

Engineering Services Agreement Instructions

Please stop and read this before filling out the Engineering Services Agreement.



The Engineering Services Agreement should be filled out and returned immediately, as we need it before scheduling an appointment. The Engineering Services Agreement must be neatly and completely filled out. Beginning on the first page, the specific steps you should follow are:

- On the first line, fill in today's date after the word *DATE*.
- On the second line, enter the name of the purchaser(s) after the word *and*.
- At the beginning of the fifth line, fill in the address to be examined.
- At the end of the fifth line, fill in the fee you were quoted after \$.
- On the seventh line, sign your name after the **X**.
- On the eighth line, print your name and address after the words *(please print)*.
- On the ninth line, initial after the **X** if you are authorizing discussion with the real estate sales person.
- At the bottom of the page, initial after the **X**.
- At the bottom of the second page, initial after the **X**.
- Payment is required at the time services are rendered. If you want the Engineering Services billed to your credit card, complete the following or visit epay.heimer.com.

Credit Card: American Express Master Card Visa Discover

Name on Credit Card _____ Security Code _____

Credit Card Billing Address _____

Credit Card Number _____ Expiration Date _____

Signature _____

- Set your fax machine resolution to fine, and fax this page and both pages of the Agreement to **631.858.5599**. There is no need to include a cover page. Alternatively, you can scan the signed agreement and email it to orders@heimer.com.
- If you have not confirmed the appointment, you must still call and confirm. Sending a signed agreement is **not** a confirmation of an otherwise unconfirmed appointment.

If you have any questions, call 800.605.1500.



2171 JERICHO TURNPIKE, SUITE 230, COMMACK, NY 11725
TOLL FREE: 800-605-1500 • FAX: 631-858-5599

WEB: www.heimer.com • EMAIL: info@heimer.com

ENGINEERS • CONSULTANTS • BUILDING INSPECTORS
LICENSED BY NEW YORK, NEW JERSEY, AND CONNECTICUT

- BRONX • 718-547-2000
- NASSAU • 516-487-2100
- QUEENS • 718-544-3000
- BROOKLYN • 718-237-7777
- MANHATTAN • 212-563-4777
- STATEN ISLAND • 718-227-5000
- WESTCHESTER • 914-576-6100
- SUFFOLK (EAST) • 631-288-3900
- SUFFOLK (WEST) • 631-858-5500
- PUTNAM, ROCKLAND • 845-638-4900

CONTRACT FOR PRE-PURCHASE INSPECTION OF BUILDING

(Copyright © 1995-2010 Heimer Engineering, P.C. All rights reserved)

This contract (hereinafter CONTRACT) dated (DATE): _____ is between HEIMER ENGINEERING, P.C. (hereinafter ENGINEER) and _____ (hereinafter CLIENT) for engineering services consisting of a pre-purchase building (hereinafter BUILDING) inspection (hereinafter INSPECTION) on DATE and a summary report (hereinafter identified as REPORT) regarding the immediately discoverable aspects of the building at:

_____ for a total fee of \$ _____
(hereinafter mutually identified as address of BUILDING, site, and exterior improvements to site) (hereinafter TOTAL FEE)

Signed as CLIENT, or agent for CLIENT: X _____ for ENGINEER: _____
Signer's Name and Address (please print): _____

X Initial only if ENGINEER is authorized to discuss INSPECTION with any real estate sales person present at INSPECTION or who may call ENGINEER after INSPECTION.

INSPECTION is subject to the following terms and conditions: IT IS MUTUALLY UNDERSTOOD AND AGREED THAT:

1. THIS CONTRACT sets forth the entire understanding between ENGINEER and CLIENT relating to the subject matter contained in it and merges all prior discussions and agreements, if any, between them as to that subject matter.
2. ENGINEER in entering into this CONTRACT and by performing service hereunder does not assume, abridge, abrogate, or undertake to discharge any duty or responsibility of CLIENT to any other party or parties. No party or entity other than CLIENT shall have any right to rely on REPORT or other representation or conduct of ENGINEER or agents thereof, and ENGINEER disclaims any obligations of any nature whatsoever with respect to such parties or entities.
3. REPORT represents the opinion of ENGINEER at the time of issuance of REPORT and is furnished to help CLIENT understand reported engineering aspects of the BUILDING. CLIENT does not and will not seek indemnity by this CONTRACT from ENGINEER against any losses or damages except to the extent provided herein.
4. INSPECTION and REPORT apply only to safely accessible and observable areas at BUILDING and to conditions only at time of INSPECTION. INSPECTION is herein agreed not to be a substitute for a seller's disclosure statement. Nothing in REPORT shall be deemed to imply, impute, suggest, or mean anything beyond what is specifically stated therein.
5. Prior to the signing of this CONTRACT, there has been no agreement between ENGINEER and CLIENT except that ENGINEER agreed to arrive at BUILDING for purposes of finalizing CONTRACT and presenting CONTRACT to CLIENT for signature, and, subsequent services if, and only if, CONTRACT is signed. REPORT is for the exclusive use of CLIENT, and REPORT is not to be used by anyone other than CLIENT, even on behalf of CLIENT, under any circumstances for any purpose whatsoever including, but not limited to, use in advertising to the general public or in any publicity material or in any other manner without prior written approval of ENGINEER. CLIENT agrees to hold ENGINEER harmless and to protect, defend and indemnify ENGINEER, its subsidiaries and affiliates and its and their officers, directors, shareholders and agents against any claim, loss, expense, liability or damage, including reasonable attorney's fees arising out of any violation by CLIENT of the terms and conditions hereof.
6. The determination of utility company violations is beyond the scope of INSPECTION. The appropriate utility company should be called by CLIENT (if so desired) for a survey. Unless otherwise specifically stated, REPORT is not to be construed as a guarantee or warranty or implication that BUILDING meets local building, plumbing, structural, electrical and zoning codes or ordinances. CLIENT should request that the seller have the BUILDING inspected by a local building inspector and any outstanding violations cited.
7. CLIENT acknowledges that this CONTRACT was available to CLIENT by computer from the COMPANY'S web site prior to its execution by CLIENT. In the event of any litigation regarding any aspect of INSPECTION, the liability of ENGINEER, their agents, employees, subcontractors, and stockholders (personally), is strictly limited to TOTAL FEE regardless of perceived or actual errors, omissions, negligence, oral representations, breach of contract (implied, oral or otherwise), malpractice, and delay by either ENGINEER, their agents, subcontractors, employees or stockholders (personally), when these result in personal, financial or medical injury or damage to any person or persons who are (and/or may become) parties interested in (or are otherwise affected by) the contents of REPORT and/or BUILDING, its site, and/or site improvements. It is understood and agreed that TOTAL FEE is the maximum liability of ENGINEER in any event and that TOTAL FEE is based on this level of liability. CLIENT is hereby notified that this limit of liability is the industry standard in pre-purchase inspections. It is agreed that no litigation may be commenced by CLIENT against ENGINEER more than one (1) year after DATE.
8. If a level of liability higher than TOTAL FEE is required by CLIENT, CLIENT is hereby offered option to decline all services of ENGINEER and refuse CONTRACT by leaving it unsigned or CLIENT can so notify ENGINEER via certified mail, return receipt requested, postmarked no later than three days after INSPECTION, but prior to ENGINEER emailing REPORT to CLIENT. If ENGINEER is so notified and all copies of all reports are returned to ENGINEER, and CLIENT provides a copy of a signed *Contract to Purchase BUILDING* to ENGINEER and CLIENT executes a full release, then the fee will (if paid) be returned to CLIENT, less the expense for any extra services beyond INSPECTION that CLIENT requested. It is further understood that agreement in writing and additional fees are required by ENGINEER (in addition to obtaining permission and indemnity from owner of premises for certain tests and inspections) if additional liability is contracted.
9. Should CLIENT, or any buyer or entity disclaim authority of CONTRACT signer to act as agent of CLIENT or any or all buyers, then the signer of CONTRACT herein indemnifies ENGINEER for all costs, damages, judgments, and expenses incurred by ENGINEER, including attorney's fees and claims that would normally be prohibited pursuant to this agreement, regarding any claims against ENGINEER made by CLIENT or any buyer or entity that relies on REPORT or other representation or conduct of ENGINEER or agents thereof, including the costs, expenses and attorney's fees incurred to enforce this clause. CLIENT shall indemnify, defend, and hold harmless ENGINEER against any and all third party claims arising out of, or in any way related to, performance of ENGINEER, INSPECTION, or REPORT including any judgments and attorney's fees incurred by ENGINEER to defend against such claims.
10. INSPECTION is principally of the functions of the elements and/or components of the BUILDING and not the cosmetic appearance, which should be readily observable by CLIENT. ENGINEER's statements of condition (such as "acceptable", "poor", etc.) are understood to mean the condition only as that condition relates to immediate function.
11. The underlying soil is inaccessible. Any problem with characteristics of, or presence of, underground drainage, pipes, oil tanks, drywells, the underground soil itself, cesspools, wells, wires, footings, piles, foundations, window wells, and lines, etc. are undiscoverable and unknowable during the course of INSPECTION. Because of this, CLIENT assumes risks such as settlement in the years to come if the soil underlying BUILDING is, or becomes, unstable. Similarly, the interiors of the walls, ceilings, and floors are inaccessible. Thus, the condition of pipes, wires, insulation, structural members, interiors of equipment and fixtures, interiors of electrical boxes, etc. therein are also unknowable and undiscoverable, and, CLIENT takes risks regarding these areas as well.
12. If conditions are stable and there is no outward indication of structural failure in the accessible and observable areas other than that which may have already been mentioned in REPORT, then CLIENT is hereby notified that sometimes pipes under the ground open causing structural underlying soil weakness to occur even after buildings have a long history of soundness. Also, sometimes underground concrete footings and foundations decompose due to soil conditions caused by acid rain or dissolved salts. Thus, CLIENT takes a risk in these regards and in regard to possible problems with any underground pipes, concrete, drainage, oil tanks, drywells, etc.

