



# Terms and Conditions

## 1 The meaning of some words used in these terms and conditions

**we, us or our** is a reference to SCORPION PEST MANAGEMENT PTY LTD (ACN 615 959 825).

**you or your** is a reference to the person or entity to whom we are providing our Services and who is required to pay for the Services we provide.

**Call Back Fee** means:

- (a) If within a 20 km radius of the Hobart CBD, \$66.00 (incl. GST) plus the cost of the Products required.
- (b) If outside a 20 km radius of the Hobart CBD, \$132.00 (incl. GST) plus the cost of the Products required.

**Commercial Customers** means those customers that record an Australian Business Number on the Agreement for Pest Management Services Form.

**Domestic Customers** means those customers that do not record an Australian Business Number on the Agreement for Pest Management Services Form.

**Parties** is a reference to both us and you.

**Premises** means the place where we will provide the Services.

**Products** means any insecticides, chemicals, materials, goods, parts or items we need to buy necessarily in order to perform the Services.

**Services** means the pest management services we will provide. The precise Services we will be providing to you will be stated in the Agreement for Pest Management Services Form and as we agree from time to time.

**Termination Fee** means \$66.00.

## 2 Entering into a legally binding contract

- (a) A contract between you and us will come into being in one of two ways:
  - (i) when you sign the Agreement for Pest Management Services Form, we and you will enter into a legally binding contract on the date you sign.
  - (ii) where you and we agree orally that we should provide the Services, then there will be a legally binding contract on the date of our oral agreement.
- (b) We suggest that before you sign the Agreement for Pest Management Services Form or orally agree to us providing Services that you read through these terms and conditions. If you have any questions concerning them please ask us.

You should keep a copy of these terms and conditions for your records.

## 3 Providing the Services

Once we and you have entered into a legally binding contract, we will normally start providing the Services to you straight away or on a date agreed between us without further discussion with you. Occasionally the Services will be provided at some other date or time or be dependent on a number of factors.

Our aim is to always provide you with the Services:

- (i) using reasonable care and skill;
- (ii) in compliance with commonly accepted practices and standards in the pest control industry; and
- (iii) in compliance with Tasmania's laws and regulations in force at the time we are carry out the Services.

(c) You acknowledge that if parts of the Premises that we treat as part of the Services are rained on within 24 hours, the effectiveness of the Products used on those parts of the Premises may be affected ("the Affected Areas"). In such case, the Parties may agree that we re-treat the Affected Areas at a time agreed between the Parties for the Call Back Fee. Only the Affected Areas are to be re-treated, which will be determined by us.

(d) You permit us to apply approved pesticides and or deploy equipment as we deem necessary, to deliver an effective treatment, subject to our compliance with all legal requirements.

(e) You agree to provide us with free access to all parts of the Premises for the purpose of inspection, treatment or surveillance and agree to ensure that all safety and treatment instructions are followed during and post treatment.

(f) You agree not to request or permit us to access any part of the site or Premises which you know or suspect to be hazardous, or in which a potentially hazardous process is carried out, without first briefing us or our employee on the nature of the hazard and the precautions to be observed.

## 4 Days and times when we normally provide the services and performance of services away from the premises

(a) Unless we agree otherwise, we will provide the Services on normal working days and start work no earlier than 8:00am and finish work no later than 5:00pm. A normal working day for us means Mondays to Fridays, excluding any bank or other national holidays.



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### 5 Products

(a) At the time we perform the Services we may not have all the Products we need to perform the Services. This may be for a number of reasons, such as:

(i) we have not provided an estimate and cannot reasonably establish what Products are necessary until we start performing the Services; or

(ii) where we have provided an estimate, it may not have been reasonably possible to establish the need for particular Products at the time we provided the estimate (the need for the particular Products may only be revealed when we start performing the Services); or

(iii) whether or not we have provided an estimate, the condition of an item or the area which is the subject of the Services may only become apparent when we start performing the Services and it was not reasonably possible to establish it until that point.

(b) In such cases we may need to purchase Products.

(c) If the Products are available from a local supplier, then we normally wish to travel to the supplier and purchase the Products and return to continue performing the Services. We normally charge for the travel time at our normal charging rate up to a maximum of \$100. If the Products are not available from a local supplier we normally order the Products and return on another occasion to continue to perform the Services. We will not charge you for any time spent in obtaining Products if we have brought or ordered the wrong Products.

