Consumer Act 2010 permits the Company to limit its liability for a breach of a guarantee implied pursuant to Division 1 of Part 3-2 of Schedule 2 of the Act, then the Company's liability for such breach including any consequential loss which the Client or any third party may sustain or incur shall be limited, at the option of the Company, to

- (i) the replacement or repair of the any goods supplied to the Client;
- (ii) the supply to the Client of equivalent Services; or
- (iii) the payment of the cost or replacing or repairing the goods or of having the equivalent Services supplied again, whichever may be determined in the absolute discretion of the Company to be appropriate in the circumstances.

4.6 The benefits of any warranty herein contained shall not apply in the case of:

- (i) Defects in any goods caused by the Client's misuse or neglect; or
- (ii) Services, which have been altered or added to or otherwise modified without the prior written consent of the Company.

5. RELEASE AND INDEMNITY

5.1 After delivery of the Services to the Client, the Company shall not be responsible or liable to the Client, and the Client releases and discharges the Company, (in the absence of any wilful or negligent act or omission on the part of the Company) for and from any liability

claim loss damage or expense of any kind or nature (including but not limited to loss of profits earnings or income direct indirect consequential contingent or resulting liability loss or damage whether to persons property or otherwise) or death or injury caused by or arising out of or relating in any manner or incidental to the Services or the delivery of the Services.

6. PRICE

6.1 The price payable for the Services is the price or prices stated in the quote provided or the Company's standard work order form or as otherwise notified to the Client in writing.

7. PAYMENT TERMS

7.1 Payment terms are strictly seven (7) days from the date of invoice.

7.2 If payment is not made within 7 days of the invoice date, the Client will be in default under the Contract and the Company may do any or all of the following:

- (a) decline to supply any further Services to the Client;
- (b) change the terms on which any future Services are provided, including to a cash on delivery basis; and
- (c) demand payment of all monies payable by the Client to the Company on any account whatsoever, whether or not the amounts claimed are due and payable.

8. TIMBER PEST INSPECTION AND REPORT

If a timber pest inspection/report is required as part of the Client's suggested property management plan, the Client acknowledges that:

- (a) The Company does not warrant that a "visual only" inspection completely complies with the Australian standard AS 4349.3 "Inspections of buildings. Part 3: Timber Pest Inspections", and may be of limited use to the Client. In addition to a visual inspection, AS 4349.3 recognises that to completely assess timber pest activity and damage requires the Company to carry out whenever necessary appropriate tests with instruments.
- (b) The inspection report does not include the inspection and assessment of matters outside the scope of the requested inspection and report.
- (c) The inspection only covers the readily accessible areas of the building and site. The inspection does not include areas which were inaccessible, not readily accessible or obstructed at the time of the inspection. Obstructions are defined as any condition or physical limitation which inhibits or prevents inspection and may include — but not limited to — fixed ceilings, wall linings, floor coverings, fixtures, fittings, furniture, stored

clothing/articles/materials, thermal insulation, sarking, pipe/duct work, builders debris, vegetation, pavements or earth.

(d) The detection of "Drywood Termites" may be extremely difficult due to the small size of the colonies. This inspection DOES NOT IN ANY WAY search for the existence of drywood termites. An inspection for drywood termites can be performed upon special request.

(e) The inspection and report is not a structural damage report. If it reveals evidence of any timber pest activity/damage, it is recommended that the client engage the appropriate professional to conduct a full inspection to ascertain the extent of any damage.

(f) The inspection and report is indicative of the condition of the subject building and site at the date and time of the inspection only and is not to be construed as an express or implied warranty or guarantee against latent, concealed, or future infestation or defects.

(g) The inspection is to be produced for the sole use of the Client named in the Booklet or property management plan agreement. The Company or its representatives are not liable for any reliance placed on the report by any third party.

9. DELAYS

The Company shall not be liable for any loss or damage suffered by a Client by reason of a delay, suspension or cancellation of any Services in part or in whole for any reason beyond the control of the Company, breakage or failure of any machinery or apparatus required to deliver the Services or labour trouble, strikes, lockouts or injunctions. Services delayed, suspended or cancelled under this clause may at the option of the Company be cancelled completely or delivered at a later time, (without any liability attaching to the Company as a consequence) and in either case, the Company shall notify the Client in writing accordingly.

10. RISK AND TITLE

10.1 Title to any goods or materials supplied by the Company to the Client as part of the Services shall not pass to the Client until such time ("the specified time") as the cost of the Services and all other moneys (if any) due from the Client to the Company in respect of the Services or under any Contract between the Company and the Client shall have been paid to the Company in full.

10.2 Until the specified time, the Client shall be only a bailee of any goods or materials for the Company and the Client shall;

(a) hold the goods or materials until the specified time as to enable them always readily to be identified as the property of the Company

(b) upon written demand re-deliver the goods or materials to the Company or allow the Company by its servants or agents to enter upon any premises where the goods or materials are stored to recover the same.

10.3 Any goods and materials shall be at the Company's risk until the time they are delivered to the Client, when risk passes to the Client.

11 DAMAGE

11.1 Although all care will be taken by the Company, it does not assume any responsibility for damage to utility/service pipes, conduit and/or fittings caused by drilling, cutting and/or trenching of soil and masonry surfaces whilst engaging in the application of the selected property management plan. It is highly recommended that if any uncertainty exists as to the location of any utility/service pipes, conduit and/or fittings the Client should engage the appropriate professional to locate and mark any utility/service pipes, conduit and/or fittings before the commencement of treatment.

