

# Timeless Homes, for Timeless Architecture, Timely Construction

THT-Design-Agreement.dot

## DESIGN AND/OR PROJECT MANAGEMENT AGREEMENT

This agreement gives Timeless Homes Limited permission to carry out Design and/or Project Management work for our clients. We use the same stages as many other Architectural Designers. Unlike most designers, who charge a percentage based fee, or charge by the hour, we provide you with a clear fixed price for each of these stages. For other services for which we cannot provide a fixed price, we indicate in this agreement how we will charge for those services. The stages above the line are the more commonly selected stages.

Client Family Name(s): (Or Company Director / Trustee(s) Family Name(s))	Phone: (h)	
	Phone: (w)	
Client First Name(s): (Or Company Director / Trustee(s) First Name(s))	Mobile(s):	
	Fax:	
Company or Trust name (if applicable):	e-mail(s):	
Postal Address:	Post code:	
Project Description:		
Project Address:		
Lot Number:	DP Number:	
Survey District:		
Certificate of Title:		
Minimum Project Value:	\$	Excl. GST. Minimum Building Contract Value for budgeting purposes.

Documentation Fees are charged at the substantial completion of each of Seven (7) stages. This Agreement does not require the client to agree to all seven stages. One or more may be selected. Each stage is selected by placing a tick in the tick-box provided and initialing next to that tick. A detailed description of each stage follow on page 2. (Some costs do not form part of the fixed price.) When we build for you, Stage 4 is provided free of charge and stages 5-7 are included in the Construction Contract Price.

### I/WE AUTHORISE AND APPOINT THL TO CARRY OUT THE FOLLOWING WORK:

(Stages 1, 2 and 3 if quote required. Add Stage 4 for Permit Plans)				<input checked="" type="checkbox"/>	Tick the Stage you require and initial below.
Fixed Fee for Stage 1	\$		Excl. GST.	<input type="checkbox"/>	Compulsory for Alterations Projects. Initial here, if selected.
Fixed Fee for Stage 2	\$		Excl. GST.	<input type="checkbox"/>	Compulsory for Design-Only Clients. Initial here, if selected.
Fixed Fee for Stage 3	\$		Excl. GST.	<input type="checkbox"/>	Compulsory for Design-Only Clients. Initial here, if selected.
Fixed Fee for Stage 4	\$		Excl. GST.	<input type="checkbox"/>	Compulsory for Design-Only Clients. Initial here, if selected.
Fixed Fee for Stage 5	\$		Excl. GST.	<input type="checkbox"/>	Initial here, if selected.
Fixed Fee for Stage 6	\$		Excl. GST.	<input type="checkbox"/>	Initial here, if selected.
Fixed Fee for Stage 7	\$		Excl. GST.	<input type="checkbox"/>	Initial here, if selected.
Engineer's Report	\$	Engineers Report Fee is calculated in accordance with 1.10.1 on page 2.		<input type="checkbox"/>	Initial here, if selected.

Please discuss the purpose of the different stages with a staff member.



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 FREE PHONE 0508 TIMELESS (0508-846353)  
**Timeless Homes Limited**  
 Street Address: 142 Main Street, Greytown  
 Postal Address: PO Box 2058, Kuripuni, Masterton, 5842