(d) You must advise us of any pets, personal or family/staff allergies or other concerns. Any persons who are particularly sensitive, or who suffer from allergic reactions, should, as a matter of precaution, remain out of the Premises for a period of 8 hours and not return until the Premises have been fully ventilated. Avoid contact with treated surfaces until the control agent has dried. You must observe any verbal or written advice provided by us or our agents at all times. You must ensure your Premises are properly ventilated after treatment. Leave on any air-conditioners on 'vent mode' for a period of at least thirty minutes after the treatment and before re-occupying.

### 6 Timing

#### 6.1 Our responsibility to perform the services by particular dates

We aim to carry out the Services by the dates and times we either agree with you or notify to you. But we cannot guarantee or provide a firm commitment that:

(a) we will start performing the Services by a specified date or time; or

(b) we will complete the performance of all the Services by any specified date or time; or

(c) the performance of any individual part of the Services will be completed by a specified date or time.

#### 6.2 What can happen if we cannot start performing the Services or complete performing the Services

(a) If we do not start or complete performing the Services within a reasonable period from the date or dates we have agreed or notified then you may choose either to continue to wait until we can start performing the Services or complete performing them or you can terminate the contract.

(b) Where we have started performing the Services and you decide you wish to terminate the contract you will only have to pay for any Services we have performed up to the date of termination and for any Products which we have legal obligation to pay for, as well as the Termination Fee. If you have made payments to us in excess these amounts we will return the difference to you within 14 days of the termination.

(c) What is a reasonable period of time depends on the type of Services we will be performing and the length of time they will take to perform. For example, if you and we believe that the Services will take only a few hours to perform, then if we fail to start performing the Services within 7 days then you may have the right to terminate the contract. But if the Services are due to take several weeks to perform, then if we fail to start to perform the Services after 14 days when are due to or we do not perform the Services during a couple of weeks when we were due to, then in such circumstances you may be entitled to terminate the contract.

#### 6.3 Situations or events outside our reasonable control

(a) In addition, there are certain situations or events which occur which are not within our reasonable control (some examples are given in the next numbered paragraph). Where one of these occurs, we will normally attempt to recommence performing the Services as soon as the situation which has stopped us performing the Services has been resolved. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue performing the Services.

(b) The following are examples of events or situations which are not within in our reasonable control:

(i) if the Products are not delivered on the date or at the time agreed with the supplier of the Products (and it is not possible to obtain a replacement from an alternative supplier at all or within a reasonable amount of time, or the price charged by the alternative supplier is excessively higher than by the original supplier if ordered at short notice);



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- (ii) where you make a change in the Services you wish us to perform (and this results in, for example, us having to do further work or wait for new or different Products);
  - (iii) where we are unable to gain access to the Premises to carry out the Services at the times and dates we have agreed with you;
  - (iv) where the areas in the Premises have not be readied by you as we and you have agreed in order for us to perform the Services; or
  - (v) for some other unforeseen or unavoidable event or situation which is beyond our control, such as weather conditions.
- (i) if the amount of extra time we need to spend to finish performing the Services will mean that the extra amount payable by you will not exceed 20% of the amount stated in the estimate, then we will carry on providing and completing the Services without contacting you and obtaining your agreement;
  - (ii) otherwise we will not continue performing the Services and we will seek your approval to the extra amount that you will need to pay, unless:
    - (A) it is not possible to contact you within a reasonable time; or
    - (B) it is not safe not to carry out and finish performing the Services (for example, your goods or Premises may be left in a dangerous condition or unprotected from theft if the Services are not completed).

### 7 Price, estimates and payment

#### 7.1 Our charges based on time spent

We normally charge for our Services based on the size of the area that requires our Services.

#### 7.2 Our charges based on an estimate

- (a) If we provide an estimate, then we will charge you the amount stated in the estimate rather than a charge based on the time taken in performing the Services. We only provide estimates and not quotations or binding indications of how much we will charge. Estimates are normally valid for a period of 14 days from the date they are given.
- (b) As we provide an estimate we may need to charge you a higher amount than stated in the estimate. This can occur for a number of reasons, in particular where:
  - (i) the size of the area of the Premises that you require us to perform the Services on is larger than we anticipate based on the information you provide us;
  - (ii) what you require us to do changes, or the amount of work or Services you require us to provide increases or is different to what we and you agreed before we started performing the Services and as stated in the estimate; or
  - (iii) when we start performing the Services it becomes apparent that the amount of Services we will need to perform or the type of work that is involved is different to what we agreed before we started performing the Services.
- (c) Where the amount of work involved is greater than that stated in an estimate then following will happen:

#### 7.3 When payment is required

Payment for our Services is required to be made as follows:

- (a) at the completion of performing the Services for Domestic Customers, as stated by the technician performing the Services; or
- (b) as selected in Item 3 (Payment Terms) of the Agreement for Pest Management Services Form for Commercial Customers.

