

# Terms and Conditions

## OUR SERVICES

We take such steps as are reasonable to enable MFA to be satisfied within the limits of the professional skill and care set out in clause 2.1 that the plans and works comply with the functional requirements of the prevailing Building Regulations, MFA shall –

Undertake the following services (where appropriate to the Project), including the Statutory Functions:

- Instructions** Receive instructions, brief and necessary documentation from the Client.
- Advise on procedure and programme for a Building Regulation certificate.
- Initial Notice** Submit an initial notice(s) to relevant local authorities and submit an acknowledgement to the Client.
- Assessment of plans** Undertake an assessment of plans for compliance and communicate to the Client, observed non-compliance with the Building Regulations, conditions pertaining to the approval or passing of plans and remedies available in the event of a dispute over compliance.
- Maintain appropriate records of the design assessment process.
- Statutory consultations** Consult with the fire authority where required and forward observations to the Client.
- Undertake all other statutory consultations and forward observations of consultees to the Client.
- Consider the desirability of undertaking additional consultations and communicate to the Client any consultee' observations or advice beyond the scope of the Building Regulations.
- Plans Certificate** If requested by the Client, when satisfied that the plans show no observed contraventions of the Building Regulations, issue a plans Certificate.
- Inspection notification framework** Prepare an inspection notification framework (INF) and if requested provide a copy to the Client.
- Adopt an appropriate site inspection regime taking account of relevant factors, and keep under review.
- Liaise with your Builders, Architect and Professional Advisors in regard to the services we are contracted to provide.
- Make inspections of the site to observe compliance with the Building Regulations.
- Maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance.
- Communicate any observed contraventions of Building Regulations.
- Notify observed significant departures from plans to consultees.
- Consider the need for tests, throughout construction and at completion, inform the Client of the requirements, witness tests and receive certificates as appropriate.

Request copies of such plans as are necessary in relation to the commissioning of services prior to issue of a final certificate(s).

**Final certificate**

Having taken reasonable steps to be satisfied that the whole or part of the works has been completed for Building Regulations purposes, issue a final certificate(s) and send to the Client.

If requested by the Client, provide a list of inspections carried out.

Retain statutory records for an appropriate period.

References to the Client include persons designated by the Client.

## **CONDITIONS**

### **1. MFA General obligations**

1.1 MFA shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with this contract. MFA shall have due regard to the BSR Code of Conduct for Approved Building Control Approvers and where possible to any programme for the Project (as amended from time to time).

### **2. Client's information and obligations**

2.1 The Client shall provide such information and assistance as MFA reasonably requires from time to time to facilitate the timely provision of the Services and any Additional works.

2.2 The Client shall be responsible for safe access to the Project being provided when MFA reasonably requires it.

2.3 The client warrants to all works in relation to the engagement of MFA Building Control Ltd to be completed within 1 year of the initial notice served (Extension over this time may cause additional Professional Fees).

### **3. Design, permits and approvals**

3.1 Except where permitted by law and to the extent set out in Part Services, the Client shall be entirely responsible for the design, construction and management of the Project and any Additional Work.

3.2 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 or any Additional Work.

### **4. Compliance with Building Regulations**

4.1 The Client shall be responsible 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.

4.2 MFA will/shall 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, shall issue a final certificate. The final certificate is not a representation that every aspect of the Project complies with the Building Regulations.

## **5. Fees/Payment**

- 5.1 The fee for our services shall be payable upon acceptance of the Initial Notice document for the project submitted by us, on behalf of the Client and/or their appointed representative to the relevant Local Authority.
- 5.2 The due date for payment of the Fee shall be the date of submission of MFA's valid invoice. The final date for payment of that invoice is 7 days after the due date for payment. The Fee is exclusive of VAT, which shall be paid in addition if applicable.
- 5.3 Any sum due under this contract which is not paid by the final date for payment shall carry interest at 5% above the Bank of England official dealing rate applicable from the final date for payment until the date on which payment is made. We may also levy an administration fee of £40.00 in addition to late payment interest.
- 5.4 When full payment of fees has not been received by MFA, we may cease all works including site inspections. This may result in our notice becoming invalid and you may be required to submit a regularisation application to the local authority, causing extensive additional costs and works to be re-inspected including the removal of plaster and decoration for inspections to take place.
- 5.5 Invoices shall be raised by MFA to the person/entity submitting the application and identifying themselves as the Invoicee. Once submitted they are responsible for paying the invoice and MFA is not responsible for invoicing third parties at their request or seeking remuneration from other parties.

## **6. Changes to the Project and Additional Work**

MFA shall notify the Client in writing as soon as it becomes aware that any Additional Work will be required, because of:

- 6.1 Changes in the design, size, scope or complexity of the Project.
- 6.2 Changes in the timing or programming of the Project.
- 6.3 A failure by the Client to comply with its obligations under this contract.
- 6.4 Additional meetings and/or visits and/or other work is required.

The Client shall pay MFA for the Additional Work on a time charge basis, at the rate of £125 (plus vat) per hour. MFA may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed. This may also include copy documentation requested by the Client or their Agents, at a minimum rate of £65 (plus vat) per document.

## **7. Insurance**

MFA shall maintain professional indemnity insurance and public liability insurance in compliant with the guidelines issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984. On the Client's written request, MFA shall provide evidence that these insurances are being properly maintained.

