

CORNWALL BUILDING CONTROL LTD TERMS AND CONDITIONS FOR THE PROVISION OF APPROVED INSPECTOR SERVICES

Definitions

In these Conditions the following words and expressions shall have the following meanings:

Client: the company, firm or individual instructing Cornwall Building Control Ltd to act as Approved Inspector for the project

Approved Inspector: means a licensed individual or organisation carrying out the duties given to an approved inspector by the Building Act 1984 and regulations made under it

Conditions: the standard Conditions and conditions of provision of Services set out in this document and conditions agreed in writing between Cornwall Building Control Ltd and the Client

Project: the work described in the Initial Notice

CBC Ltd Cornwall Building Control Ltd (Company Number 8121704) whose registered office is located at Units 13 & 14 Penwith Business Centre, Long Rock, Penzance, Cornwall, TR20 9HL

Introduction

1.1. The Approved Inspector shall provide the services with reasonable skill, care and diligence and in accordance with the Construction Industry Council's Code of Conduct for Approved Inspectors.

Clients obligations

2.1. The Client shall supply such information to the Approved Inspector at such times as is reasonably required for the delivery of the services.

2.2. The Client shall notify the Approved Inspector in writing of any agent appointed to act on behalf of the Client and of any change or dismissal of the agent.

2.3. The Client shall notify the Approved Inspector in writing of any instruction to vary the services.

2.4. The Client shall 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.

Compliance with the Building Regulations

- 3.1 The Client has the statutory responsibility for the Project's compliance with the Building Regulations and the 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.
- 3.2 The Approved Inspector shall, in performing the Services exercising the level of skill and care provided in clause 1.1, 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, it shall 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.

Assignment and subcontracting

- 4.1. Neither the Client or the Approved Inspector 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.
- 4.2. The Approved Inspector shall not subcontract any part of the services without giving written notification to the Client.
- 4.3. A person or company who is not a 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.

Payment

- 5.1. The Client shall pay the Approved Inspector for the performance of the services the fees and charges in such instalments as set out the Fee Proposal. All fees and charges under the Agreement are exclusive of Value Added Tax which if due shall be paid at the prevailing rate concurrently in addition.
- 5.2. Where the Client intends to withhold payment of any amount either stated in the Approved Inspector's invoice, the Client must give written notice to the Approved Inspector not later than 5 days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.
- 5.3. In the event that the Client is in default over payments of amounts at the final date for payment and no notice of intention to withhold payment from such amount has been given under Clause 5.2 above, the Approved Inspector may suspend performance of any or all of the services, and Final Certificates will not be issued. This right is subject to the Approved Inspector first giving the Client not less than 7 days' written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the Client makes payment of the amount due. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the services. Such suspension shall not be treated as a suspension under Clause 9 below.
- 5.4. The Approved Inspector shall notify the Client in writing as soon as it becomes reasonably apparent that any work additional to the subject of this Agreement will be required.

5.5. Where the Approved Inspector is involved in additional work because of:

- 5.5.1. Changes in the scope of the work, and/or
- 5.5.2. Changes in the program of the work, and/or
- 5.5.3. Changes instructed to the services, and/or
- 5.5.4. The commencement of adjudication, arbitration or litigation

the Client shall pay to the Approved Inspector additional fees calculated (unless otherwise agreed) on the revised cost of the works, or at an hourly rate of £100.00 plus VAT.

Professional Indemnity Insurance

- 6.1. The Approved Inspector is required to comply with the guidelines issued by the Department Communities and Local Government in respect of the maintenance of professional indemnity insurance.
- 6.2. The Approved Inspector shall on written request of the Client provide evidence that the insurance is properly maintained.
- 6.3. The Approved Inspector shall immediately inform the Client if the insurance referred to in Clause 6.1 above ceases to be available.
- 6.4. The Scheme of current insurance cover approved by the Secretary of State is Royal Sun Alliance Insurance plc, Policy Number 14/1/00945, also referred to as "The Griffiths & Armour Scheme".

Copyright

- 7.1. The copyright in all documents prepared by the Approved Inspector in providing the services shall remain the property of the Approved Inspector. Subject to payment by the Client of the fees properly due to the Approved Inspector under this Agreement the Approved Inspector grants to the Client a non-exclusive royalty free licence to copy and use the documents for any purpose related to the project.
- 7.2. The Approved Inspector shall not be liable for any use of the documents for any purpose other than that for which they were prepared and provided by the Approved Inspector.

Suspension and Termination

- 8.1. The Client may suspend performance by the Approved Inspector of all or any of the services by giving 7 days' written notice to the Approved Inspector. The Client must also give notice of cancellation of Initial Notice to the appropriate local authority and the Approved Inspector in accordance with Section 52 of the Building Act 1984.
- 8.2. The Client may terminate the appointment of the Approved Inspector under this agreement by giving 7 days' written notice to the Approved Inspector.
- 8.3. Where services have been suspended by the Client and the Agreement has not been terminated, the Client may, by giving reasonable written notice to the Approved Inspector, require the Approved Inspector to resume the performance of the services.
- 8.4. If the Client materially breaches its obligations under this Agreement the Approved Inspector may serve on the Client a notice specifying the breach and requiring it

remedy within 28 days, and if the Client thereafter fails to remedy that breach within that period the Approved Inspector may terminate this Agreement by giving written notice to the Client.

