



## ASSESSMENT TERMS AND CONDITIONS

### 1 DEFINITIONS

1.1 In these Terms:

**Applicable Requirements** means all statutes, regulations, statutory instruments, delegated or subordinated legislation, codes of practice and standards (both general and industry specific), that are applicable to the Property;

**Assessment** has the meaning given to it in clause 2.1.a;

**Assessment Fee** has the meaning given to it in clause 7.1;

**Customer** means any company, firm or individual or its agent (e.g. a property manager) to whom Warm Fuzzies provides the Services;

**Installation Contract** means any agreement reached between the Customer and the Installer to carry out the Installation Services;

**Installation Services** means the supply and install of materials and/or completion of other services in or to the Property in accordance with the Installation Contract;

**Installer** means the third party contractor that the Customer chooses to carry out any Installation Services;

**Personnel** includes directors, employees, contractors and agents;

**Property** means the property or properties that the Customer owns, occupies or manages (as applicable) that is the subject of an Assessment including all buildings on that property or properties;

**Services** has the meaning given to it in clause 2.1;

**Terms** means these Terms and Conditions together with any special terms or sales contracts agreed in writing between Warm Fuzzies and the Customer; and

**Warm Fuzzies** means Warm Fuzzies Limited (Company No. 6343350).

### 2 SERVICES

2.1 Warm Fuzzies is in the business of:

- a. carrying out assessments on properties including insulation assessments, property management inspections, maintenance assessments, Healthy Homes Standards assessments, building inspections and valuations (**Assessment/s**);
- b. project management services including helping the Customer obtain quotes from Installers for Installation Services, facilitating an Installation Contract and acting as a contact point between the Customer and the Installer;
- c. supplying materials, appliances and systems to the Customer (including heating and ventilation appliances (e.g. heat pumps and smoke alarms) (**Goods**);
- d. facilitating payment solutions; and
- e. any other related services,

(together the **Services**).

### 3 ACCEPTANCE

3.1 These Terms will apply to all Services that Warm Fuzzies supplies to the Customer.

3.2 Without limiting any other methods of acceptance, the Customer's request for Warm Fuzzies to provide the Customer with the Services will constitute the Customer's acceptance of these Terms.

3.3 Where there is more than one Customer, these Terms will bind those persons jointly and severally. For the avoidance of doubt, reference to Customer in these terms will include any agent (e.g. a property manager)

acting on behalf of the owner of the Property and these terms will bind the agent and such owner jointly and severally. In such case the agent warrants that it has authority to act as agent on behalf of the owner of the Property and bind that owner to these Terms.

3.4 Warm Fuzzies may vary these Terms from time to time by giving no less than 20 days written notice to the Customer. Any varied Terms will apply to the provision of all Services to the Customer after the notice period referred to above.

3.5 These Terms will continue until either party terminates these terms by giving the other no less than 20 days written notice. Termination of these terms will not affect either party's rights and obligations that accrued before termination including in relation to any Services that are current as at the date of termination.

#### **4 ASSESSMENT REPORTS**

4.1 If Warm Fuzzies completes an Assessment of the Property, it will provide the Customer with a written report indicating whether the Property is, or is at risk of being, non-compliant with certain legislative standards applicable as at the date of the Assessment (including under the Residential Tenancies Act 1986 (**RTA**), Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016), Healthy Homes Guarantee Act 2017 (including the Healthy Homes Standards) and Residential Tenancies (Healthy Homes Standards) Regulations 2019.

4.2 The Assessment report is not a compliance inspection or certification for past or present standards, codes or regulations. Warm Fuzzies will use all reasonable care and skill when assessing the Customer's Property and preparing any Assessment report however Warm Fuzzies makes no representation or warranty and gives no guarantee that the Property is compliant with any Applicable Requirements. The Customer agrees to rely on their own judgement when considering the Assessment report and whether to enter into an Installation Contract or sign any certificates prepared by Warm Fuzzies (including a certificate issued under section 13A of the RTA).