**1 Definitions:**

- 1.1 **Client:** Means the person described as such in the Parties Contact Details section of this agreement.
- 1.2 **Designer:** Means Timeless Homes Limited, described as such in the Parties Contract Details section of this agreement.
- 1.3 **THL:** Timeless Homes Limited, trading as 'Timeless Homes, For Timeless Design and Timely Construction'
- 1.4 **Fixed Fee:** Means the fees specified for the various parts of the work on page 1.
- 1.5 **Documentation:** Means the plans, other drawings and specifications and other services relating to the design of the works.
- 1.6 **Works:** Means the building or structure to be built from the documentation.
- 1.7 **Payment Claim:** A construction payment claim submitted by the Builder following completion or substantial completion of a part or stage of the Works.
- 1.8 **Builder:** The person or firm constructing the Works.
- 1.9 **Delivery Date:** The date upon which each stage has been completed.
- 1.10 **Stages:** Means the stages of work which can be selected in terms of this agreement. Clients usually select stages 1, 2 and 3, initially. Stage 4 may be selected initially, or added later. Stages 5-7 are not usually selected by a client who would like to employ THL to quote for the construction of a building as those stages will form part of a construction agreement, once a quote has been approved. The Stages are:
- 1.10.1 **Stage 1: Design Brief, Pre-Design** (2-10% of total fee base.) This is the first stage where clients brief the designer as to their requirements. For Alterations and Additions projects, this stage includes As-Built Plans. Rough sketches may be included in this stage. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.1.1 Site and/or Existing Building Survey and measuring. Charged at cost + 15% (for outside contractors) and/or \$100.00 excluding GST per hour for THL staff.
- 1.10.1.2 Engineering Services design and consultancy for site soil conditions, effluent disposal conditions and services location. Charged at cost + 15% (for outside contractors) and/or \$100.00 excluding GST per hour for THL staff.
- 1.10.1.3 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser. Photocopies charged at \$0.05 per copy excluding GST. All other disbursements charged at cost.
- 1.10.2 **Stage 2: Preliminary Design** (4-18% of total fee base) This is the second stage where clients continue to brief the designer as to their requirements. The Designer interprets the brief and produces a Preliminary Design. Drawings typically include a Preliminary Site Plan and/or Part Site Plan, a Preliminary Floor Layout Plan, Preliminary Elevations and/or Sections. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.2.1 Engineering Services design and consultancy for site soil conditions, effluent disposal conditions and services location, if not carried out as part of Stage 1. Engineering Structural Design (Preliminary) Charged at cost + 15% (for outside contractors) and/or \$100.00 excluding GST per hour for THL staff.
- 1.10.2.2 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser. Photocopies charged at \$0.05 per copy excluding GST. All other disbursements charged at cost.
- 1.10.3 **Stage 3: Developed Design** (5-20% of total fee base) This is the third stage where the Designer adds more information to the drawings, once the Preliminary Design has been approved by the Client. The designer adds drawings and a written specification document. Drawings typically include a Developed Site Plan and/or Part Site Plan, a Developed Floor Layout Plan, Developed Elevations and Cross-Sections. The designer will also produce door- and window schedule sheets, a roof plan and/or foundation plan. At the conclusion of this stage the Designer will have enough information for the firm to provide a free quotation to carry out the works. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.3.1 Engineering Services design and consultancy for site soil conditions, effluent disposal conditions and services location, if not carried out as part of Stage 1 or Stage 2. Engineering Structural Design Charged at cost + 15% (for outside contractors) and/or \$100.00 excluding GST per hour for THL staff.
- 1.10.3.2 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser. Photocopies charged at \$0.05 per copy excluding GST. All other disbursements charged at cost.
- 1.10.4 **Stage 4: Building Permit Application Documentation** (30-50% of total fee base) This stage is not required to obtain a construction quotation. This stage may form part of a Construction Quotation or may be selected separately by clients who wish to obtain building permit approval prior to the costing process being completed or clients who only wish to purchase their documentation from THL and build with another builder. The Designer adds more information to the drawings, adds drawings and details and produces a more detailed specification document. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.4.1 Engineering Structural Design Charged if not carried out or completed as part of Stage 3. Charged at cost + 15% (for outside contractors) and/or \$100.00 excluding GST per hour for THL staff.
- 1.10.4.2 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser. Photocopies charged at \$0.05 per copy excluding GST. All other disbursements charged at cost.
- 1.10.5 **Stage 5: Detailed Design and Documentation** (1-10% of total fee base) This stage is not required to obtain a construction quotation. This stage may form part of a Construction Quotation or may be selected separately by clients who only wish to purchase their documentation from THL and build with another builder. The Designer produces, after consultation with the client, Kitchen and Bathroom layout drawings, Tiling layout drawings and other detail design features. This stage also includes 'As-Built' drawings. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.5.1 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser. Photocopies charged at \$0.05 per copy excluding GST. All other disbursements charged at cost.
- 1.10.6 **Stage 6: Administration of Contract Works** (5-15% of total fee base) Administration of the Contract Works is the work carried out if another builder builds the Works. This is the service where the Designer carries out the administration of and issue of Payment Claims issued by the Builder. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.6.1 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser.
- 1.10.7 **Stage 7: Observation of Contract Works** (5-15% of total fee base) Administration of the Contract Works is the work carried out if another builder builds the Works. This is the service where the Designer carries out the periodic observation of the Works to see that the Builder is following the Documentation. Additional to the fixed fee charged, the client can expect the following disbursements:
- 1.10.7.1 Disbursements: Travel charged at \$1.00 / km excluding GST + travel time at \$100.00 excluding GST per hour or \$3.00 / km excluding GST for travel including travel time, whichever the lesser.
- 1.11 Reference to the singular includes reference to the plural and vice versa.
- 1.12 Reference to a party means a party to this agreement and includes the successors, executors, of that party.

