

## **TERMS OF BUSINESS**

### **Commencement on Instruction**

1. On receipt of written confirmation of your order we will commence work.

### **Fees and Invoicing**

2. All orders should state the address for invoices and, where required, the order number and address to which the invoice is to be copied.
3. All invoices are due for payment 14 days from the date of issue. Interest will be calculated under The Late Payment of Commercial Debts (Interest) Act 1998 on any invoices not paid on time and will be charged along with the compensation fee. Overdue invoices for private individuals will attract interest at the Statutory Rate of 8% per annum. The legal and non-legal costs (whether or not legal proceedings are instituted) incurred for enforcing the claim and collecting the debt including the fees of the collecting agencies and solicitors shall be reimbursed to us.
4. An invoice for the Plan Fee will be issued on submission of the Initial Notice.
5. Where the total fee is £500.00 plus VAT or less and includes for both the Plan and Site Inspection Fee, the Invoice will be issued on submission of the Initial Notice and payment is due within 30 days. Site Inspections will be made but no additional fees charged. There will be no rebate should the project not proceed.
6. The applicable plan fee and site inspection fee will be identified on the fee quote, except where the total fee is £500.00 plus VAT. See 8 below.
7. For projects where the total fee is over £500 invoices for the Site Inspection Fee:
  - i. Will be issued on commencement of work for the total amount where the fee is £2,000.00 or less excluding VAT.
  - l. Where the fee is in excess of £2,000.00 excluding VAT, invoices will be issued in instalments as agreed, but not less than £1,000.00, excluding VAT. The final instalment will be issued at least 30 days prior to completion of 'building work'\*.
8. All fees to be paid in full prior to a Final Certificate being issued.
9. Fee quotations may include anticipated approximate numbers of site inspections. This number is approximate for resource planning purposes and is not guaranteed. The actual number of inspections done will be subject to timely notifications by the project manager/contractor and the Evolve surveyor's discretion based on project specific risk assessment.

### **Agency**

10. Agents signing on behalf of clients must ensure that they have informed the client agency the fact that they have instructed us on their behalf and bring to the attention of their clients our Terms of Business. In the event that a client defaults on payment and they have not been informed of this contract by the agent, then the agent can be held responsible for the outstanding fees.
11. Reasonable notice is required where an existing appointment to be rearranged or cancelled site inspections to avoid abortive journeys to site. Where insufficient notice is not given Evolve will charge a reasonable fee for the time spent on abortive work subject to a minimum of £60 plus Vat.

### **Notice Required Before Commencement**

12. Initial Notices should be submitted a minimum of 5 days notice before commencement before substantial commencement of work. Where work commences within 5 days the Local Authority may reject the Initial Notice, assume the role of Building Control provider for the proposal, charge additional fees and require any work done to be opened up. Evolve will charge a reasonable fee for the time spent on abortive work in these circumstances subject to a minimum of £100 plus Vat administration fee. No responsibility can be taken by Evolve for any costs arising out of work which commences prior to acceptance of the Initial Notice.

### **Data Protection and You**

13. As part of the Initial Notice submission we must disclose the applicant's name and address. This information is shared with the relevant parties such as Local Authority, Water services provider and Fire Authority (this may not include all three depending on project) This data shared has not been obtained for marketing purposes by third parties and therefore, if it is found that data has been used for such purposes by the Local Authority dealing with this Initial Notice they may breach the principles of the Data Protection Act. Evolve Building Control Ltd stores all data electronically with some parts as a hard copy with is secured when not in use. Only data which is necessary such as Surname and address is collected. Email address, phone numbers are optional to provide and are not necessary to share with further parties.

Upon completion of a project, all paper is shredded and electronic data is archived and stored securely for a further years  
No information gathered will be used for any marketing purposes.

14. These Terms of Business cannot be varied unless agreed in writing by a Director.

### **Client's Information and Obligations**

15. The client shall provide such information and assistance as the approved inspector reasonably requires from time to time in order facilitating the timely provision of the services and any additional work.
16. The client shall be responsible for safe access to the project being provided when the approved inspector reasonably requires it.

