



BCS BUILDING CONTROL TERMS AND CONDITIONS

BY SUBMITTING OUR ONLINE OR PAPER HARDCOPY VERSION OF THE BCS CONTRACT OF APPOINTMENT YOU CONFIRMED THAT YOU HAVE READ AND ACCEPTED THESE TERMS AND CONDITIONS.

THESE TERMS AND CONDITIONS ARE APPLICABLE TO THE APPOINTMENT OF BCS BUILDING CONTROL IN THE CAPACITY OF APPROVED INSPECTORS OFFERING A BUILDING CONTROL SERVICE ONLY – PERFORMING THE FUNCTION OF AN APPROVED INSPECTOR.

YOU MUST UNDERSTAND THAT OUR SERVICES WHILST PERFORMING OUR FUNCTIONS AS AN APPROVED INSPECTOR PURSUANT TO THE BUILDING (APPROVED INSPECTORS) REGULATIONS 2010 [AS AMENDED] IS NO SUBSTITUTE FOR YOU HAVING FULL SITE SUPERVISION AND CONTROL OF YOUR BUILDING WORKS. BCS BUILDING CONTROL IS NOT YOUR “CLERK OF WORKS” or WILL NOT BE INVOLVED IN YOUR DESIGN OR PROJECT MANAGEMENT RELATING TO YOUR PROGRAMME OF WORKS THROUGHOUT ALL THE PROJECT DURATION ON ANY DAILY BASIS. IT IS YOUR RESPONSIBILITY TO ENSURE THAT ALL WORK CARRIED OUT BY YOU MEETS THE REQUIREMENTS CONTAINED IN THE BUILDING REGULATIONS.

BY SUBMITTING OUR CONTRACT OF APPOINTMENT TO US YOU CONFIRM THAT –

- YOU UNDERSTAND THAT OUR FINAL CERTIFICATE IS NOT A DOCUMENT OF GUARANTEE OR WARRANTY THAT WORK CARRIED OUT BY YOU OR YOUR BUILDERS ARE ENTIRELY COMPLIANT.
- OUR ACKNOWLEDGEMENT PACK WHICH YOU WILL RECEIVE WILL SHOW A FEE PAYABLE FOR OUR SERVICES. IF THERE IS ANY DISPUTE WITH REGARD TO THE FEE SHOWN ON THE ACKNOWLEDGEMENT PACK YOU HAVE 14 DAYS TO RAISE YOUR DISPUTE IN WRITING TO OUR OFFICES. IF NO LETTER OF DISPUTE IS RECEIVED THEN OUR FEE IS CONFIRMED & DEEMED TO BE ACCEPTABLE TO YOU AND WILL BE PAYABLE IN ACCORDANCE WITH THESE TERMS & CONDITIONS.

Terms and Conditions accepted by the person responsible for building work or his / her agents acting on their behalf Building Control Surveyors Ltd (BCS) – Corporate Approved Inspectors

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

“Client” the company, firm or individual instructing Building Control Surveyors Ltd (BCS Ltd) to act as Approved Inspector providing Building Regulation approval services for the project, duly appointed as the case may be to act on behalf of the registered property owners being subjected to building work;

“Clients Agent” means the person, firm, company identified on this form of appointment who in good faith represents the person intending to carry out building work, by virtue of a contract which they state [verbally or in writing] exists between them, and the person intending to carry out the building work. This person who in good faith signs this document is deemed to have the authority of the person intending to carry out the building work, and who is ultimately responsible for building work carried out at the premises indicated on this form. The Law of Agency relating to UK commercial practices is considered to be applicable in circumstances where an Agent is used by a Client.

“Conditions” the standard Conditions and conditions of provision of Services set out in this document and conditions agreed in writing between Building Control Surveyors Ltd and the Client.

