

Terms and Conditions

1. INTRODUCTION

- 1.1 Unless we tell you otherwise, when we use the following words in these terms, **We, our, us** means PWC Building Control Services Limited (05411581) and **You** means the person or company carrying out the work and/or the responsible person for the relevant property and/or named in the quotation/instruction/fee proposal as the client.
- 1.2 This document sets out the terms and conditions that apply to your contract for the supply of Approved Inspector services under the Building Act 1984 as more particularly described below in the Schedule of Services (hereinafter "Services").
- 1.3 We are licensed by the Construction Industry Council to act as an Approved Inspector in England and Wales.

2. OUR OBLIGATIONS

- 2.1 The Approved Inspector shall provide the Services with reasonable skill, and care in accordance with this Approved Inspectors Regulations 2010; Regulation 8 within this Agreement. In carrying out the Services the Approved Inspector shall have due regard to the Construction Industry Council's Code of Conduct for Approved Inspectors. A copy of the Code of Conduct can be found at <http://cic.org.uk/services/approval-process.php>.

3. YOUR OBLIGATIONS

- 3.1 You shall:-
 - 3.1.1 supply such information to the Approved Inspector at such times as is reasonably required for the delivery of the Services;
 - 3.1.2 notify the Approved Inspector in writing of any agent appointed to act on your behalf and of any change or dismissal of the agent;
 - 3.1.3 notify the Approved Inspector in writing of any instruction to vary the Services;
 - 3.1.4 make available during normal working hours proper access to the site for the Approved Inspector or his appointed agent or servant in order to carry out inspections of work; (Mon – Fri 9am to 5 pm)
 - 3.1.5 be responsible for the project's compliance with the Building Regulations, (our Services do not include, designing or managing the project to ensure that compliance is achieved).
 - 3.1.6 be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, and, provide us with all certificates as requested, that may or may not be a part of a competent person schemes but is needed as evidence towards compliance with Building Regulations.
 - 3.1.7 Except where permitted by law, you shall be entirely responsible for the design, construction and management of the project or any Additional Work.

4. ASSIGNMENT AND SUBCONTRACTING

- 4.1 Neither you nor us shall assign the whole or any part of this Agreement without the consent of the other in writing. Such consent shall not be unreasonably withheld and at all times be compliant with the Approved Inspectors Regulations 2010
- 4.2 Save in relation to the use of Approved Inspectors listed in the Schedule of Approved Inspectors, we shall not subcontract any part of the Services without giving written notification to you.
- 4.3 A person or company who is not party to this Agreement has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that act.
- 4.4 We may use subcontractor or assign the work to other subcontractor/Approved Inspector as outlined in the CIC Code Of Conduct to carry professional services. must be notified in writing if you assign any works to a third party to act on your behalf.

5. PAYMENT

- 5.1 You shall pay us for the performance of the Services the fees and charges in accordance with the agreement. All fees and charges charged to you shall be exclusive of Value Added Tax, which we shall add to our invoices at the appropriate rate.
- 5.2 We shall invoice on the commencement of our Services. This may include fees for a registration/plan check fee upon registration and an inspection fee or total fee following the first site visit. In all circumstances all fees must be paid prior to us issuing a Part Final/Final Certificate We shall submit to you an invoice for each instalment or otherwise in our absolute discretion (as appropriate) of our fee, together with any supporting documents that are reasonably necessary to check the invoice.

Unless specifically agreed we will submit an invoice after the first inspection and within 30 days thereafter as our works progress

- 5.3 Payment shall be due on the date of the invoice (the "Due Date").
- 5.4 No later than 5 days after the Due Date you shall notify us of the sum that you consider to have been due at the Due Date in respect of the payment and the basis on which that sum is calculated (the "Notified Sum").
- 5.5 If you fail to notify us of the Notified Sum as required by clause 5.4 then our invoice shall be deemed to be the Notified Sum.
- 5.6 You shall pay our invoices no later than the date stated on the invoice or if none is stated 28 days from the date of invoice (the "Final Date for Payment").

