



## Terms and Conditions

The standard terms and conditions of Total Building Control Limited, hereinafter referred to as “The Company” are set out below and will apply to all Projects to which Total B C are appointed unless agreed otherwise in writing.

In these terms and conditions, “the Project” will, where relevant, refer to the notifiable building work as described in your Initial Notice.

“The Client” will refer to the person or persons named as the applicant on the application form or any persons acting on their behalf.

Total Building Control Limited  
Unit 8 Langdon House  
Langdon Road  
Swansea  
SA1 8QY

### The Company’s Responsibilities

1. The Company shall carry out the services and any additional work with reasonable skill, care and diligence in accordance with these Terms and Conditions. The Company shall have due regard to the Professional Conduct Rules for Registered Building Control Approvers and where possible to any programme for the Project (as amended from time to time).
2. The Company shall hold and maintain Professional Indemnity Insurance and Public Liability Insurance. On the Client’s written request the Company shall provide evidence that these insurances are being properly maintained.
3. The Company shall take such steps as are reasonable to enable it to be satisfied as to the Project’s compliance with The Building Regulations 2010, and if so satisfied, it shall issue a Final Certificate. The Final Certificate is not a representation that every aspect of the Project complies with The Building Regulations 2010. As stated on the Final Certificate; the Final Certificate is evidence, but not conclusive evidence that the building work complies with the Building Regulations.
4. As a condition of the Company Professional Indemnity Insurance Policy please note the following:
  - i. the Company does not sign collateral warranties.
  - ii. the Company does not sign contracts intended for designers.
5. The total limit of the Company’s liability to the Client referred to in Clause 63 is commensurate with the Company’s responsibility arising from the Company’s overall conduct of business in relation to the Project.

### Client Responsibilities



6. The Client (person identified on the Initial Notice as ‘carrying out the works, typically the building or land owners’) shall be responsible for the Project’s compliance with The Building Regulations 2010 and the services do not include advising the Client or managing the Project to ensure that compliance is achieved.
7. Whilst it is anticipated that the Company’s control of the project will proceed with site inspections at key stages, the Client commits as a minimum to providing a simple project update at least once every 28 days while the Project is active and if the Project is on hold, every 90 days. Failure to update the Company within 90 days may result in the Company having to issue a cancellation notice, and it will then only be possible to obtain a Final Certificate for the Client’s Project by engaging with Local Authority Building Control. The Company are not obliged to refund any fees and engaging with Local Authority Building Control may involve additional fees.
8. The Client shall make available during normal working hours proper and safe access to the site for the Company or their appointed agent (typically a Professional Consultant) in order to carry out inspections of work in progress.
9. The Client shall be responsible to inform the Company of any significant design team member changes which may result in repeat / extra work. Repeat / extra work may be subject to supplementary fee(s) and if so, the Company will not proceed with any works without prior agreement and written consent of the Client. *[Appendix A – (Supplementary Fees) #1 + any other deemed applicable]*
10. The Client is responsible for ensuring that planning permission is obtained where required for the proposed works.
11. The Client is responsible for complying with the requirements of the Party Wall, etc., Act 1996.
12. The Client is advised not to commence building works until the Company has received a response to the consultation with the Sewerage Undertaker under Regulation 13. See Clause 38. The purpose of such a consultation is to allow the Sewerage Undertaker to consider the plans in relation to building over any public sewers in their ownership.
13. In the case of **New Dwellings in England** the Company will require the following information:
  - i) a statement as to whether one or more, and if so which, of the following optional requirements in the Building Regulations 2010 applies to the building work-
    - (a) Regulation 36(2)(b) (optional water efficiency requirement of 110 litres per person per day)
    - (b) Schedule 1 Part M optional requirement M4(2) (category 2-accessible and adaptable dwellings),
    - (c) Schedule 1 Part M optional requirement M4(3) (category 3- wheelchair user dwellings), or
  - ii) a statement that planning permission has not yet been granted for the work, and that the information required by subparagraph (b)(i) will be supplied as soon as is reasonably practicable after that permission is granted.
14. It is the Client’s responsibility to notify the Company at completion of work to enable the Company to carry out a final inspection. Failure to do so, resulting in aborted visits or additional administration may be subject to supplementary charges. *[Appendix A – (Supplementary Fees) #2].*

It is the Client's responsibility to notify the Company at key stages for inspection, as identified in the information supplied at application stage, including the final inspection. Access should be made available to allow inspections to be made. Failure to do so, or acting in a way as to result in failed inspections or additional administration may be subject to supplementary charges.