“Project” the work described on this Contract of Appointment & subsequent Initial Notice. “BCS Ltd” or “BCS” refers to Building Control Surveyors Ltd (Company Number 07846158) whose registered office is located at Warlies Park House, Teulon Wing, Horseshoe Hill, Upshire Essex EN9 3SL. Our VAT registration number is available by request.

1. 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.

1.2. A binding contract shall not be formed until BCS Ltd receives from the Client or from their appointed Agents / Contractors, deemed as representing the person undertaking the building work, the completed and signed Contract of Appointment allowing BCS Ltd to commence basic service provision. If in our opinion, any details contained in the Fee Quote or Contract of Appointment are incorrect we shall notify the Client in writing within 10 working days from receipt (and before BCS Ltd starts to perform the Basic Services) and either request that the Contract of Appointment is resubmitted to BCS Ltd by the Client or from their appointed Agents / Contractors. BCS Ltd and the Client may agree either verbally or in writing (which for this purpose shall include email) how the issue is to be resolved.

1.3. All documentation exchanged between a signatory of this document is deemed as having Terms and Conditions accepted by the person responsible for building work or his / her agents acting on their behalf been delivered by the signatory, to all parties who may be affected by this contract particularly the person intending to undertake building work.

2. 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 providing client technical support i.e. Client Architect.

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 your work.

2.5 The Client shall make available during our visits to your project a competent Project manager, Foreman, Clerks of Works, or another competent person authorised by you, on the site and in charge of your building work, acting in a supervisory capacity should we require any information which will aid us during our inspections.

2.6 To obtain consent and to comply with all other legislative requirements as would be applicable to the proposed developments (i.e. Town & Country Planning Consents, Freeholders consents, Building Regulations etc)

2.7 To notify BCS Ltd [the Approved Inspector] in writing of the commencement of building work and certain stages of that work as may be mutually agreed, and to agree that the project will be completed within 1 calendar year starting from the date our Initial Notice was Accepted by the local authority and our services was duly appointed by a building owner or his/her contracted agent to provide our services, or we reserve the right to increase our service costs for the further supply of building regulation services beyond the first calendar year. For active projects the client must maintain contact with the Approved Inspectors offices at intervals not exceeding 25 days, by telephone or in writing, to update the Approved Inspector in respect to the current status of building work in progress, and to arrange all necessary inspections of building work prior to covering over or concealment of that work. For non-active projects i.e. projects where no activity has taken place for 3 calendar months, clients must make contact with the Approved Inspectors offices at intervals not exceeding two and a one half calendar months, by telephone or in writing, to update the Approved Inspector in respect to the current status of building work, and to arrange all necessary inspections of building work prior to covering over or concealment, or to provide any re-commencement of building work operations dates to our office.

2.8 To undertake all building work in accordance with plans which show compliance with the building regulations, British Standards, Codes of Practice and approved specifications prepared on the clients behalf, as they may apply at the time of application of our services, and which show compliance with current building regulations.

2.9 The client shall be responsible for the projects compliance with the building regulations and our services does not include advising the client or managing the project to ensure that compliance is achieved. The client shall pay our fees as shown in our ACKNOWLEDGEMENT PACK/ invoice in full on the date of deemed acceptance (five days after submission of the Initial Notice to the Local Authority). The client is given 14 days to notify us in writing of any dispute with regard to our fees otherwise it will be deemed by BCS that you have accepted our fees quoted therein.

2.91 Our staff operate within strict ethical and professional codes of conduct. If any member of our staff has been subjected to any acts of violence, verbal, written or physical abuse or assault from any client or his/her contracted agent, this contract shall be terminated following a review and report of the circumstances to the Managing Director of BCS Ltd. We reserve the right to take further legal advice or action as may be necessary to safeguard any member of our staff. Please be aware that if it is proven that abusive behaviour, physical, written or other threats including any assault of our staff has taken place our services will be terminated without any refunds of fees paid.