- 1.13 References to clauses and schedules and attachments are to clauses in, and the schedules and attachments to, this agreement (as the context may require).
- 1.14 This agreement is not a construction agreement and not subject to the Construction Contracts Act 2002.
- 1.15 Except as provided at law or elsewhere in this agreement, nothing in this agreement can be varied, waived, discharged or released, except with the Designer's prior written consent.
- 2 Engagement:**
- 2.1 The Client wishes to engage the services of the Designer to provide the Documentation.
- 2.2 The Designer agrees to provide the Documentation on the terms and conditions set out in this agreement.
- 2.3 The agreement records the entire agreement between the parties relating to the Documentation, subject only to any agreed written variations between the parties.
- 3 Term:**
- 3.1 The term of this agreement shall commence on the date that it is signed by the Client and shall, unless terminated earlier in accordance with clauses of this agreement, expire upon the Delivery Date.
- 4 Use of Documentation:**
- 4.1 All intellectual property rights, including, without limitation, the copyright in the Plans & Specifications and all material arising out of the Deliverables, remain the property of the Designer.
- 4.2 The Designer grants a licence to the Client to use the Documentation for the purpose of having the Works constructed and to make such copies of the copyright Documentation as are necessary for such construction but for no other purpose.
- 4.3 The Client shall not be permitted to use any of the Documentation for any further activities.
- 4.4 The Client acknowledges all of the Designer's moral rights in the Documentation and any reference to the Documentation by the Client in future shall be accompanied by a full attribution of those rights to the Designer.
- 5 Consultants and Contractors:**
- 5.1 Where the Designer has engaged the services of a Secondary Consultant, the Designer shall be responsible for all acts of the Secondary Consultant or Contractor.
- 5.2 Where the Client has engaged the services of a Secondary Consultant, the Client shall be responsible for all acts of the Secondary Consultant or Contractor.
- 6 Designers Warranties:**
- 6.1 The Designer warrants that, at the Delivery Date the Plans and Specifications will be the unencumbered property of the Designer.
- 6.2 The Designer warrants that, at the Delivery Date the Designer will have full capacity to grant to the Client the rights to use of the Plans and Specifications.
- 7 Payment claims in terms of this agreement:**
- 7.1 The Fees payable shall be the fees stipulated as per the descriptions of the selected Stages.
- 7.2 Where each of the Stages has been completed or substantially completed, the Designer shall deliver to the Client a written progress payment claim for the relevant amount shown in the Progress Payment Schedule or for any amended amount.
- 7.3 On receipt of a progress payment claim pursuant to clause 7.2, the Client shall within five working days pay the Designer the relevant specified Progress Payment.
- 7.4 All payments made by the Client to the Designer pursuant to this agreement shall be made without set off or deduction.
- 7.5 Without prejudice to any other rights and remedies which the Designer may possess, if the Client fails to make any payment of any monies owing pursuant to this agreement within 7 working days of such payment being due, then the Designer may, without notice to the Client, suspend the supply of the Documentation.
- 7.6 If the supply of the Documentation is suspended as a result of clause 7.5, and regardless of whether the Client reinstates the supply of the Documentation by paying the monies due, the Designer shall not be held responsible for any delay in completing the Documentation.