4.3 Warm Fuzzies cannot assess with any degree of accuracy or include within its Assessment report any areas that are concealed (either fully or partly), contained or generally inaccessible or cannot be sighted (whether due to ceiling linings, flooring, furniture, stored items, vehicles, or any other object which obscures clear viewing of the subject matter).

4.4 Warm Fuzzies will not:

- a. dismantle any components, move any unreasonable items of furniture, stored possessions or vehicles while carrying out an Assessment; or
- b. carry out any destructive or invasive inspections while carrying out an Assessment, unless otherwise requested by the Customer and agreed to in writing by Warm Fuzzies. If Warm Fuzzies does agree it is on the basis that the Customer will be responsible for any damage or loss or liability that results from such actions.

#### **5 ACCESS TO PROPERTY FOR ASSESSMENTS**

5.1 The Customer represents that it has the legal right to provide Warm Fuzzies and its Personnel with access to the Property to complete the Services.

5.2 Warm Fuzzies will endeavor to give the Customer at least 24 hours notice. The Customer will co-operate with Warm Fuzzies in arranging access to the Property.

5.3 Warm Fuzzies will only complete the Assessment if, and to the extent that, the relevant areas are safe, unobstructed access is provided and the following minimum clearances are available (unless otherwise approved by Warm Fuzzies in its sole discretion) or the relevant areas are within unobstructed line of sight:

- a. Internal Ceiling Access: Access manhole 450mm x 400mm; crawl space vertical clearance 600mm from upper side of ceiling joist; height accessible from a ladder no higher than 3.6m;
- b. Sub floor: Access manhole 500mm x 400mm; crawl space vertical clearance; and
- c. Timber floor: 400mm (from underside of bearer) concrete floor 500mm.

5.4 The Customer warrants that the Property is insured for either replacement value or an appropriate sum insured amount against all normal risks (including fire cover).

#### **6 DELAY AND CANCELLATION**

6.1 Warm Fuzzies will not be liable for any delay in completing the Assessment resulting from actions beyond Warm Fuzzies' reasonable control. If any delay is a result of any act by the Customer, Warm Fuzzies may,

without prejudice to its other rights and remedies, require payment from the Customer for any part of the Services already undertaken and terminate the Assessment.

- 6.2 Warm Fuzzies may in its sole discretion immediately cancel any Assessment by giving written notice to the Customer. Warm Fuzzies will not be liable for any loss or damage whatsoever arising from such cancellation.

## **7 FEES AND PAYMENT**

- 7.1 The fee for the Assessment and/or Services will be as notified to the Customer prior to commencement (**Assessment Fee**).
- 7.2 Warm Fuzzies will issue an invoice to the Customer after completion of the Assessment. All invoices are due for payment within 7 days of the date of the invoice.
- 7.3 Despite clause 7.2, Warm Fuzzies may waive the Assessment Fee if the Assessment report indicates that the Property is, or is at risk of being, non-compliant with Applicable Requirements and the Customer enters into an Installation Contract within 30 days after the date that the Customer receives the Assessment report.
- 7.4 Warm Fuzzies may charge default interest of up to 10% per annum compounding monthly on all amounts that are not paid on time. If any amount that is owed to by the Customer continues to remain unpaid, Warm Fuzzies may also take action to recover that amount and charge the costs incurred in doing so. Such costs include all of Warm Fuzzies' legal costs (as between lawyer and client) and all preparatory costs (including any third party reports) of and incidental to the enforcement of Warm Fuzzies' rights and remedies under these Terms or at law.