8.5. The Approved Inspector may terminate this contract forthwith by notice in writing if the Approved Inspector reasonably believes that it is impossible or impracticable to perform the Services as a result of any circumstances for which the Consultant is not responsible and/or that the Consultant will not be in a position to issue a Final Certificate on completion. Following termination by the Approved Inspector or the Client, the Approved Inspector is entitled to write to the Local Authority (with a copy to the Client) cancelling the initial notice under the Building Regulations, in which case the Approved Inspector functions will revert to the Local Authority and the Approved Inspector will be discharged from all requirements to complete the Services or any Additional Work. The Approved Inspector shall not be liable for any losses, costs, expenses, damages, or liabilities that [the Client] may incur in such circumstances.

8.6. If either party:

- 8.6.1 Commits an act of bankruptcy or has a receiving or administrative order made against it, and/or
- 8.6.2 Goes into liquidation, and/or
- 8.6.3 Becomes insolvent, and/or
- 8.6.4 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 Client.

8.7. These rights are in addition to those granted to the Approved Inspector under Clause 5 above.

Consequences of suspension and termination

9.1. If performance of the services has been suspended under Clause 5 or Clause 8 above or the Agreement has been terminated pursuant to the provisions of Clause 8 above:

- 9.1.1. The Client shall pay the Approved Inspector any instalments of the fees due to the Approved Inspector 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.
- 9.1.2. Unless the Agreement has been terminated by the Client because of a material breach by the Approved Inspector the Client shall pay the Approved Inspector within 28 days of written demand the consequential costs necessarily incurred as a result of the suspension or termination.

9.2. Termination of the Agreement shall be without prejudice to the rights and remedies of the parties.

Complaints

10.1. In the event that the Client has a complaint in respect of the performance of the Approved Inspector's services under this Agreement, without prejudice to any other remedy available under this Agreement, he shall be entitled to have access to the

complaints handling procedure maintained by the Approved Inspector, written copies of which should be available upon request from the Approved Inspector.

Liability

- 10.1. The Approved Inspector's obligation in relation to the performance of the Services shall be limited to the exercise of the level of skill and care provided in clause 1.1 and he shall only be liable if and to the extent that it has failed to exercise such skill and care.
- 11.2. The Approved Inspector 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 Approved Inspector have any responsibility, duty or liability as a result of or in connection with the performance of any contractor or sub-contractor or any contractor or sub-contractor's standard of workmanship.
- 11.3. Without prejudice to any other exclusion or limitation of liability available to the Approved Inspector, the Approved Inspector's liability for loss or damage suffered by the Client in the event of any breach of this Appointment is limited to the proportion of such loss or damage that it would be just and equitable to require the Approved Inspector to pay having regard to the extent of the Approved Inspector's responsibility for the same and on the assumptions that:
 - 11.3.1. any and all parties or persons in any way involved in the Project have provided contractual undertakings and/or collateral warranties to the Client on terms no less onerous than those set out in this Appointment in respect of the carrying out of their obligations in connection with the Project;
 - 11.3.2. there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client such party or person in any way involved in the Project; and
 - 11.3.3 any and all parties or persons in any way involved in the Project have paid to the Client such sums as it is just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.
- 11.4. 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 saving or special, indirect or consequential damage suffered by the other Party that arises under or in connection with this Agreement.
- 11.5. Without prejudice to any other exclusion or limitation of liability available to the Approved Inspector, in assessing the Approved Inspector's liability for loss or damage suffered by the Client in the event of any breach of this Appointment, due regard will also be given to the limitations set down by the House of Lord's decision on *Murphy v Brentwood District Council* [1991] 1 AC 398 and any other relevant decisions of the Courts of England & Wales.
- 11.6. Notwithstanding any other provisions in these Terms and Conditions, the Approved Inspector's total liability to the Client for any claims under or in connection with this contract (other than in respect of personal injury or death), whether in contract, in tort (including negligence), for breach of statutory duty or otherwise, shall be not exceed in the aggregate the lowest financial value of either (a) the Project Value set out in Section 5 of the CBC Ltd's "Appointment Form for Approved Inspector Services" relevant to the Project, (b) the limit of indemnity of CBC Ltd's professional indemnity

insurance that might respond to the claim or, (c) a multiple of ten times the total of the fees payable to CBC Ltd to by the Client in relation to the Project.

Notice

- 12.1. Any notice to be given under this Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the address shown in this Agreement or to such other address as the other party may have specified from time to time by written notice to the other.
- 12.2. Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.
- 12.3. Where under this Agreement an act is required to be completed within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday, that day shall be excluded.

Schedule of Services

- 13.1. The Approved Inspector hereby agrees to provide the following Building Control service:
 - 13.1.1. To issue to the Client and appropriate local authorities an Initial Notice upon receipt of a completed Agreement.
 - 13.1.2. To allocate a suitable qualified Building Control Surveyor to the contract.
 - 13.1.3. To carry out statutory consultations.
 - 13.1.4. Issue a Plans Certificate upon request when the plans and details show compliance with current Building Regulations.
 - 13.1.5. To make periodic visits to the site to advise the Contractor of opportunities to comply with Building Regulations.
 - 13.1.6. To issue a Final Certificate to the Client and the appropriate local authority at satisfactory completion of building works.
- 13.2. The Client hereby agrees, as is requires for the Approved Inspector to carry out his duties, to provide
 - 13.2.1. Copies of full working drawings in sufficient quantities as is specified, and at the appropriate time,
 - 13.2.2. Access to the Site during working hours, and
 - 13.2.3. The opportunity to display a site sign board if such facilities are to be provided on site.