### **Design, permits and approvals**

17. Except where permitted by law, the client shall be entirely responsible for the design, construction and management of the project and any additional work.
18. The client shall also be entirely responsible for obtaining and implementing all necessary permits, licenses and approvals, except those which form part of the services or any additional work.

### **Compliance with building regulations**

19. The client, designers and contractors shall be responsible for the project's compliance with the building regulations and the services do not include managing the project to ensure that compliance is achieved.
20. The approved inspector 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, it shall issue a final certificate. The final certificate is not a representation that every aspect of the project complies with building regulations.

### **Changes to the project and additional work**

21. The approved inspector shall notify the client in writing as soon as it becomes aware that any additional work will be required, because of:
  - Changes in the design, size, scope or complexity of the project;
  - Changes in the timing or programming of the projects
  - A failure by the client to comply with its obligations under this contract;
  - Additional meetings and/or visits/ or other work if required.

22. The client shall pay the approved inspectors for the additional work on a time charge basis (currently £60/hr) The approved inspector may include the charge in the next payment instalment after additional work (or part of it) has been performed.
23. 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.
24. The right of either party to terminate for material breach of this contract shall lapse if it has not been exercised with 35 days after giving notice of the breach to the other party.
- Consequences of termination**
25. If this contract has been terminated, the client shall pay the approved inspector any instalments of the fee due up to date of termination together with a fair and reasonable proportion of the next instalment of the fee commensurate with the services and any additional work performed by the approved inspector prior to the notice of termination.
26. Termination of this contract shall not affect any rights or remedies of the client or the approved inspector which exist at the date of termination.
- General**
27. The Approved Inspector shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with this contract. Notwithstanding any other provision of this contract the Approved Inspector shall have no greater obligation under or in connection with this contract than to exercise reasonable skill, care and diligence.
28. The Approved Inspector shall exercise reasonable skill, care and diligence in performing the Services and any Additional Work to have regard to the CIC Code of Conduct for Approved Inspectors and where possible to any programme for the Project (as amended from time to time and provided to the Approved Inspector in writing)
- Limitations of liability**
29. Nothing in this clause 29—37 shall limit the Approved Inspector's liability for negligence resulting in death or personal injury.
30. Notwithstanding any other provisions in this contract (apart from clause 29):
- (i) the Approved Inspector's total liability under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) including without limitation interest and legal costs shall be limited to 10 x the project fee in the aggregate; and
  - (ii) without prejudice to the aggregate limit of liability under clause 30(i), the Approved Inspector's liability to 10 x the project fee
31. Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of the Approved Inspector 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 the Approved Inspector 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 3-1 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.
32. The Approved Inspector shall not be responsible for the supervision of any contractor or
33. 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).
34. The Client agrees not to pursue any claims under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) against any individuals engaged by the Approved Inspector or any individual directors or members of the Approved Inspector. The Client acknowledges that such individuals are entitled to enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999.
35. The Approved Inspector's liability under or in connection with this contract shall be limited to the exercise of reasonable skill, care and diligence and the Approved Inspector shall not be liable unless it has failed to exercise such skill, care and diligence.
36. 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 contract.
37. No action or proceedings under or in respect of this contract whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced after the expiry of six years from the date of completion of Services or the termination of this contract if earlier.
- Rights of third parties**
38. 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 in clause 3-13.4. This does not affect the rights of the client and the approved inspector in relation to this contract.
- Commencement**
39. Whatever the date of this contract, it shall have effect as if it had been signed on the date when the approved inspector commenced the services.
40. These Terms of Business cannot be varied unless agreed in writing by a Director.
- Term Commissions**
41. Fee Scales, Orders, Invoicing and method of working will be as stated in each Term Commission contract.

#### **DEFINITIONS AND INTERPRETATION**

**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 3-6 and which are not already covered by the services set out in part 2, together with any other services instructed by the client and agreed by the approved inspector.

**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.

**CIC** - Means the construction industry council.

**Fee** - Means the total amount to be paid to the approved inspector for the services and any additional works.

**Statutory Functions**

Means the duties of an approved inspector under the building act 1984 and regulations made under it.

**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.

Building work is as defined by Regulation 3(1) of the Building Regulations 2010