11.2 The Company is not expert in the construction or building trades. Any property management plan proposal and/or its associated components do not and cannot state the extent of any structural damage caused by subterranean termites, wood decay fungi or borer infestation. If any past/present/suspected damage is brought to the Client's attention it is recommended that the owner or other interested parties contact a qualified building engineer, architect, or other qualified expert in the construction or building trades to determine the existence and/or extent of possible structural damage to the building or structures pertaining to this property management plan.

11.3 The Company during the course of the selected property management plan may be required to carry out tests and procedures using the following techniques and instruments:

1. Electronic moisture detecting meter — an instrument used for assessing the moisture content of timber.
2. Stethoscope/listening device — a listening device used to hear sounds within building elements. -
3. Termatrac - an electronic device used to track termite movement within building elements.
4. Borescope — an instrument used to view the internal of voids through a small hole, usually a hole will be made to accommodate this method.
5. Sounding — a technique where building elements are tapped with a solid object.
6. Probing — a technique where timber and other materials/areas are penetrated with a sharp instrument.

7. The removal and/or cutting and/or drilling of certain building elements to ascertain subterranean termite infestation/activity and suitability for treatment may also be required.

These techniques will be negotiated with the Client if and when they are required. Although all care will be taken, the Company will not be liable for damage caused by the carrying out of these or any other tests or treatment techniques that are a required part of the selected property management plan.

12 CANCELLATION

Any request for cancellation of an order for Services must be made in writing. Any request for cancellation shall be of no force or effect and shall not be binding on the Company unless and until the request for cancellation is accepted by the Company in writing. Consent to a request for cancellation of any order for Services shall be at the sole and absolute discretion of the Company.

13 ENVIRONMENTAL CONDITIONS

13.1 The Client agrees to read, understand and implement any environmental or other corrections as required by the Company within the time period stipulated. Failure to implement and maintain these corrections will reduce the effectiveness of the selected Property Management Plan and will affect the Free Service Period or Timber Replacement Guarantee if offered on the Management Plan.

13.2 The Client will inform the Company immediately that they become aware of any circumstances that are outlined in the environmental maintenance information and or directions provided with any documentation in regards to the property management plan.

14 WARRANTY SERVICE

14.1 An inspection of the Client's premises and an assessment of the effectiveness of the Services may be carried out by the Company by arrangement with the Client, at the Company's expense.

14.2 No warranty period applies in respect of the Services unless the Company has expressly offered a warranty period as a term of the Contract with the Client.

14.3 If a warranty period applies under clause 14.2, the Client must allow the Company access to the Clients premises at all reasonable times as required by the Company to undertake any warranty work.

15 GOVERNING LAW

Any Contract is governed by the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts of that State.

16 WAIVER

A party does not waive a right or power simply because it fails to exercise or delays exercising that right or power. A single exercise or power does not prevent in exercising it again or exercising any other right or power. A right or power may only be waived in writing signed by the party to be bound by the waiver.

17 SEVERABILITY

Any provision in these Terms which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable. Otherwise, the offending provision may be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms.

18 NOTICES

Any notice to be given or an invoice to be issued by the Company under these Terms may be given or issued by:

(a) leaving it at, or posting it to, the Client's address last notified in writing to the Company; or

(b) faxing it to the Client's last fax number, last notified in writing to the Company.

Any notice posted to the Client will be deemed to have been received by the Client three business days after the date on which the notice was posted.

Any notice faxed to a Client will be deemed to have been received by the Client when transmitted to the Client and the Company has received a successful facsimile transmission report.

19 ASSIGNMENT

The Client may not assign any of its rights or obligations under any Contract without the Company's prior written consent, which may be given or refused in the Company's absolute discretion.

20 PRIVACY ACT

(a) The Company discloses that certain items of personal information about the Client contained in any credit application by the Client may be disclosed to a credit reporting agency.

(b) The Client consents to disclosure of the personal information pursuant to subclause (a) and consents to the Company disclosing any information derived from any credit

application and any other information relating to the Client which the Company may hold to any other credit provider for the purpose of providing a reference to the Company in relation to the Client.

(c) The Client acknowledges and consents to the Company obtaining a consumer credit report about the Client from a credit reporting agency.

21 INTERPRETATION

In these Terms, unless the context otherwise requires:

(a) if the Client comprises more than one person, any promise or agreement by the Client binds each person individually and all of them jointly;

(b) a reference to the Client includes the Client's legal personal representatives, administrators and successors;

(c) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it and any subordinate legislation made under it;

(d) words employing the singular number or plural number will be deemed to include the plural number and the singular number respectively;

(e) any words importing any gender will include every gender.

22 DEFINITIONS

In this agreement unless the context requires otherwise the following expressions shall have the following meanings respectively;

(i) "Company" means Top Dog Pest Control and any other related companies.

(ii) "Contract" means all those documents comprising the agreed terms of sale of Services by the Company to the Client including but not limited to purchase orders, invoices, these Terms and such other written material of the Company relating to the Services and which is issued to or brought to the notice of the Client and any writing of the Client issued to the Company and accepted by the Company as constituting a term or condition of the Contract.

(iii) "Client" means the Client who requires the Services.

(iv) "Services" means any pest eradication or management services provided by the Company.

(v) "Terms" means these Terms and Conditions