

Midlands Building Control Consultancy Limited

Terms and Conditions

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 10 (LIMITATION OF LIABILITY)*.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Approved Documents: the supporting documents providing practical guidance to the Building Regulations.

Building Regulations: the Building Regulations 2010 or any subsequent update or amendment thereof.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 8 (Charges and payment).

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.6.

Contract: the contract between MBCC and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from MBCC.

Customer Default: has the meaning set out in clause 7.2.

Delivery Site: the location in which the Services will be delivered for the Customer.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights

to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

MBCC: Midlands Building Control Consultancy Limited registered in England and Wales with company number 07996061.

Project Information Sheet: means MBCC information sheet detailing information relating to the Customer's project.

Services: the services, including the Deliverables, supplied by MBCC to the Customer as set out in the Specification.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 Completion of the Project Information Sheet constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Project Information Sheet shall only be deemed to be accepted when MBCC issues written acceptance of the Project Information Sheet at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by MBCC shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1 MBCC shall use all reasonable endeavours to meet any performance dates specified, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.2 MBCC warrants to the Customer that the Services will be provided using reasonable care and skill in accordance with the Construction Industry Councils Code of Conduct for Approved Inspectors and the Building Control Performance Standards (each as amended from time to time).
- 3.3 MBCC's role in the works and Services shall only be to consider and ensure evidence of compliance from assessing design information and periodic site inspections and not to build in accordance with the Building Regulations and relevant codes of practice.
- 3.4 **The function of MBCC shall not be construed as quality assurance or project management. You are advised to instruct expert professional advice in this regard.**
4. **Commencement of work (IMPORTANT FOR CONSUMERS)**
- 4.1 From the Commencement Date, we will begin work upon receipt of completion of our Project Information Sheet in full, including details of the payee of our fees.
- 4.2 Unless it is agreed otherwise in writing, your rights under the Consumer Contracts (Information, Cancellation and Additional Charging) Regulations 2013 (right to change your mind within 14 days commencing from the date the contract is made) is waived, and we shall begin work immediately upon completion of clause 4.1.
5. **Process and important Customer information**
- 5.1 By instructing MBCC to undertake the Services, permission for MBCC to sign the initial notice on behalf of the person(s) carrying out the works for the Customer is automatically assumed.
- 5.2 Alternatively, where a third party, or agent, appoints MBCC the person(s) carrying out the works for the Customer should be informed and permission for MBCC to sign the initial notice on their behalf is automatically assumed.
- 5.3 MBCC will use its reasonable endeavours to submit the initial notice to the relevant local authority within 5 days prior to works commencing on the Delivery Site.
- 5.4 Whereby a Customer, third party, or agent, instructs MBCC, it is the Customer, third party, or agent's responsibility to inform the person(s) carrying out the works of MBCC's appointment and to make them aware of these terms.
- 5.5 Should any works begin prior to this period, the local authority may reject the initial notice and then assume the role of building control provider and charge a fee. **MBCC shall not have any responsibility for any works that start without an initial notice in place or be liable for any costs associated with works starting prior to the initial notice being validated by the local authority.**

- 5.6** MBCC may cancel the initial notice and shall cease the Service if:
- (a) we are unable to verify that the works are in compliance with the Building Regulations and the Approved Documents due to the Customer's non-provision of information;
 - (b) the Customer, or person(s), responsible for the works is in breach of the Building Regulations and this breach has not been rectified within the time scale provided by us; or
 - (c) if we are not notified at key inspection stages.
- 5.7** MBCC shall not be responsible for any costs associated with testing and commissioning of building systems where we have requested certification.
- 5.8** MBCC shall maintain the right to inspect the services at the Delivery Site at mutually agreed stages between the parties during the term.
- 5.9** MBCC reserves the right to request from the Customer any further plans, information, structural calculations necessary for MBCC to carry out our assessment of the service to confirm compliance with the Building Act 1984 and Building Regulations 2010.
- 5.10** It is the Customer's sole responsibility to notify us when the works are completed, time is of the essence.
- 5.11** Subject to 5.13, a final certificate will be issued within 28 days by MBCC.
- 5.12** MBCC will not be responsible for any additional fees that are payable to the local authority or any other costs if we are unable to issue a completion certificate under clause 5.11 or 5.13.
- 5.13** MBCC will issue a final certificate upon satisfactory completion of the Services and full clear payment has been made by the Customer for all outstanding invoices.
- 5.14** This clause 5 will continue after termination of the contract. MBCC shall have the right to request a copy of the certificate upon completion to verify completion of the Services, in accordance with the Building Regulations 2010, from time to time.
- 6. Consultation with other regulatory parties**
- 6.1** MBCC will, where required, consult with relevant local authorities to obtain necessary information to assist in the delivery and performance of the Services. Any reasonable fees associated to the obtaining of information from a local authority shall be payable by the Customer.
- 6.2** MBCC will consult the relevant water authority when there is a possibility that a public sewer is being built over or near.