### **7.1 Net Contribution**

Further and notwithstanding anything to the contrary contained in this Agreement and without prejudice to any provision in [this Agreement] whereby liability is excluded or limited to a lesser amount, the liability of MFA Building Control Ltd, 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 MFA Building Control Ltd to pay having regard to the extent of our responsibility for the loss or damage and on the assumptions that:

(i) all other consultants and advisers, contractors and sub-contractors involved in the project shall have provided contractual undertakings to you the Client on terms no less onerous than those set out in this Agreement in respect of the carrying out of their obligations in connection with the project: and

(ii) there are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between the Client and any other party to the Project and that 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 (i) above, 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) when a Client is acting as the contractor or sub-contractor, the Client undertakes to abide by the terms set herein as all other consultants and advisers, contractors and sub-contractors involved in the project under clauses (i),(ii), (iii)

## **8. Assignment and subcontracting**

MFA may subcontract any part of the Services and any Additional Work, with the prior approval of the Client, not to be unreasonably withheld or delayed.

## **9. Termination and discharge**

The Client may terminate this contract forthwith if:

9.1 MFA are in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Client; or

9.2 MFA becomes insolvent.

## **10. MFA may terminate this contract forthwith if:**

10.1 The Client is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from MFA;

10.2 MFA reasonably believes that it will not be able to issue a final certificate on completion; or

10.3 The Client becomes insolvent.

10.4 MFA may terminate this contract under clause 2.3 and/or may make additional fee charges.

## **11. Following termination by the Approved Inspector or the Client, MFA are entitled to write to the Local Authority (with a copy to the Client) cancelling the initial notice under the Building Regulations, in which case MFA's functions will revert to the Local Authority and MFA will be discharged from all requirements to complete the Services or any Additional Work.**

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

## **12. Consequences of termination**

If this contract has been terminated, the Client shall pay MFA any instalments of the Fee due up to the date of termination (subject to the minimum registration fee which is not refundable) together with a fair and reasonable proportion of the next instalment of the Fee commensurate with the Services and any Additional Work performed by MFA prior to the notice of termination.

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

### **13. Limitations of liability**

- 13.1 Nothing in this clause 13 shall limit MFA's liability for negligence resulting in death or personal injury. Subject to that:
- 13.2 Notwithstanding any other provisions in this contract (apart from clause 13.1), MFA's total liability to the Client for any claims arising under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to five times the fee charged for its services for all domestic dwelling projects, and £2,000,000.00 for commercial projects.
- 13.3 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of MFA for any loss or damage ('the loss or damage') under this contract shall be limited to that proportion as it would be just and equitable for MFA to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:
- 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 2.1 to the Client in respect of the carrying out of their obligations in connection with the Project.
  - 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
  - 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.
- 13.4 MFA shall not be responsible for the supervision of any contractor or subcontractor, nor shall MFA have any liability for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor.
- 13.5 The Client shall look only to MFA (and not to individuals engaged by MFA or any individual directors or members of MFA) for redress if the Client considers that there has been any breach of this contract. 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 of the contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **14. Notices**

The Client and MFA can give notice to each other in writing under this contract by personal delivery. They can also give notice by Recorded Delivery or Special Delivery, in which case delivery is effective two working days after posting. Notices must be sent to MFA Building SF Control Ltd., Stanhope House, 113 Stanhope Road south, Darlington DL3 7SF

### **15. Disputes and complaints**

- 15.1 If the Client is not satisfied with MFA's performance of the Services or any Additional Work, it may ask MFA to implement MFA's complaints handling procedure. MFA shall provide a copy of the procedure on request. The operation of MFA's complaints handling procedure does not affect the Client's right to refer a dispute to the courts.

15.2 The Client and MFA shall consider in good faith whether any dispute or difference between them is suitable for resolution by mediation and if so, shall take the appropriate steps with a view to resolving the dispute or difference by mediation.

15.3 Either the Client or MFA may at any time refer a dispute or difference arising under or in connection with this contract to adjudication in accordance with the BSR Model Adjudication Procedure current at the date of the adjudication notice.

## 16. Novation

A contract law and business law replacing an obligation to perform with a new obligation.

MFA shall, within 14 days of the Client's request, execute and deliver to the Client a novation agreement in favour of the contractor in the form published by the BSR current at the date of the Client's request (with the deletion of clause 3 and amending the recitals as appropriate).

With effect from the date of execution of that novation agreement:

- All references to the Client in this contract shall (unless the context otherwise requires) be construed as references to the contractor.
- Any variations to the Services and other obligations of the Client and MFA set out in the novation agreement shall apply; and
- The rights and obligations of MFA in respect of the Project shall otherwise remain unchanged.

## 17. Rights of third parties

No-one has any right to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999, except as set out above. This does not affect the rights of the Client and MFA in relation to this contract.

## 18. Commencement

Whatever the date of this contract, it shall have effect as if it had been signed on the date when MFA commenced the Services.

# Definitions and Interpretation

## 19. Definitions

In this contract, unless the context otherwise requires, the following expressions have the following meanings:

**Additional Work** means the type or volume of services appropriate for an Approved Inspector to carry out in relation to the Project as a result of or in consequence of the matters described in clause 6 and which are not already covered by the Services set out in Part 1, together with any other services instructed by the Client and agreed by the Approved Inspector.

**MFA** means MFA Building Control Limited

**BSR** means the Building Safety Regulator (Regulatory Body)

<b>Fee</b>	means the total amount to be paid to the Registered Building Control Approver for the Services and any Additional Work.
<b>Services</b>	means the services listed in Part 1.
<b>Statutory Functions</b>	means the duties of an approved inspector under the Building Act 1984, regulations made under it and formal guidelines issued by a government department.

## 20. Interpretation

In this contract, unless the context otherwise requires:

- The word 'include' and any derivations of it shall be construed without limitation;
- The singular shall include the plural and vice versa;
- A gender shall include any other gender; and
- References to any statute or statutory instrument includes any statute or statutory instrument amending, consolidating or replacing it, and references to a statute includes statutory instruments and regulations made pursuant to it.