15. If the Client materially breaches their obligations under this Agreement or fails to respond to any notification of a breach of Building Regulations, the Company may serve on the Client a Notice of Contravention specifying the breach and requiring it to be remedied within three months. If the Client thereafter fails to remedy that breach within that period, the Company may terminate this Agreement by giving written notice to the Client. This would also result in the Initial Notice being cancelled by the Company.
16. The Company's appointment may be terminated, and the Initial Notice cancelled if the Client fails to provide information or the reasonable opportunity for site inspection such that the Company is unable to satisfy itself as to the compliance of the Project with the Building Regulations within the normal statutory timescales.
17. Except where prohibited by law, the Client shall be entirely responsible for the design, construction and management of the project and any additional work. The Client shall also be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, except those which form part of the services provided by the Company or any additional work.

#### Payment and fees

18. Payment must be received before or when the application is submitted to be processed (unless otherwise agreed in writing for credit terms or staged payments). In the event of non-payment following submission of the application to submit the Initial Notice, the Company reserve the right to cancel the Initial Notice under Section 52.1(a) of the Building Act 1984 and will not be liable for any additional fees payable to the Local Authority for the cancelled application. Payment must be received in full upon submission of the application, unless otherwise agreed in writing, e.g. for staged payments or credit terms. In the event of non-payment following submission of the application and service of an Initial Notice, the Company reserve the right to cancel the Initial Notice under section 52.1 (a) of the Building Act 1984 and will not be liable for any additional fees payable to the Local Authority for any reason associated with the cancellation.
19. Unless otherwise agreed 100% of the Building Control Application Fee will be payable upon submission of the Application. Payment terms are strict, Applications and further work may not be processed if payment is not received. Any work carried out by the Company prior to receipt of payment could be charged for should the project not proceed, at which stage the fee payer will be informed. If building work commences after acceptance (or deemed acceptance) of the Initial Notice, but before payment of the fee has been made, then the Client understands that they are at risk (even if the Company, at its discretion, opts not to cancel the Initial Notice) that no Project Information Assessment nor any site inspections will be resourced by the Company until such payment is made.
20. The fee quoted shall not include any inspections or work on behalf of any Warranty Providers.



21. All expenses and disbursements incurred by the Company in performing the services as part of the appointment are included in the agreed fee (unless otherwise stated).
  22. Any overdue invoices will be subject to the specified interest per 7 days over 28 days.  
*[Appendix A – (Supplementary Fees) #3]*
  23. Unless agreed otherwise all projects will be invoiced upon appointment.
  24. All fee proposals and quotes provided by The Company will be valid for a period of three months from the date of the proposal or quotation and be subject to the limitations included therein.
  25. The Client shall pay the charges and amount in respect of VAT by the date stated in the invoice. Payment may be made by BACS, card or cheque (cheque only if prior agreed). For bank transfer payments, bank account details for LLOYDS TSB are as follows:
    - i. Account Name – Total Building Control Limited
    - ii. Account Number - 00781703
    - iii. Sort Code - 30-95-46
  26. All correspondence in relation to invoices and VAT invoices shall be sent to the Company on [accounts@totalbuildingcontrol.co.uk](mailto:accounts@totalbuildingcontrol.co.uk) or to the address set out above or any such other address as the Company notifies to the Client in accordance with this agreement.
  27. Where the Client intends to withhold payment of any amount stated in a Company invoice, the Client must give written notice to the Company no later than five days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.
  28. Unless agreed otherwise, all invoices are subject to the following:
    - I. If an invoice remains unpaid without challenge for 30 days from issue, the Company may levy a charge to cover their additional costs incurred in pursuing payment *[Appendix A – (Supplementary Fees) #4]*
    - II. If Staged payments have been agreed in writing and an invoice remains unpaid without challenge for 60 days, the Company may suspend service in relation to the Project by notification to the Client in writing.
    - III. If staged payments have been agreed in writing and an invoice remains unpaid without challenge for 90 days from issue, the Company reserves the right to withdraw. The Company may formally terminate involvement with the Project and cancel the Initial Notice. The Company will accept no liability for costs, damages, delay, expenses, fees, works, etc that arise out of such a cancellation of the Initial Notice.
  29. Should the application be withdrawn by the Client after the Initial Notice has been submitted, the Company reserve the right to charge an administration fee to cover any work carried out by the Company up to the date of withdrawal. As a Registered Building Control Approver, the Company must give the Local Authority five working days' notice before work can commence on site. If there is a cancellation, withdrawal or rejection, supplementary fees will be applicable *[Appendix A – (Supplementary Fees) #2/5]*
- 29(b) If, after acceptance of the Initial Notice (or deemed acceptance after the expiration of five days from the date of the Initial Notice), the Client wishes to terminate the appointment of Total Building Control Ltd, such wish should be confirmed in writing by way of Notice of cancellation by person