#### 7.4 If you do not pay when required to

If you fail to make payment by the date or time (**Late Payment**) you and us agree that we may charge you interest of 10% on any outstanding amounts and if those outstanding amounts remain unpaid for more than 30 days from the date of our invoice or when we asked you first to pay them. We will also charge you an additional processing and handling fee of \$15 for the Late Payment.

#### 7.5 Where you seek to not pay amounts due to us

You will not refuse to pay any amount owing to us where there is only a minor or inconsequential defect or error in the performance of the Services. You will be entitled only to refuse to pay no more than a proportionate amount of any amount due.

### 8 Administrative fees for mailing

We will charge Customers who wish to have their invoices and/or service report sent by post an administration and processing fee of \$5.50 (including



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- GST) which will be included on the Customer's Tax Invoice.
- 9 Photographs**
- You acknowledge and agree that we may take photographs in, on or around the Premises and that we own the copyright in all images taken in accordance with this contract. We reserve the right to, and you agree that we may, use any images taken for advertising, display, publication, for profit, social media and/or all other purposes with unrestricted use in any country.
- 10 Exclusion and limitation of liability**
- (a) We do not exclude or limit liability for our negligence or negligent omission which causes personal injury or death.
- (b) We will only be liable for any loss or damage suffered by you which is a reasonably foreseeable consequence of a breach by us of this contract.
- (c) If any loss or damage suffered by you relates to your business activities or use of the Premises for commercial purposes, then we exclude all liability for any business loss and in particular we exclude all liability for loss of profits or other economic loss arising out of a breach of this contract.
- (d) No responsibility is accepted, or warranty implied, for any damages or consequential losses that may occur as the result of past, current or future pest activity.
- (e) We will not be held liable should staining of timbers, fabrics, wall and coverings, or any other articles occur
- (f) We do not guarantee the eradication of future pest activity after we have completed our treatment.
- 11 Communicating with us**
- (a) If you wish to send us any notice or letter then it needs to be sent to the address provided on the Agreement for Pest management Services Form.
- (b) If we wish to send you a letter or notice we will use the address you have given in the contact information section of the Agreement for Pest Management Services.
- 12 Termination of contract by you**
- (a) Once we and you enter into a binding contract you will normally not be able to terminate the contract, except where we agree or as otherwise provided for in this contract.
- (b) If we agree to terminate the contract then you will be responsible for the cost of:
- (i) any of our time in performing the Services up to the date we stop providing the Services; and
  - (ii) any Products we are contractually committed to buying up to the date of termination (whether or not we need to pay for them before or after the date the contract between us and you is terminated). Any Products we have purchased (but not used in performing the Services) will be delivered to you; and
  - (iii) if you are a Commercial Customer, the balance of the charge estimate recorded on the Agreement for Pest Management Services Form, or, if you are a Domestic Customer, the Termination Fee.
- (c) If you:
- (i) purport to terminate the contract; or
  - (ii) give notice purporting to terminate the contract; or
  - (iii) otherwise do not fulfil your obligations (such as by not paying any sums due to be paid to us) in a way which amounts to you terminating the contract,
- we do not have to accept your termination of the contract except as provided in paragraph (b) or as otherwise provided for in this contract. However, we may choose to accept termination of the contract, and if we choose to do so you will be required to pay to us a reasonable amount for the losses and costs (including loss of profit) we have suffered. If you have paid a deposit, this will be retained and if our reasonable losses and costs (including loss of profit) are greater than the deposit we have retained we will require you to pay for our losses and costs in excess of the deposit retained.
- 13 Amendments to the contract terms and conditions**
- We will have the right to amend the terms and conditions of this contract where:
- (a) we need to do so in order to comply with changes in the law or for regulatory reasons; or
  - (b) we need to correct any errors or omissions (and this right includes the right to change any of the documentation which forms part of the contract), as long such correction is minor and does not materially affect the contract.
  - (c) we need to correct any errors or omissions (and this right includes the right to change any of the documentation which forms part of the contract), as long such correction is minor and does not materially affect the contract.



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Where we are making any amendment we will give you 30 days' prior notice (unless the contract is terminated before that period).

### **14 Law and jurisdiction**

This contract takes effect, is governed by, and is construed in accordance with the laws from time to time in force in Tasmania, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Tasmania.

### **15 Severability**

If any provision of this contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this contract and rendered ineffective as far as possible without modifying the remaining provisions of this contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this contract.

### **16 Copyright**

We own the copyright in this document. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of Scorpion Pest Management Pty Ltd of PO Box 123 Glenorchy TAS 7010.