- 5.7 If you are to pay less than the Notified Sum then you must not later than 7 days before the Final Date for Payment issue a written notice of payment to us specifying:-
- 5.7.1 the amount of payment to be made in respect of the amount stated in the invoice, and
- 5.7.2 the basis on which you calculate the amount to be paid.
- 5.8 If you fail to pay the invoiced amount by the Final Date for Payment and you have not issued a pay less notice under clause 5.7 above, we may suspend performance of any or all of the Services and the Final Certificates will not be issued. This right is subject to us first giving you not less than 7 days written notice of our intention and stating the ground(s) for suspension. The right to suspend performance shall cease when you make payment of the amount due. Any such period of suspension shall be disregarded for the purpose of contractual time limited previously agreed for the completion of the Services. Such suspension shall not be treated as a suspension under clause 7 below.
- 5.9 Without prejudice to any other right or remedy that we may have, if any sum payable by you is not paid by the Final Date for Payment, it shall be paid with interest on the overdue amount calculated at the rate of 5% above the Bank of England's base lending rate for the whole period from the date upon which the sum ought to have been paid until the date of payment (whether before or after any judgment).
- 5.10 The Approved Inspector shall notify you in writing after it becomes reasonably apparent that any work additional to the subject of this Agreement will be required.
- 5.11 Where the Approved Inspector is involved in additional work because of:
- changes in the scope of the Services and/or
 - changes in the programme of the work, and/or,
 - changes instructed to the Services, and/or,
 - the commencement of adjudication, arbitration, litigation or any other form of dispute resolution, and/or
 - any other cause outside of our reasonable control,
- you shall pay us additional fees calculated (unless otherwise agreed) on the revised cost of the Services (insofar as we are able based on the fees and charges set out in the quote), or at an hourly rate in accordance with our standard hourly rates, which can be provided on request.

6. PROFESSIONAL INDEMNITY INSURANCE

- 6.1 We shall maintain insurance for an Approved Inspector in accordance with the guidance issued by the Department for Communities and Local Government pursuant to the requirements of section 47(6) of the Building Act 1984.
- 6.2 We shall on receipt of a written request by you provide you within a reasonable period of time evidence that the insurance is properly maintained.
- 6.3 We shall immediately inform you if the insurance referred to in clause 6.1 above ceases to be available.

7. SUSPENSION AND TERMINATION

- 7.1 You may terminate this Agreement by giving not less than 14 days written notice to us.(1) Where work has not started on site termination will attract an administrative fee of £75 plus VAT to close the file down and send the relevant paperwork to the Local Authority Building Control Department (2) if work has started on site and the relevant fees have been paid to us we will close down the file and send the relevant paperwork to the Local Authority Building Control Department. Please note, by terminating this agreement after work has commenced, may leave you in a position where a retrospective Building Regulation Application is required to be made to the Local Authority Building Control Department. (If you are considering this option we would suggest you contact the Local Authority and/or us to obtain more advice on the legal implications)
- 7.2 If you breach your obligations under this Agreement we may serve on you a notice specifying the breach and, if the breach is capable of being remedied, requiring its remedy within 7 days, and if you fail to remedy the breach within that period we may terminate this Agreement by giving you written notice. If the breach is not capable of being remedied, we may terminate this Agreement with immediate effect by giving written notice to you.
- 7.3 If you sell, transfer or assign your interest in the site we may terminate this Agreement with immediate effect by giving written notice to you.(1) It may be possible for us to continue with the building control provisions subject to appropriate agreement for the new intended party. Please contact Head Office to discuss .(2) within three weeks of satisfactory Final Inspection copies of all relevant certification must be provided to us. If this is not provided, we may terminate this agreement which will include closure of the file and notification to the Local Authority Building Control Department (The Building Regulations (Approved Inspectors etc.) 2010 or such similar legislation
- 7.4 If either party:
- Commits an act of bankruptcy or has a receiving or administrative order made against it, and/or,
 - goes into liquidation, and/or,
 - becomes insolvent, and/or,
 - makes any arrangement with its creditors
- the other may suspend performance of the Services or may terminate the appointment by giving written notice to the other party.
- 7.5 These rights are in addition to those granted to us under clause 4 above.

8. CONSEQUENCES OF SUSPENSION AND TERMINATION

- 8.1 If performance of the Services has been suspended under clause 5 or clause 7 above or this Agreement has been terminated pursuant to the provisions of clause 7 above, then:

- 8.1.1 You shall pay us any instalments of the fees due up to the date of suspension or termination together with a fair and reasonable proportion of the next following instalment commensurate with the Services performed by the Approved Inspector.
- 8.1.2 Unless the Agreement has been terminated by you because of a material breach by the Approved Inspector you shall pay us within 28 days of written demand the consequential costs (including, but not limited to, loss of profit, loss of revenue and loss of business) incurred as a result of the suspension or termination.
- 8.1.3 Termination of the Agreement shall be without prejudice to the rights and remedies of the parties.
- 8.2 If we serve a written notice of termination under clause 7.4, 7.5 or 7.6, or this Agreement is terminated, howsoever arising, we shall notify the relevant local authority in writing (with a copy to you) to cancel the relevant Initial Notice in which case we shall cease to be responsible for building control for the site referred to in the Initial Notice from the date of termination.
- 8.3 If the building works are not commenced within three years of the application this agreement may be terminated by us