carrying out the work in Schedule 1 of the Building (Approved inspectors etc.) Regulations 2010. On presentation of Cancellation Form to the Local Authority, the Initial Notice will be cancelled, after which there will be no building control application in force. The Company may offer a refund, in full or in part, of the fees paid up to that date, retaining such portion of the fees that reasonably represents any work carried out on the project, including but not limited to, administrative, plan checking and site inspections.

29(c) If, after acceptance of the Initial Notice (or deemed acceptance after the expiration of five days from the date of the Initial Notice), a period of three years passes without any material commencement of the building work described in the Initial Notice, the Local Authority may, at their discretion, serve a Cancellation Notice on both the Company and the Client which will cancel the Initial Notice. No refund of fees will be made and control of the building work proposed will then only be possible by the Local Authority.

## General

30. The Company will continue to carry out the Building Control function while an Initial Notice is in force, in line with the current Building Safety Regulator's Operational Standards Rules.
31. The Company must be notified prior to works commencing and at the agreed key inspection stages in order to arrange site inspections.
32. Any agents or third parties that are instructing the Company to undertake Registered Building Control Approver services must ensure that the Client is made aware of the Company's appointment and make the Client aware of the Company's standard terms and conditions.
33. The liability of the Company shall be limited to such sum as would be just and equitable for the Company to pay, having regard to the extent of the responsibility of the Company for the damage suffered on the basis that all other consultants and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those applying in the case of this contract and, shall be deemed to have paid to the Client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage. In assessing any liability arising from this Agreement, due regard shall be made to the limitations imposed by findings in *Murphy v Brentwood District Council (1989) 88 LGR 333CA*.
34. Where projects are subject to the Regulatory Reform (fire safety) Order 2005 such as but not exclusive to: commercial properties and properties with shared access, Regulation 38 of Building Regulations 2010 should be satisfied at appointment. The Company's application form has a section which requests the details for naming the Responsible Person for fire safety. Incomplete information will frustrate the process of achieving compliance with the Building Regulations and may incur supplementary fees. [Appendix A – (Supplementary Fees) #2]
35. The Company shall have a right to request any plans, details or calculations that are necessary to carry out assessment of the Project to confirm compliance with the Building Act 1984 and the Building Regulations 2010.

36. The Company shall have a right to inspect the works at agreed stages and request certification upon completion and request witnessing of any part/service or system of construction to verify that the works are being constructed in accordance with the Building Regulations 2010.
37. The Company does not undertake any design responsibility for the Project, in common with all building control bodies. Fees are based upon the client appointing a professional design team for the full duration of the Project including any or all of the following:
- i. RIBA Chartered Architect / Competent Technician
  - ii. Technical / Design / Project - Manager
  - iii. Structural Engineer
  - iv. Fire Engineering Consultant
  - v. Mechanical and Electrical Engineer (where relevant)

The Company reserves the right to withdraw from the scheme should a suitable professional team not be maintained to support the complexity of the project through all relevant stages.