2.92 If the client has received any price adjustments, this is on the basis that full payment is made upon local authority "Acceptance" of our Initial Notice or at least five working days after submission of the Initial Notice to the Local Authority. BCS reserve the right to remove the price adjustment and reinstate the standard fee if payment is not received by this date.

2.93 The client agrees that works are to be completed within a duration of 3 years following Local Authority acceptance of our Initial Notice. The client obligations shall be met, so that we can issue a Final Certificate before project expiration, on compliant work. For the purposes of this clause, we determine that a project duration commences with the date of deemed acceptance/Local Authority acceptance, whichever is earlier. It is possible to extend the project beyond 3 years, but an additional charge applies.

3. Assignment and subcontracting

3.1. 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.

3.2. The Approved Inspector shall not subcontract any part of the services without giving written notification to the Client.

3.3. 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.

4. Payment of statutory fees for Building Regulation Approval

4.1. The Client shall pay the Approved Inspector for the performance of the services the fees and charges in such instalments as set out in any pre-agreed Fee Proposal or as shown on this document. Our fees are not fixed fees and maybe varied if the scope of works vary, additional work is required due to your project circumstances, or material facts declared to us at the start of the project are found to be inaccurate. Our Building Regulation fees otherwise by default become immediately payable upon local authority "Acceptance" of our Initial

Notice and must therefore be settled prior to commencement of building work, and in all cases must become payable before any plan checking service is provided or any site inspection request is made by the client or his/her contracted agent. All fees and charges under the Agreement are exclusive of Value Added Tax (If applicable) which if due shall be paid at the prevailing rate concurrently in addition.

4.2. 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.

4.3. In the event that the Client is in default over payments of any amount due either at commencement of work, and following the issue of our invoice demands, and no notice of intention to withhold payment from such amount has been given under Clause 4.2 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 any 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 8 below. We reserve the right to claim interest (8% plus the Bank of England base rate) under the Late Payment of Commercial Debts (Interest) Act 1998 and a fixed fee sum for the cost of recovering a late payment of £40 for debts up to £999 and £70 for debts up to £9,999 will be charged. These amounts are set by late payment legislation.

4.4. 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. The client will be advised of additional fees required to cover this work.

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

- Changes in the Terms and Conditions accepted by the person responsible for building work, or due to a lack, refusal or delay in obtaining relevant information from either a client or their appointed agents acting on their behalf, or a change in the scope of the work, and/or changes in the program of the work, and/or changes otherwise instructed to the services agreed by the client, and/or the commencement of adjudication, arbitration or litigation, and/or any other additional works determined by the Approved Inspector -

The Client shall pay to the Approved Inspector additional fees for any additional work beyond that originally agreed in our signed contracts, calculated (unless otherwise agreed) on the revised cost of the works, or at an hourly rate of £250.00 plus VAT.

5. Professional Indemnity Insurance

5.1. The Approved Inspector is required to comply with the guidelines issued by the Department of Transport, Environment and the Regions in respect of the maintenance of professional indemnity insurance.

5.2. The Approved Inspector shall on written request of the Client provide evidence that the insurance is properly maintained.

5.3. The Approved Inspector shall immediately inform the Client if the insurance referred to in Clause 5.1 above ceases to be available.

6. Copyright

6.1. 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 an irrevocable non-exclusive royalty free licence to copy and use the documents for any purpose related to the project.

6.2. 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.

6.3 The Approved Inspector is not able to retransmit – publish – or hardcopy print any documents provided to them as part of statutory checking services which may result in a copyright infringement. Copies should be obtained from the originating author.

7. Warranties

7.1. The Client shall have in place an approved Designate Warranty Provider (DW) cover prior to serving of an Initial Notice for new build homes or flats formed by conversion, and shall notify BCS Ltd immediately if the warranty is no longer in place.

7.2 Please note that our site outcome notes are intended for the use of the Building Owner only, and should not be used by warranty companies or any other third parties party as approval of that stage of works. Should our notes be required for any third party this constitutes additional works as defined in clause 4.5.