X _____ CLIENT'S INITIALS
_____ ENGINEER'S INITIALS

ENGINEER COPY — WHITE
Revised: 1/4/2010

CLIENT COPY — YELLOW

CONTINUED ON REVERSE SIDE

13. INSPECTION and REPORT specifically relate to BUILDING and do not include outbuildings, other exterior additions, the grounds, trees and shrubs, grass, structures, or appurtenances, except as agreed or provided by ENGINEER in this CONTRACT.
14. INSPECTION is a one-inspector, walk-through visual inspection using normal layperson controls in BUILDING (such as wall switches, faucets, thermostats, etc.). That is to say, INSPECTION does not include use of technician or mechanic's controls such as circuit breakers, furnace aquastats, etc.; INSPECTION does not include climbing on ladders; it does not include crawling or walking across attics without flooring; it does not include crawling in spaces where the head room is less than four feet. ENGINEER specifically does not bring ladders during INSPECTION for purposes of close examination or testing of roofs, upper siding, or ceiling mounted (or upper wall mounted) smoke detectors. ENGINEER specifically does not go onto pitched roofs. These places are inaccessible to ENGINEER. The walk-through visual INSPECTION does not include determination of the efficiency of appliances and/or equipment, the efficiency of heating and ventilating systems, the adequacy of the air conditioning (if any), the operating characteristics of any units based on serial or model numbers, or checking for hidden drafts through hidden openings. In addition, low voltage and communication wiring in BUILDING is not checked during INSPECTION. This includes, but is not limited to, wiring, switches, controls, jacks, and appurtenance associated with telephone wiring, signal wiring, stereo wiring, computer wiring, alarm wiring, intercom wiring, and TV wiring.
15. The properties of the atmosphere in and around BUILDING are not checked chemically or otherwise (except for odor) as part of INSPECTION. Impurities, gas content, carbon monoxide and/or other noxious gases, moisture content, mold, mildew, radon and other radioactive elements, suspended particles, carcinogens, unhealthy characteristics, or other environmental characteristics are not checked. ENGINEER recommends calling the Environmental Protection Agency if CLIENT has any questions in this regard.
16. INSPECTION is specifically of BUILDING viewing BUILDING from positions exclusively on the subject property or nearby public roads. INSPECTION does not include examination of existing, past, or potential problems relating to community drainage characteristics, community sewer and local water supply problems (chemical or otherwise), flood plain area characteristics, acid rain problems, soil salt problems, community environmental problems, property history, proposed roads, impending legislation, or past or ongoing legislation.
17. ENGINEER does walk on flat roofs when access is provided by means of either an interior or exterior staircase, door, or roof hatch under which a permanently mounted ladder is located. Should CLIENT want an examination of the shingles on a pitched or inaccessible roof or sheathing, then ENGINEER recommends a professional roofer in this regard.
18. ENGINEER does enter attics when the attics are fully floored and the headroom is more than four feet. However, if there is no flooring in the attic, then ENGINEER will inspect it visually from the point of access if access is no higher than eight feet above the top floor (and assuming that climbing is not required). Inspection of the subterranean crawl spaces is conducted in the same manner (presuming the head room is more than four feet and access is possible without climbing).
19. Although BUILDING, components, or equipment may be in good condition at the time of INSPECTION, that condition may change thereafter. REPORT is not to be construed as a guarantee or warranty or policy of insurance regarding BUILDING, or of its fitness for alteration, decoration, rehabilitation or refurbishment, restoration, renovation, remodeling, or revision; or adequacy of lighting, soundproofing or insulation; or fitness during flood, windstorm, fire, high tide, earthquakes, hurricane, ice, and rainstorm; or subsurface environmental contamination; or level and degree of obsolescence (functional or otherwise).