38. The Company will consult with the Sewerage Undertaker for the Project where the building work extends the size of the property. It is advisable for the Client to ascertain in advance of building works being carried out to whether a build over agreement with the Sewerage Undertaker is required, these agreements can delay projects and incur additional costs. See paragraph 12.
39. The Company will consult the Fire Authority, when required. The Fire Authority may have their own opinion on compliance and have wider powers under the Regulatory Reform (fire safety) Order 2005. It is therefore recommended to allow the Company to undertake this consultation at an early stage to ensure the design is agreed by all parties. The Company's consultation with the Fire Authority should be based on project information that demonstrates compliance with the Building Regulations. Insufficient information provided to the Company will delay this statutory process and may incur supplementary fee(s) for the client. *[Appendix A – (Supplementary Fees) #6]*
40. The Company will not be responsible for any costs associated with testing and commissioning of building systems where a request has been made to witness or provide certification. All domestic electrical works, where Part P applies, must be carried out by a competent person covered by one of the Self-certification schemes contained within Schedule 3 or (3A) of the Building Regulations 2010. Gas installations must be certified by a GAS SAFE registered contractor. Oil fired appliances must also be certified by a third-Party scheme. Clients must satisfy themselves that competent persons are certifying all electrical, gas, oil, unvented cylinder and solid fuel appliance installations and obtain relevant certificates upon completion. Persons working within a competent person scheme are certifying that their work complies with the Building Regulations 2010 instead of being checked by the Building Control Body appointed.
41. The Company cannot be held responsible for the cancellation of the Initial Notice by the Local Authority or any subsequent enforcement action undertaken by the same in circumstances whereby work is completed without appropriate notification being made to The Company and the opportunity given to The Company to carry out a final inspection within statutory time limits.
42. If considered necessary, The Company reserves the right to request (but not enforce) completed works to be uncovered to show compliance with the Regulations.



43. The Company shall not be responsible for or have any duty or liability in connection with the supervision of any contractor or sub-contractor, nor shall The Company have any responsibility, duty or liability for ensuring the performance of any contractor or sub-contractor or any contractor or sub-contractor's standard of workmanship. In addition is not the role of the building control approver to
- I. Provide quality control of the Project.
  - II. Provide a 'clerk of works' service monitoring every stage of the construction process.
  - III. Provide a service to address issues such as the finish and aesthetics of the Project where these are not Building Regulations matters.
  - IV. Provide a service to offer contractual protection between the person carrying out the building work and the parties engaged in the design and/or construction of such work.
  - V. Provide a guarantee of compliance with the Building Regulations. The appointment of a Building Control Body does not remove the obligation of the person carrying out the work to achieve compliance.
44. Site inspections carried out by The Company during construction are to 'verify and audit' the building works on site and observe whether at the time of inspection compliance with the Building Regulations is being met. The Company do not provide 'quality control' or a guarantee of compliance both of which are the responsibility of the Client and contractor. It is the Client and contractor who carry prime responsibility for compliance with the Building Regulations and the quality of the finished product.
45. Unless agreed otherwise, repeated additional inspections required to be undertaken by The Company to resolve contraventions of Building Regulations may be subject to supplementary fee(s). *[Appendix A – (Additional Fees) #7]* Single inspections to resolve contraventions would not normally be charged for.
46. Any changes to the specification produced for the Project should be subject to an agreement between the contractor and the Client or their agent. The Company cannot accept responsibility relating to changes in specification agreed on site where the resultant work still complies with the requirements of the Building Regulations.
47. The appointment of The Company shall not be assigned or novated to other third parties following the initial appointment. This includes novation from the Client to the contractor.
48. Unless otherwise agreed in writing, The Company's quoted fees cover a design stage of up to 12 months from the formal appointment. Projects having a design stage greater than 12 months or having significant design changes will be subject to supplementary fee(s). *[Appendix A – (Supplementary Fees) #1]*
49. Any residential Project involving new electrical installation work must fall into one of the following categories:
- i. That the electrical installation is by a Part P registered competent installer, with Part P certification provided to the Company within four weeks of completion of works to confirm this.
  - ii. That the electrical installation is undertaken by a qualified electrical contractor (not Part P registered), with copies of their qualifications (typically City & Guilds) and the electrical

certification under BS7671 'Current Edition' provided to The Company within four weeks of completion of works to confirm this.