- 6.3** It is advisable for the Customer to undertake their own consultations in advance of works being undertaken to ascertain whether a “build over” agreement with the relevant water authority is required. These agreements may cause delays to the project and incur additional costs.
- 6.4** MBCC will consult with the relevant fire service when required. The relevant fire service may have their own opinion on compliance and have wider powers under the Regulatory Reform (Fire Safety) Order 2005 (or subsequent legislation). It is therefore recommended to allow MBCC to consult the fire service at an early stage to ensure the design is agreed by all parties.
- 6.5** MBCC shall not be liable for any delays in the delivery of the Service when information is delayed or protracted due to consultation in relation to the above parties.
- 7. Customer's obligations**
- 7.1** The Customer shall:
- (a) notify MBCC prior to the works commencing;
 - (b) notify MBCC at mutually agreed key inspection stages during the course of the Services;
 - (c) ensure that the terms of the Project Information Sheet and any information it provides including in any drawings or calculations, are complete and accurate;
 - (d) co-operate with MBCC in all matters relating to the Services;
 - (e) provide MBCC, its employees, agents, consultants and subcontractors, with access to the Delivery Site as reasonably required by MBCC;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (g) comply with all applicable laws, including health and safety laws, ensuring that the Delivery Site allows MBCC staff to carry out the Services and that appropriate facilities are in place to ensure the health and safety of MBCC staff.
 - (h) be responsible for compliance of the works under the Building Regulations and the Building Act 1984. MBCC can only assess the works on the project at key inspection stages, when notified and are not considered project managers or clerks of works.
- 7.2** It is the Customer’s sole responsibility if domestic work requires a Part P certificate, the work is carried out by a competent person and an electrical test certificate is provided to MBCC.

7.3 If MBCC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, MBCC shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays MBCC's performance of any of its obligations;
- (b) MBCC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from MBCC's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse MBCC on written demand for any costs or losses sustained or incurred by MBCC arising directly or indirectly from the Customer Default.

8. Charges and payment

8.1 The Charges for the Services shall be calculated as stated below:

- (a) the Charges shall be calculated in accordance with MBCC's fee rates from time to time or a quoted to the Customer and placed on the Project Information Sheet
- (b) MBCC's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) MBCC shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom MBCC engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by MBCC for the performance of the Services, and for the cost of any materials.
- (d) Upon commencement of the works, and regardless of an inspection taken place an inspection fee shall be payable in accordance with clause 8.6. Any fees below £350+VAT will be invoiced upon registration of the initial notice and shall be payable in accordance with clause 8.6.

8.2 Where works significantly change from that originally instructed, we may charge reasonable additional fees for any additional plan examination(s) and site inspection(s) of the works as reasonably required.

8.3 It is noted that our fee quoted shall not include any site inspections for warranty providers.

- 8.4** MBCC shall invoice the Customer on completion of the Services or otherwise required during the supply of Services.
- 8.5** Any staged payments scheme(s) by the Customer to MBCC exceeding £3,000 plus VAT shall only be accepted by MBCC whereby a director of MBCC has approved such payment scheme(s).
- 8.6** The Customer shall pay each invoice submitted by MBCC:
- (a) within 28 days of the date of the invoice or in accordance with any credit terms agreed by MBCC and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by MBCC, and
- time for payment shall be of the essence of the Contract.
- 8.7** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by MBCC to the Customer, the Customer shall, on receipt of a valid VAT invoice from MBCC, pay to MBCC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.8** If the Customer fails to make a payment due to MBCC under the Contract by the due date, then, without limiting MBCC's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.9** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. Intellectual property rights**
- 9.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by MBCC.
- 9.2** MBCC grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free.
- 9.3** The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.
- 9.4** The Customer grants MBCC a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to MBCC for the term of the Contract for the purpose of providing the Services to the Customer.