8. 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. This clause does not apply where our termination is due to any act identified under clause 2.91.

8.5. 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 Client.

8.6. These rights are in addition to those granted to the Approved Inspector under Clause 4 above.

9. Consequences of suspension and termination

9.1. If performance of the services has been suspended under Clause 4 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.

9.3 Termination of our services due to a client's, or his contracted agent's confirmed abusive behaviour as covered by clause 2.91 shall result in no refund of any fees paid to BCS Ltd.

10. 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.

11. Arbitration

11.1. Any dispute arising under this Agreement, including those for more than £50,000 and/or those where adjudication would not apply, may be referred at the instance of either of the parties to be determined by an instance of either of the parties to be determined by an Arbitrator. The person who is to act as an arbitrator shall be agreed between the parties within 28 days of the one giving written notice of his wish to refer the decision to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering this Agreement.

12. Liability

12.1. The liability of the Approved Inspector shall be limited to such sum as would be just and equitable for the Approved Inspector to pay having regard to the extent of the responsibility of the Approved Inspector for the loss or 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 Agreement 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 the *Murphy v Brentwood District Council* (1989) 88 LGR 333 CA. Unless pre-agreed our limit of liability will not exceed the value of our fee charged to deliver our services for your project, or as the case maybe in the following clause 12.2

12.2. The maximum liability of the Approved Inspector shall be limited to the amount of the professional indemnity insurance required by virtue of Clause 5.1 above, but shall at the outset not exceed the fee we charged to deliver your services.

12.3. No action or proceedings for any breach of this Agreement shall be commenced by either party after the expiry of the period of limitation (specified in Clause 9 above).

13. Notice

13.1. Any notice to be given under this Agreement shall be in writing and delivered by electronic service of documents (email), 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.

13.2. 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.

13.3. 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.

14. Schedule of Services

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

14.1.1. To issue to the Client and appropriate local authorities an Initial Notice upon receipt of a completed Agreement and agreed fee.

- 14.1.2. To allocate a suitably qualified Building Control Surveyor to the contract.
- 14.1.3. To carry out all necessary statutory consultations at all keystages, where notified by the person responsible for carrying out the building work.
- 14.1.4. To review plans submitted within 5-15 days and to communicate any insufficient information to the client / consultant. Issue a Plans Certificate upon request when the plans and details show compliance with current Building Regulations.
- 14.1.5. To make periodic visits to the site to advise the Contractor of opportunities to comply with Building Regulations.
- 14.1.6. To issue a Final Certificate to the Client and the appropriate local authority following satisfactory completion of building works, on the understanding that a Final Certificate is not a representation that every aspect of the project complies with the building regulations, on the understanding that a Final Certificate is not a guarantee or warranty covering any aspect of your building work.
- 14.2. The Client hereby agrees as is required for the Approved Inspector to carry out his duties in the appointed capacity of building control service provider and to advise the registered building owner or occupier of the appointment of BCS Ltd, together with their respective obligations under this contract.
- 14.2.1. Copies of full working drawings in sufficient quantities as is specified, and at the appropriate time,
- 14.2.2. Access to the Site during working hours, and
- 14.2.3. The opportunity to display a site sign board if such facilities are to be provided on site.
- 14.3 The Greenstreet Berman 2012 Risk Assessment model is used to risk assess each proposal based upon information you have provided to us in good faith. Commencement and completion of work are the statutory notification stages and we replace the rest with a service plan based upon a risk assessment of your project. If during the scope of your building works your declarations are found to be inaccurate we reserve the right to alter our service plan agreement and our costs for providing our technical resources. Indicative site visits for each project may be altered by us to suit the levels of risk encountered on site by our surveyors.