- iii. That no electrical work will be undertaken for which notification to a building control body is required. This includes where no new circuits have been installed.

## 50. Compliance with the Building Regulations

The Client has the statutory responsibility for the Project's compliance with the Building Regulations and the Company's services do not include advising the Client or managing the Project to ensure that compliance is achieved or give rise to any duty to do so.

The Company can provide the formal Inspection report upon request of the Client. This will be subject to supplementary fees [*Appendix A – (supplementary Fees) #8*]

The Company will, in performing its services with the level of skill and care set out in Paragraph 1 of this Agreement, take such steps as are reasonable to enable it to be satisfied as to the Project's compliance with the Building Regulations and if so satisfied, the Company will issue a Final Certificate. The Final Certificate is not a representation that the Project as a whole or every aspect of the Project complies with the Building Regulations.

## 51. Schedule of Service

The Company shall take such steps as are reasonable, considering the limitations of the building control function set out in Paragraph 43, and any other relevant limitations including the quality of the information provided and the co-operation of the Client or their agents, to be satisfied that the project information, plans, and building works comply with the Building Regulations. The schedule of services referred to includes the following:

- I. Submission of the Initial Notice to the relevant Local Authority.
- II. Assessment of submitted Project Information for compliance with the Building Regulations and the provision of a report confirming The Company findings will be provided where timeframes permit. Projects which are fast tracked before a Project Information Assessment has been completed will be assessed, as far as it is reasonably possible, in the course of site inspections.
- III. The carrying out of formal consultations with the Fire Authority and statutory undertakers (as appropriate).
- IV. When requested, the provision of a plans certificate approval.
- V. Inspection of works in progress to verify and audit compliance with the Building Regulations.
- VI. Provision of a Final Certificate when The Company is reasonably satisfied the works comply with the requirements of the Building Regulations.

## 52. Initial Notice

When The Company is appointed to undertake Registered Building Control Approver services, it is automatically assumed that permission is given to The Company to sign the Initial Notice on behalf of the person carrying out the works. When a third party appoints The Company, the person carrying out the works should be informed and permission to sign the Initial Notice on their behalf is again automatically assumed. The person carrying out the works is usually the person paying for or procuring the work.





The Initial Notice should be submitted to the Local Authority at least five days prior to works commencing on site and should works start within this 5-day period the Local Authority may reject the Initial Notice. The Local Authority may then assume the role of Building Control provider and charge a fee. The Company accept no responsibility for any works which commence prior to acceptance of the Initial Notice by the Local Authority or the expiration of a period of five days and any costs associated with starting prior to the Initial Notice being valid.

Initial Notices are valid for three years. Should the work not commence within three years of the date of the Initial Notice, The Company reserve the right to cancel the Initial Notice. Should the client wish to proceed with the Project after the Initial Notice has been cancelled it will be necessary to submit a new Initial Notice. *[Appendix A – (Supplementary Fees) #9]*

An Initial Notice may need to be accompanied by a Site Location Plan when submitted to the Local Authority. If a location plan is not provided to us, we may be unable to carry out this service on the client's behalf and this will be subject to supplementary fees. *[Appendix A – (Supplementary Fees) #10]*

### **Amendment Notice**

We will process and serve an Amendment Notice upon request, where the original description provided and recorded on the Initial Notice no longer represents the whole work. Where this is applicable, we will update the public records. There may be an additional fee to 'control' the revised project, or there may be a partial refund, as applicable *[Appendix A – (Supplementary Fees) #11]*

### **53. Assessment of Plans**

The Company will, unless as indicated below, undertake an assessment of the Project information supplied and communicate to the Client any observed non-compliance with the Building Regulations 2010. In this regard The Company may request further project information to demonstrate compliance with the Building Regulations, which may include a schedule of modifications specified and/or further plans or information required to demonstrate compliance of plans.