- 7.7 When a Stage of the work has been completed and approved, and changes are instructed by the client after that approval, then changes requested by the client to the drawings and documentation produced by THL can incur additional fees. Additional fees will be charged at \$100.00 per hour + disbursements at cost + 15% margin, excluding GST.
- 8 Interest on late payments:** THL may charge interest on any due but unpaid monies at 2.5% per month interest rate, default and compounded, up to the time that the unpaid monies and all interest are paid in full. The client agrees to pay for all costs incurred in debt recovery including but not limited to; THL's time (\$100.00 excluding GST per hour.) spent involved in debt recovery, all debt collection agency commissions and debt collection agency fees, all legal fees and all late payment penalties. These costs can be invoiced at any stage during or after the debt recovery process.
- 9 Designers Liability:** Except as otherwise prescribed by law, the liability of the Designer to the Client in respect of the Documentation shall be limited to the value of the selected Stage (exclusive of G.S.T). In the unlikely event that THL commits an error in discharging its obligations under this contract, thereby breaching its contractual obligations to you, or acting negligently, and you suffer any sort of loss as a result, then THL will either carry out the necessary remedial work to the building or pay the reasonable costs of that work being carried out. Under no circumstances will THL be liable for any consequential losses or general damages such as damages for hurt, humiliation, stress or loss of enjoyment of life.
- 10 Errors in work to be corrected:** If the client believes THL has produced incorrect work, before having the work rectified elsewhere, THL must first be notified of the error and requested in writing to make good the error. THL will make good errors within a reasonable timeframe.
- 11 Termination:** Upon termination of this agreement for whatever reason:
- 11.1 Such termination shall be without prejudice to the rights and remedies of either party in respect of, and shall not be deemed a waiver of, any antecedent breach of this agreement by the other party;
- 11.2 The licence granted under Clause 4.2 and/or 4.3 shall be deemed to be cancelled,
- 11.3 The Client shall promptly return to the Designer all licensed materials including the Documentation (and all copies of the Documentation) received under this agreement.
- 11.4 The Designer shall invoice the Client for any materials, software or documents not returned at the replacement cost of those materials.
- 11.5 The Designer shall invoice the Client for any part of the work undertaken but not completed at a rate of \$100.00 excluding GST per hour for all hours booked to the Client's project.
- 12 Assignment:** Neither party shall assign any of the rights, entitlements or benefits under this agreement without obtaining the prior written consent of the other party. Such consent shall not be unreasonably withheld in the case of a solvent responsible assignee.
- 13 Variations:**
- 13.1 If a variation to the Documentation is requested by the Client to the Designer, then the Designer shall use its reasonable endeavours to issue a variation order detailing the changes to the Documentation and the resulting debit or credit adjustment to be made to the Design Contract Price.
- 13.2 The Client shall then have 5 working days to accept the variation order by written notice to the Designer.
- 14 Force Majeure:**
- 14.1 Neither party shall be liable for any act, omission or failure under this agreement if that act, omission or failure arises directly from an event beyond the reasonable control of the party concerned, provided that:

- 14.1.1 The party claiming protection of this clause shall, as soon as possible after becoming aware of such event or the likelihood of such event, give the other party written notice accordingly. Such notice shall describe the event and include the expected effect or duration of that event.
- 14.1.2 Each party shall continue to use all reasonable endeavours to perform its obligations as required under this agreement despite that event.
- 14.1.3 In any such event, neither party shall be deemed to have accepted any extra costs, which may be incurred or sustained by the other party through a delay resulting from that event.
- 14.1.4 If the event is of such magnitude or will be of such duration that it is either impractical or unreasonable, for a period of 60 working days or longer for the party claiming protection under this clause to comply with its obligations under this agreement, the other party may terminate this agreement by giving 10 working days notice.
- 15 Estimates:** THL will not give estimates on a proposed construction or the cost of producing work requested in this agreement. If an estimate is asked for, a likely cost, within 20% will be given without prejudice, i.e.: THL will not be responsible or liable in any way where documentation and drawings have to be altered or re-drawn when a written quoted price by THL or others exceeds the initial verbal or written estimate. THL's designs are created from the verbal and written instructions provided by the Client. THL cannot be held liable when a budgetary figure is supplied and design or other instructions by the Client result in a quotation of higher value than the original budget indicated. When the client instructs THL to make changes to the documentation and drawings, the client agrees that those instructed changes may alter the cost of the project and the client agrees that THL may issue a variation in the Documentation Stage price. Changes will not be made without a client's verbal or written instruction.
- 16 Supply for Business Purposes:** The Client acknowledges that where the Documentation is purchased for business purposes, the Consumer Guarantees Act 1993 shall not apply.
- 17 Good Faith:** The parties shall act in good faith towards each other in respect of all dealings or matters under, or in connection with, this agreement.
- 18 Dispute Resolution:**
- 18.1 The parties agree to use all reasonable efforts to resolve any dispute which may arise under this agreement through good faith negotiations.
- 18.2 Any dispute arising under this Agreement which cannot be settled by negotiation between the parties, including any dispute as to its interpretation, or any dispute as to the recoverability of moneys pursuant to it, shall be dealt with in accordance with this clause as follows:
- 18.2.1 Either party shall be entitled to initiate a dispute by giving the other party written notice of the same. A dispute need not be initiated in any particular form, but must inform the other party of the matter or matters in issue.
- 18.2.2 In the event of either party initiating a dispute under Clause 6, the parties shall use their best endeavours to resolve the same by direct negotiation over the five working days following the giving of notice. In doing so, they may elect to involve legal or other advisers, and may by agreement in writing seek the assistance of a mediator. By agreement in writing the parties may extend the five day period referred to in this sub-clause.
- 18.2.3 If the dispute remains unresolved after the expiry of five working days, or such extended period as the parties may agree, then both parties shall be free to pursue their legal remedies including:
- 18.2.3.1 The commencement of a claim in the Disputes Tribunal;
- 18.2.3.2 The commencement of proceedings in the Courts;
- 18.2.3.3 The initiation of a dispute pursuant to the provisions of the Construction Contracts Act 2002;
- 18.2.3.4 Subject to the following:
- 18.2.3.4.1 Where the dispute is a claim by Timeless Homes Limited for a liquidated amount, the parties hereby agree that recovery may be sought of any such claim up to an amount of \$20,000 in the Disputes Tribunal;
- 18.2.3.4.2 Any claim in the Disputes Tribunal shall be commenced in the Disputes Tribunal at Masterton;
- 18.2.3.4.3 Proceedings in the District Court shall be commenced in the District Court at Masterton;
- 18.2.3.4.4 Proceedings in the High Court shall be commenced in the High Court at Wellington.
- 18.3 The parties shall continue to perform their obligations under the agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to adjudication.
- 19 Governing Law:** This Agreement shall be deemed to be a contract made in New Zealand and its construction validity and performance shall be governed by New Zealand law (but expressly excluding the United Nations Convention on Contracts for the International Sales of Goods – Vienna, 1980)
- 20 Privacy Act 1993:** Pursuant to the PRIVACY ACT 1993 the following is brought to your attention:
- 20.1 This Contract collects personal information about you;
- 20.2 This information is collected to administer the plans & specifications;
- 20.3 The intended recipient(s) of the information is THL, our consultants, subcontractors and suppliers, the Local Authority to which your Documentation may be submitted and other related parties.
- 20.4 The information is being collected and held by THL, 142 Main Street, Greytown;
- 20.5 You have the rights of access to, and correction of, this information in terms of the provisions of the Privacy Act.

#### DECLARATION:

A staff member from Timeless Homes Limited has explained the agreement to me/us and have offered me/us the opportunity to obtain independent advice prior to signing this contract.

Client / Trustee / Director, Print name:	Client, Signature:
Client / Trustee / Director, Print name:	Client, Signature:
Client / Trustee / Director, Print name:	Client, Signature:
Date:	
Timeless Homes Limited, Print name:	For Timeless Homes Limited, Signature:

Agreement revised 7 December 2010

Initial here