We anticipate but are not constrained to, 5 to 6 inspections for a single storey extension, 2 to 3 inspections for a loft conversion and 5 to 8 inspections on a loft conversion plus an extension. Please note that these are only indicative site inspection amounts which also takes into account any possible inspection of contravening works and the competency of those carrying out the building work. The actual site visits undertaken may be less following our initial risk assessment, in order to provide you with a cost effective fee quote prior to your work commencing.

14.4 Please note that our "site outcome notes" are intended for the use of the Building Owner only, and should not be used by Warranty Service providers or any other third parties party, as an approval of that keystone of works. Should our notes be required for any third party scrutiny or reference, this constitutes additional works as defined in clause 4.5.

15.0 FINAL CERTIFICATES that are issued by BCS Building Control after the completion of building work are not conclusive proof that all the requirements specified in the certificate issued have been complied with. Final certificates will be issued at least 12 working days after the local authority has had an opportunity to accept our Final Certificate, in all cases pursuant to s16 of The Building (Approved Inspectors etc) Regulations 2010. A Final Certificate is not a warranty or guarantee of the building work carried out by your contractors. The building owners should at all times make sure that they have supervised competent persons on site who are following compliant plans and specifications.

15.1 It is the Building Owners responsibility to appoint a competent person to perform applicable works at their property. A Competent Person must be registered with a scheme that has been approved by The Department for Communities and Local Government (DCLG). Schemes authorised by the DCLG are listed on its website at <http://www.communities.gov.uk>

Where a client fails to submit competent person compliance certificates for work included on our Initial Notice, in accordance with DCLG guidance note issued 28th January 2016, "Approved inspectors' final certificates and regulation 171", BCS Ltd reserves the right to amend the description of works on our Initial Notice to remove such works covered by the competent persons scheme, and where possible our Final Certificate will be issued to exclude such works.

1. <https://www.gov.uk/government/publications/approved-inspectors-final-certificates-and-regulation-17>

Project Compliance

As the person responsible for carrying out building work at the above mentioned address, you will provide and give the Building Owner/s the following information Fire Safety information in compliance with regulation 38, regulation 39- ventilation and regulation 40- conservation of fuel and power.

• REGULATION 38.—Fire safety Information

1. This regulation applies where building work—
 - a. consists of or includes the erection or extension of a relevant building; or

- b. is carried out in connection with a relevant change of use of a building, and Part B of Schedule 1 imposes a requirement in relation to the work. or
- 2. The person carrying out the work **shall give fire safety information to the responsible person** not later than the date of completion of the work, or the date of occupation of the building or extension, whichever is the earlier.
- 3. In this regulation—
 - a. “fire safety information” means information relating to the design and construction of the building or extension, and the services, fittings and equipment provided in or in connection with the building or extension which will assist the responsible person to operate and maintain the building or extension with reasonable safety;
 - b. a “relevant building” is a building to which the Regulatory Reform (Fire Safety) Order 2005 applies, or will apply after the completion of building work;
 - c. a “relevant change of use” is a material change of use where, after the change of use takes place, the Regulatory Reform (Fire Safety) Order 2005 will apply, or continue to apply, to the building; and
 - d. “responsible person” has the meaning given by article 3 of the Regulatory Reform (Fire Safety) Order 2005.

Please note that As-Built Plans will be requested in order that you can fulfil this requirement.

REGULATION 39 Ventilation

1. This regulation applies where paragraph F1(1) of Schedule 1 imposes a requirement in relation to building work.
2. The person carrying out the work shall not later than five days after the work has been completed **give sufficient information to the owner** about the building's ventilation system and its maintenance requirements so that the

ventilation system can be operated in such a manner as to provide adequate means of ventilation.

REGULATION 40. Conservation of fuel and power

1. This regulation applies where paragraph L1 of Schedule 1 imposes a requirement in relation to building work.
2. The person carrying out the work shall not later than five days after the work has been completed **provide to the owner sufficient information about the building**, the fixed building services and their maintenance requirements so that the building can be operated in such a manner as to use no more fuel and power than is reasonable in the circumstances.