In circumstances where work commences soon after the serving of the Initial Notice, or in any event before a Project information assessment has been undertaken, The Company may at its discretion, elect to assess the compliance of the Project with the Building Regulations in the course of site inspections.

### **54. Inspection notification framework – The Company will:**

- I. Provide a document at appointment of the typical inspection stages known as "Key areas for inspection". This is the product of a risk-based approach to determining the best opportunity for The Company to monitor and audit the widest range of elements of the building work.
- II. Compile and maintain appropriate records of site inspections, identifying the work inspected and any observed contravention.
- III. Communicate any observed contraventions of The Building Regulations 2010.
- IV. Notify observed significant departures from plans to the relevant bodies.
- V. Consider the need for tests, throughout construction and at completion, inform the client of the requirements; witness tests and receive certificates as appropriate.



- VI. Request copies of such plans as are necessary in relation to the commissioning of service prior to issuing a Final Certificate(s).

The Client **will**:

- VII. Allow the Company to observe the construction process and monitor compliance (or highlight non-compliance) with the Building Regulations 2010. To facilitate this The Client (either directly or through their appointed agent/builder/project manager) further undertakes to arrange such inspections identified at appointment.
- VIII. Pay any supplementary fees that are required due to aborted inspections, outstanding items, contraventions or other circumstances that may, under Appendix A herein, be subject to supplementary fee(s) *[Appendix A – (Supplementary Fees) #7]*.

## 55. Final certificate

Having taken reasonable steps to be satisfied that the whole or part of the works has been completed for Building Regulations purposes, the Company will issue a Final Certificate(s) and send to the Client. See appendix A for supplementary fees relating to Part Final Certificates. *[Appendix A – (Supplementary Fees) #12]*.

If requested by the Client, the Company can provide a list of the inspections that have been carried out. The Company will retain statutory records for an appropriate period.

56. The Company will undertake the following additional services if requested and agreed as part of the appointment:
  - i. Additional design team meetings, as agreed.
  - ii. Undertake further statutory consultations as agreed.
  - iii. Additional site meetings, as agreed.
  - iv. Witness tests outside the site, as agreed.
  - v. Participate in assessing plans by electronic means

## 57. Copies of Statutory Documents

- I. The Company can provide copies of a statutory document upon request. Additional fees apply *[Appendix A – (Supplementary Fees) #13]*

## 58. Disputes and complaints

If the Client is not satisfied with The Company's performance of the services or any additional work, it may ask The Company to implement its complaints procedure. The Company shall provide a copy of the procedure on request. The operation of The Company's complaints procedure does not affect the Client's right to refer a dispute to The Courts.

The Client and The Company shall consider in good faith whether any dispute is suitable for resolution by mediation, and if so, shall take the appropriate steps with a view to resolving the dispute at mediation.

Once The Company's complaints procedure is exhausted The Client may escalate the complaint to the Building Safety Regulator.



## 59. Exclusion of Third-Party Rights

Nothing in these Terms and Conditions or any Agreement subsequently entered into by The Company confers or purports to confer on any third Party any benefit or any right to enforce a term of any agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 60. Commencement

Whatever the date of appointment, this Agreement will have effect commencing on the date when The Company commenced services.

## 61. Assignment and subcontracting

Neither Party may assign its rights and/or benefits under this contract [without the prior written consent of the other Party]. The Company may subcontract any part of the Services and any Additional Work, with the prior approval of the Client, such approval not to be unreasonably withheld or delayed.

## 62. Compliance with the General Data Protection Regulations

The Company will not share any personal details unless required by law as part of its duties. The Company may write to Clients from time to time during its appointment to request certain details or arrange the performance of its services and this will not extend beyond the scope and duration of its appointment. A copy of The Company's Data Protection Policy is available upon request.

## 63. Economic Loss

Neither Party shall under any circumstances whatsoever be liable to the other for any direct or indirect loss of profit, loss of business or anticipated savings or special, indirect or consequential damage suffered to the other Party that arises under or in connection with this Agreement.