- 10. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 10.1** MBCC has obtained insurance cover in respect of its own legal liability. The limits and exclusions in this clause reflect the insurance cover MBCC has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 10.2** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any liability that may not be excluded by law if the Customer is a consumer; and
 - (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.3** Subject to clause 10.2, MBCC's total liability to the Customer shall not exceed 10 x MBCC's total application fee. MBCC's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 10.4** The following types of loss are wholly excluded:
- (i) Loss of profits
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.
- 10.5** MBCC has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. **This clause shall not apply where the Customer is a consumer and it shall not affect the Customer's statutory rights in such cases.**
- 10.6** MBCC liability will be determined as that of the local authority having due regard to the limitations imposed by findings in the *Murphy v Brentwood District Council* (1989) 88 LGR 333CA. This refers to a House of

Lords decision which limits the financial recovery from a building control body of pure economic loss in tort. We would also reference the Court of Appeal decision in Lessees and Management Company of Herons Court v Heronslea Ltd and others (2019) and the High Court decision in Zagora Management and others Ltd v Zurich Insurance PLC and others.

10.7 Further and notwithstanding anything to the contrary contained in these Conditions and the Contract and without prejudice to any provision in these Conditions and the Contract whereby liability is excluded or limited to a lesser amount, the liability of MBCC, if any, for any loss or damage (“the loss or damage”) in respect of any claim or claims shall not exceed such sum as it would be just and equitable for MBBC to pay having regard to the extent of MBBC’s responsibility for the loss or damage and on the assumptions that:

- (a) All other consultants and advisers, contractors, sub-contractors and or any other parties providing services in respect the project to which the Services and the Contract relate shall have provided contractual undertakings to the Customer on terms no less onerous than those set out in these conditions and the Contract in respect of the carrying out of their obligations in connection with the project to which the Services and the Contract relate; and
- (b) There are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between the Customer and any other party to which the Services and the Contract relate and that any such other party who is responsible to any extent for the loss or damage is contractually liable to the Customer for the loss or damage; and
- (c) All the parties referred to in (a) above, have paid to the Customer 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.

10.8 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.

11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.3 Without affecting any other right or remedy available to it, MBCC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12. Consequences of termination

12.1 On termination of the Contract:

- (a) the Customer shall immediately pay to MBCC all of MBCC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, MBCC shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) MBCC may withhold the issue of any final certificates/completion certificates.

12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. General

13.1 Complaints. If the Customer wishes to submit a complaint to MBCC, a written request for MBCC's complaints procedure should be made either in writing at adrianmarshall@midlandsbc.co.uk or 13 South Road, West Bridgford, Nottingham NG2 7AG.

13.2 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.3 Assignment and other dealings.

- (a) MBCC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of MBCC.

13.4 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or MBCC of the other party, except as permitted by clause 13.4(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.4; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.5 Entire agreement.

- (a) The Contract 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 13.6 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.7 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.8 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.9 Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.10 Governing law.** The Contract, 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.
- 13.11 Jurisdiction.** 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 the Contract or its subject matter or formation.
- 13.12** The Insurer will not be liable in respect of:
any Claim arising from a contract, agreement or appointment signed, entered into or concluded on or after the 1st July 2021, which contains provisions more onerous than the ACAI/CIC approved 'Contract for the Appointment of an Approved Inspector' but only to the extent that the claim or part thereof relates to a liability arising out of provisions more onerous than the ACAI/CIC approved 'Contract for the Appointment of an Approved Inspector'.



MBC

Midlands Building Control

13.13 The Approved Inspector shall not be responsible for the supervision of any contractor or subcontractor and/or for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor. The Approved Inspector shall not be liable under or in connection with this contract for or as a result of any work and/or services provided by and/or any act or omission of any third party (including without limitation any contractor, consultant or sub-contractor).

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