## **8 WARM FUZZIES ACTING AS BROKER**

- 8.1 For all Installation Services the Customer acknowledges and agrees that:
- a. Warm Fuzzies will act in its capacity as broker to source quotes from participating Installers, facilitate the creation and administration of an Installation Contract and act as a contact point between the Customer and the Installer for the completion of Installation Services;
  - b. the Customer will rely on their own judgement when considering to engage any particular Installer and not in reliance on any recommendation or representation by Warm Fuzzies;
  - c. Warm Fuzzies will be eligible to receive a commission payment from the Installer for all referrals that result in an Installation Contract; and
  - d. the Installer is an independent contractor of the Customer and no other relationship (e.g. joint venture, agency, trust or partnership) exists between Warm Fuzzies and the Installer under these Terms or any Installation Contract. Warm Fuzzies does not accept any responsibility or liability to the Customer for the completion of any Installation Services or any associated risks under an Installation Contract.

## **9 LIMITATION OF LIABILITY**

- 9.1 All warranties and representations (including those expressed or implied by law) in respect of Warm Fuzzies' Services are excluded to the extent permitted by law. The provisions in the Consumer Guarantees Act 1993 do not apply to the extent the Customer is acquiring services from Warm Fuzzies for the purposes of a business in terms of section 2 and 43 of that Act.
- 9.2 Warm Fuzzies' liability to the Customer (whether in relation to contract, tort (including negligence) or otherwise) in respect of any Services provided to the Customer is limited to the value of the Assessment Fee paid by the Customer.
- 9.3 Warm Fuzzies is not liable to the Customer for any special, indirect or consequential damage or loss of any kind under any cause of action arising under or in connection with Warm Fuzzies' Services to the Customer.
- 9.4 The Customer indemnifies Warm Fuzzies and its Personnel against any loss or liability suffered or incurred at any time by Warm Fuzzies or its Personnel and directly or indirectly caused by a breach of the Customer's obligations under these Terms.

## **10 HEALTH AND SAFETY**

- 10.1 Warm Fuzzies and the Customer are each a (Person in Charge of a Business or Undertaking (PCBU) as defined in section 17 of the Health and Safety at Work Act 2015 and must comply at all times with that Act and its regulations (**HSWA**). Where each party has a duty in relation to the same matter imposed by or under the HSWA, then each party must, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other.

- 10.2 The Customer is required to inform Warm Fuzzies if they are aware of, or aware of the likelihood of asbestos at the property.
- 10.3 The Customer confirms that: the property is safe to enter, by having an applicable Code of Compliance Certificate from the relevant Council body; and has not suffered any structural or cosmetic damage since the issue of the Code of Compliance Certificate that could cause harm; and all asbestos is appropriately removed or contained.

## **11 INTELLECTUAL PROPERTY**

- 11.1 Warm Fuzzies retains all intellectual property/copyright in all Assessments and any other documents, drawings or deliverables prepared by Warm Fuzzies. The Customer is entitled to use them or copy them only for the purpose for which they are intended and only if they have paid the Assessment Fee.

## **12 DELIVERY OF GOODS, RISK AND TITLE**

- 12.1 Delivery of the Goods shall take place when the Goods are delivered and installed in the Property.
- 12.2 All risk for the Goods passes to the Customer on delivery.
- 12.3 Ownership of the Goods shall not pass to the Customer until the Customer has paid Warm Fuzzies all amounts owing for the particular Goods and the Customer has met all other obligations owed by the Customer to Warm Fuzzies under these Terms.

## **13 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- 13.1 The Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and a security interest is taken in all Goods supplied by Warm Fuzzies to the Customer until title in those Goods passes to the Customer in accordance with these Terms.
- 13.2 The Customer agrees, from time to time, to take any action and execute and deliver any document (including, without limitation, financing statements to be registered on the Personal Property Securities Register) reasonably requested by Warm Fuzzies to transfer, create, perfect, preserve, protect and enforce its security interest.
- 13.3 Warm Fuzzies and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by Warm Fuzzies, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