20. REPORT (including the Wood Destroying Insect Infestation Inspection Report) encompasses the entire results of INSPECTION and specifically does not include expenses of fuel, upkeep, and maintenance. CLIENT will not form conclusions regarding BUILDING or aspects thereof which are not stated in REPORT except at CLIENT's own risk. If CLIENT wants ENGINEER'S REPORT in a format different than ENGINEER'S customary format, the time to change REPORT is billable at \$235 per hour, with a two-hour minimum. If REPORT is transmitted to CLIENT over the Internet, ENGINEER assumes no liability if CLIENT is unable to download or read the electronic version of REPORT.
21. ENGINEER recommends that CLIENT have BUILDING reinspected one or two days prior to Closing to determine if there have been any changes between the time of INSPECTION and the time of the Closing, and that all the requirements stipulated in the contract (between the buyer and seller) have been met. Hopefully, this can be done after the existing furnishings are removed so that BUILDING can be inspected in areas which may have been inaccessible and unobservable at INSPECTION. Note that this is important also since it usually allows observation of equipment and components in BUILDING during a different season. For example, steam radiators are better checked after they have been on for weeks during the winter rather than for the few minutes of inspection during moderate weather. On the other hand, frozen rotted deck woodwork often feels sturdy during the winter and the deck would be judged as sound. During moderate weather, rotted members soften and the unsoundness of such a deck only then becomes apparent.
22. ENGINEER recommends that CLIENT have ENGINEER perform the pre-closing reinspection (specified above) since ENGINEER is already familiar with BUILDING, but, of course, this is up to CLIENT. However, if CLIENT chooses not to have reinspection done by ENGINEER, CLIENT will make sure the reinspection is done by someone (or some firm) at least equally skilled, licensed, professional, and competent. CLIENT will make sure a written report is issued for study as well as for CLIENT'S protection. The cost of a reinspection by ENGINEER varies but is generally about \$50 less than TOTAL FEE.
23. If CLIENT wishes an additional inspection of any area of BUILDING, or any device or appliance which is not specifically inspected at INSPECTION, CLIENT will contact ENGINEER to determine the feasibility of such an inspection and the additional fee. The terms and conditions of CONTRACT will apply to any and all subsequent services provided to CLIENT at any other address or place a new pre-purchase or other inspection be needed whether or not the new pre-purchase or other inspection is related to INSPECTION.
24. INSPECTION is a walk-through visual inspection. ENGINEER reports what is found based on the visual discoverable conditions observed during the walk-through. Should CLIENT wish the places which are inaccessible and/or unobservable to be examined, ENGINEER recommends that CLIENT make this known to ENGINEER so as to obtain suggestions as to how this may be accomplished, if at all possible, and to determine what the additional fee would be.
25. In the event that it is necessary for ENGINEER to return to the BUILDING to complete INSPECTION or REPORT as a result of unforeseeable circumstances, CLIENT is responsible to obtain additional access to BUILDING for ENGINEER during normal business hours. ENGINEER has no obligation to develop or deliver REPORT to CLIENT until such additional access is obtained. If CLIENT fails to obtain additional access for ENGINEER to BUILDING, CLIENT remains responsible for payment of TOTAL FEE. If CLIENT obtains additional access for ENGINEER, CLIENT is responsible for payment of TOTAL FEE, plus any others fees due under the terms of this contract or any other mutually agreed fees.
26. REPORT is to be read by CLIENT in its entirety. It is agreed that if CLIENT has any questions regarding any aspect of REPORT after fully reading it, CLIENT will notify ENGINEER in writing before making firm decisions and/or undertaking expense or commitment.