9. LIMITATION OF LIABILITY

- 9.1 Nothing in this clause 9 shall limit our liability for negligence resulting in death or personal injury. Subject to that:
- 9.2 Our liability to you shall be limited to such sum as would be just and equitable for us to pay having regard to the extent of the responsibility of the Approved Inspector for the loss or damage suffered on the basis that:
 - 9.2.1 all other consultants, contractors, subcontractors and advisers engaged in connection with the project shall be deemed to have provided contractual undertakings to you on terms no less onerous than those applying in the case of this Agreement and shall be deemed to have paid to you such sums as it would be just and equitable for you to pay having regard to the extent of your responsibility for such loss or damage, and
 - 9.2.2 there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between you and any other party referred to in this clause and any such other party who is responsible to any extent for the loss or damage is contractually liable to you for the loss or damage.
- 9.3 In assessing any liability arising from this Agreement, due regard shall be made to the limitations imposed by findings in the *Murphy v Brentwood District Council* (1989) 99 LGR 333 CA.
- 9.4 Notwithstanding any other provisions in this Agreement (save for clause 9.1 above), our total liability to you for any claims arising under or in connection with this Agreement (whether in contract, tort (including negligence), for breach of statutory duty or otherwise) shall be limited to the lesser of:
 - 9.4.1 ten times the amount of the fees payable for the Services under this Agreement; or
 - 9.4.2 the amount of professional indemnity insurance required by virtue of clause 6.1 above.
- 9.5 The Approved Inspector shall not be responsible for the supervision of any contractor or subcontractor, nor shall the Approved Inspector have any liability for ensuring the performance or adequate standard of any workmanship and/or design of any contractor or subcontractor.
- 9.6 No action or proceedings for any breach of this Agreement shall be commenced by either party after 6 years from completion of the Services.
- 9.7 Our liability to you under this agreement shall be reduced to the extent that we would have been able to recover a contribution pursuant to the Civil Liability (Contribution) Act 1978 from one or more of the relevant parties involved in the works, on the assumption that those parties have entered into an agreement with you on terms generally similar to this agreement (having regard to the differing nature of their respective functions in relation to the works)

10. COMPLAINTS

- 10.1 In the event that you have a complaint in respect of the performance of the Services under this Agreement, without prejudice to any other remedy available under this Agreement, you shall be entitled to have access to our complaints handling procedure, written copies of which are available upon request from us or can be accessed at <https://www.pwc.uk.net>.

Written copies are available upon request from:

Head Office
PWC Building Control Services Ltd
Unit 6 Selby Barns
Towcester
Northamptonshire
NN12 8AL
Tel: 01327 359400
Email: headofficeadmin@pwc.uk.net

NOTICES

- 10.2 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next business day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 10.3 Any notice shall be deemed to have been received:

- 10.3.1 If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 10.3.2 if sent by pre-paid first-class post or other next business day delivery services, at 9.00am on the second business day after posting or at the time recorded by the delivery service.
- 10.3.3 Any notice may also be sent by email, provided that the notice is also sent pursuant to clause 11.1
- 10.4 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11. DISPUTES

- 11.1 Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.
- 11.2 Notwithstanding any other provision of this Agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.
- 11.3 The adjudicator shall be appointed by the Construction Industry Council.

12. ENTIRE AGREEMENT

- 12.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.2 Without prejudice to that we may make changes to the terms of this Agreement from time to time and will notify you of the same. You will be bound by the said changes as if they were at all times within the Agreement
- 12.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13. JURISDICTION

- 13.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

14. GOVERNING LAW

- 14.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Schedule of Services

The Approved Inspector hereby agrees to provide the following Building Control service:

1. To issue to the Client and appropriate local authorities an Initial Notice (as defined in the Building Act 1984 and the regulations made pursuant to that Act) upon receipt of a completed Agreement.
2. To allocate suitable qualified competent personnel to the contract.
3. To carry out statutory consultations.
4. Issue a Plans Certificate upon request when the plans and details show compliance with current Building Regulations.
5. To make periodic visit to the site, to enable opportunities to view works at times that comply with the Building Regulations
6. To issue a Final Certificate to Client/You (or an appropriate external agency or bill payer) and the appropriate Local Authority at satisfactory completion of building work And when relevant the fire service etc.
7. You agree, as is required for Approved Inspector to carry out his duties, to provide:
 - Copies of full working drawings Technical documents as required in sufficient quantities if requested as is specified, and at the appropriate time,
 - Access to the Site during working hours, and, (Mon-Fri)
 - The opportunity to display a site sign board if such facilities are to be provided on site.

Schedule of Approved Inspectors

Please refer to the CICAIR register of Approved Inspectors; <https://www.cicair.org.uk/approved-inspectors-register/>