## **14 PRIVACY ACT 2020**

- 14.1 Any personal information received by Warm Fuzzies will be used, processed, transmitted, and disclosed to the extent necessary to perform the Services and in accordance with Warm Fuzzies' privacy policy and the Privacy Act 2020. The Customer agrees that Warm Fuzzies may:
- a. collect, retain, use and disclose any personal information about the Customer and the Property for the purpose of providing the Services to the Customer;
  - b. collect, retain, use and disclose:
    - any information about the Property; and
    - any personal information about the Customer but only on an anonymous and aggregated basis,in each case obtained by Warm Fuzzies in the course of performing the Services and the Customer grants Warm Fuzzies an unrestricted, non-exclusive, perpetual, transferable and royalty free licence to copy, use and disclose that information to any third parties for Warm Fuzzies' business purposes; and
  - c. disclose any necessary personal information about the Customer to any third parties or credit agencies for the purpose of carrying out credit enquiries about the Customer to assess the Customer's credit worthiness and to provide credit reporting services or to exercise any power of enforcement under these Terms.
- 14.2 Where the Customer is a natural person the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 2020.

## **15 DISPUTE RESOLUTION**

- 15.1 If a party considers that there is a dispute in respect of any matters arising out of or in connection with these Terms, then unless other provisions of these Terms govern the manner in which that dispute is to be resolved, that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to try to resolve the dispute between themselves within 10 Business Days of receipt of the notice. Neither party will commence legal proceedings against the other before following the procedure above except that this clause does not affect any party's right to seek urgent interlocutory and/or injunctive relief.

## **16 FORCE MAJEURE**

- 16.1 Neither party will be liable to the other for any failure to perform its obligations under these Terms by reason of any cause or circumstance beyond the party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, pandemic (including COVID-19), epidemic or governmental action after the date of any contract between the parties but excluding lack of funds for any reason (**Force Majeure Event**). The party affected must:
- a. notify the other party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
  - b. use its best endeavours to overcome the Force Majeure Event; and
  - c. continue to perform its obligations as far as practicable.
- 16.2 If a Force Majeure Event continues for longer than 30 days then without limiting any of its other rights under these Terms, Warm Fuzzies may cancel any contract by giving the Customer no less than 10 days prior written notice. Warm Fuzzies will not be liable for any loss or damage whatsoever arising from such cancellation.

## **17 ASSESSMENT FEE EXCLUSIONS**

- 17.1 The Assessment Fee excludes the cost of asbestos removal or containment required prior to or following an Assessment. If remedial works are required following an Assessment, Warm Fuzzies are only liable for the remedial works and not the associated asbestos management costs. Asbestos management costs include, but not limited to, all costs associated with testing, cleaning, disposal, planning, removal or containment of asbestos (e.g. specialist asbestos consultant fees, asbestos removal plan, containment or removal).
- 17.2 The Assessment Fee excludes the remedial cost for any movement in a ceiling, during an Assessment, which causes cracking, nail popping or any other defect due to the ceiling structure notwithstanding serviceability requirements i.e. able to walk across ceiling joists without causing damage (SLS - AS/NZS 1170).
- 17.3 The Assessment Fee excludes the remedial costs for damage caused to, or subsequently from, any building elements that are not built in accordance with the NZ Building Code.
- 17.4 The Assessment Fee is for a single visit and if an additional visit is required, due to circumstances outside the control of Warm Fuzzies, an additional Assessment Fee will be charged.

## **18 GENERAL**

- 18.1 To waive a right under these Terms that waiver must be in writing and signed by the waiving party.
- 18.2 Warm Fuzzies may assign novate, subcontract or transfer its rights and obligations under these Terms at any time without the consent of the Customer.
- 18.3 If there is any conflict between these Terms and any other agreement between the parties then the provisions of these Terms will prevail unless Warm Fuzzies agrees otherwise in writing.
- 18.4 Any benefits expressly conferred on any third parties named or referred to in these Terms (including Warm Fuzzies' Personnel) are intended to be enforceable by those third parties for the purposes of section 12 of the Contract and Commercial Law Act 2017.
- 18.5 Any illegality, unenforceability or invalidity of a provision of these Terms does not affect the legality, enforceability or validity of the remaining provisions of these Terms.
- 18.6 These Terms and any agreement to which they apply are governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.