## 64. Termination and discharge

The Client may terminate the appointment forthwith if:

- i. The Company is in material breach of its obligations under these terms and conditions and has failed to remedy the breach within 28 days of the date of the notice of the breach from the client; or
- ii. The Company becomes insolvent.

The Company may terminate this contract forthwith by notice in writing if The Company reasonably believes that any of the following are true:

- i. It is impossible or impracticable to perform the services as a result of any circumstances for which The Company is not responsible and/or that The Company will not be in a position to issue a Final Certificate.
- ii. The Client is in material breach of its obligations under the appointment and has failed to remedy the breach within 28 days of the date of the notice of the breach from The Company.
- iii. The Client becomes insolvent.



Following termination by The Company or the Client, The Company is entitled to write to the Local Authority (with a copy to the Client) cancelling the Initial Notice under The Building Regulations 2010, in which case The Company's functions will revert to the Local Authority (an application to the local authority by the Client will be required) and The Company will be discharged from all requirements to complete the services or any additional work. The Company shall not be liable for any losses, costs, expenses, liabilities or damages (the Client) may incur in such circumstances. See appendix for cancellation Notice fee [Appendix A – (Supplementary Fees) #5].

The right of either Party to terminate for material breach of these terms shall lapse if it has not been exercised within 35 days after giving notice of the breach to the other Party.

#### 65. Consequences of termination

If the appointment has been terminated, the Client shall pay The Company any instalments of the fee due to the date of termination together with a fair and reasonable proportion of the next instalment of the fee commensurate with the services and any additional work performed by The Company prior to the notice of termination.

Termination of this contract shall not affect any rights or remedies of the Client or The Company which exist at the date of termination.

#### 66. Limitations of liability

- a) Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or cost, the liability of The Company for any loss or damage ('the loss or damage') under the appointment shall be limited to that proportion as it would be just and equitable for The Company to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:
  - i. All other consultants, contractors, subcontractors, and advisers engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those in Clause 1 to the Client in respect of the carrying out of their obligations in connection with the project.
  - ii. There are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client 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 the Client for the loss or damage; and
  - iii. all the parties referred to in this clause have paid to the Client such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.
  - iv. A calculated financial cap in terms of The Company's liability for loss, has been arrived at (for a small domestic project) by adopting the formula of 10 times The Company's agreed fee. For anything that is deemed to be a larger project, the financial cap in terms of The Company's liability for loss will be £1m (as per The Department for Levelling up, Housing and Communities (DLUHC) guidance).

The Company shall not be responsible for the supervision of any contractor or subcontractor, nor shall The Company have any liability for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor.

The Client shall look only to the Company (and not to individuals engaged by the Company or an individual Director or member of the Company) for redress if the Client considers that there has been any breach of these terms. The Client agrees not to pursue any claims in contract, in tort (including negligence), for breach of statutory duty or otherwise against any such individuals as a result of carrying out its obligations under or in connection with this contract at any time. The Client acknowledges that such individuals are entitled to enforce this term pursuant to the Contracts (Rights of Third Parties) Act 1999.

b) Without prejudice to any provision in this Agreement whereby liability is excluded or limited to a lesser amount, the liability of the Company in respect of any one claim arising from one source or originating cause and in total for all claims arising under or in connection with the Agreement whether in contract, tort (including negligence), for breach of statutory duty or otherwise in respect of:

- (i) the combustibility, fire protection performance, fire resistance and/or fire retardant characteristic of any external cladding or roofing systems;
- (ii) any internal fire protection systems; and/or
- (iii) any aspect of the fire safety or fire performance of a building or structure

shall be limited to the greater of a) £25,000 or (b) the amount, if any, recoverable by the Company by way of indemnity against the claim or claims in question under any professional indemnity insurance taken out by the Company and in force at the time that the circumstance that might give rise to the claim or claims or if later the claim or claims is or are reported to the insurer in question.

**TOTAL**  
BUILDING CONTROL  
Corporate Approved Inspectors