27. The payment terms are NET CASH. It is also understood and agreed that payment of TOTAL FEE (by check, credit card, money order, or cash) will be rendered upon completion of the INSPECTION and prior to release of REPORT. If INSPECTION is cancelled, or stopped for any reason, at any time following the arrival of ENGINEER at BUILDING, full TOTAL FEE is due and payable at the time of cancellation. Any additional services requested by CLIENT are billable at \$285 per hour, with a two-hour minimum. Should any litigation develop, then it is mutually agreed that CLIENT will pay ENGINEER'S reasonable attorney's fees involved in the litigation and collection of TOTAL FEE.
28. This CONTRACT shall be construed and enforced as a contract under seal in accordance with the laws of New York State. In the event CLIENT has a claim of breach of warranty, or for negligent inspection, CLIENT shall provide ENGINEER with three (3) working days to re-inspect BUILDING before the client repairs or replaces the subject of the claim. CLIENT agrees to notify ENGINEER in writing within thirty (30) days of becoming aware of a problem. If CLIENT fails to so notify ENGINEER, CLIENT agrees that all rights to bring an action or actions against ENGINEER are terminated and/or waived.
29. Should any litigation (including, but not limited to, small claims, professional arbitration, hearings, etc.) arise (with ENGINEER as a defendant) as a result of INSPECTION, REPORT, or CONTRACT, it is mutually agreed that CLIENT is obligated to pay ENGINEER's reasonable attorney's fees if court finds substantially in ENGINEER's favor.
30. All Notices regarding litigation shall be sent to ENGINEER at 2171 Jericho Turnpike, Suite 230, Commack, NY 11725, and not to any other address. The venue for any litigation is mutually agreed to be Nassau County, New York. In the event of a refund of TOTAL FEE or portion thereof, or any other sum, such refund shall be a full and final settlement of all present and future claims and causes of actions, and ENGINEER shall be thereupon generally and fully released.
31. It is mutually agreed that if ENGINEER is requested by CLIENT or subpoenaed by CLIENT or adversary of CLIENT in any litigation involving a third party, where INSPECTION, REPORT, BUILDING, notes on INSPECTION and/or REPORT preparation, notes on INSPECTION and/or REPORT preparation, courtroom time, and/or other time is sought, CLIENT shall pay ENGINEER's prevailing litigation rates or \$6,000 per day or portion thereof, whichever is less, or obtain a protective order prohibiting said adversary or third-party from obtaining appearance, services, or information at CLIENT'S sole cost and expense.
32. If any provisions (or provision clauses) of this CONTRACT shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions (and provision clauses) shall not in any way be affected or impaired thereby. Facsimile and scanned copies shall be treated as original documents for all purposes. Initials shall be treated as signatures for all purposes.
33. This CONTRACT can only be modified by a written consent agreement duly signed by persons authorized to sign it.
34. Unauthorized reproduction or alteration of REPORT or any part thereof, without express written permission of ENGINEER, is a violation of law and is prohibited. Copies of REPORT not bearing the corporation or Professional Engineer's original inked seal is not a valid true copy. No part of REPORT may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording or by any informational retrieval system, without permission in writing. All rights are reserved by ENGINEER.
35. The information in REPORT is fully restricted for use exclusively by CLIENT and/or ENGINEER. No rights regarding extension of the use of REPORT is granted to assigns, successors, or others nor is reliance upon REPORT by any other individual corporation, company, or other entity granted without the express written permission of ENGINEER. By accepting REPORT and or using REPORT and/or relying upon contents of REPORT, and/or paying for REPORT, CLIENT accepts the terms, notes, disclosures, conditions, inspection limitations, liability limitations, and general limitations specified therein.
36. CONTRACT is not assignable without prior written consent of ENGINEER. Any attempt to assign any of the rights, duties, or obligations of CONTRACT without such consent is void.

X _____ CLIENT'S INITIALS
 _____ ENGINEER'S INITIALS

ENGINEER COPY — WHITE
 Revised: 1/4/2010

CLIENT COPY — YELLOW

(continued on reverse side)