

# **MC Plan and Site Services Ltd**

## **Terms and Conditions 2021.**

### **Services:**

MC Plan and Site Services Ltd shall be contracted to take such steps, as are reasonable, to enable them to be satisfied within the limits of the professional skill and care, set out in the CIC Code of Conduct for Approved Inspectors, and that the plans and works submitted when complete will comply with the Building Regulations.

MC Plan and Site Services Ltd, as part of their contractual obligation will undertake the following services.

#### **1. Instructions:**

- i. Receive instructions, brief, and necessary documentation from the Client.
- ii. Advise on procedure and program for Building Regulation Certification.
- iii. MC Plan & Site Services Ltd will act as agent for the Client only for the purposes of signing the Initial Notice.

#### **2. Initial Notice:**

- i. Submit Initial Notice(s) to relevant Local Authorities and copy to the Client.

#### **3. Assessment of Plans:**

- i. Undertake an assessment of plans (plans is defined by the Building Act 1984 S126 as including drawings of any other description, specifications and other information in any form) for compliance and communicate to the Client, observed non-compliance with the Building Regulations, conditions pertaining to the approval or passing for plans and remedies available in the event of a dispute over compliance.
- ii. Maintain appropriate records of the design assessment process.

#### **4. Statutory Consultations:**

- i. Consult with the Fire Authority and forward observations to the Client.
- ii. Undertake all other statutory consultations and forward information of the consultees to the Client.
- iii. Consider the desirability of undertaking additional consultations and communicate to the Client any consultees observations or advice beyond the scope of the Building Regulations.
- iv. Alert the Client to provisions of legislation outside of the Building Regulations believed to be relevant.

#### **5. Plan Certificate:**

- i. If requested by the Client, when satisfied that the plans show no observed contraventions of the Building Regulations, issue a plans certificate.
- ii. Compile a schedule of modifications specified and / or further plans or information required to demonstrate compliance of plans.

## **6. Inspection Notification Framework:**

- i. Prepare an inspection notification framework (INF) and if requested provide a copy to the Client.
- ii. Adopt an appropriate site inspection regime taken account of relevant factors and keep under review.
- iii. Make inspection of the site to observe compliance with the Building Regulations.
- iv. Maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance.
- v. Communicate any observed contraventions of Building Regulations.
- vi. Notify observed significant departures from plans to consultees.
- vii. Consider the need for tests, throughout construction and at completion, inform the Client of the requirements: -
- viii. Witness tests and receive certificates as appropriate.
- ix. Request copies of such plans as are necessary in relation to the commissioning of services prior to the issue of the final certificate(s).

## **7. Final Certificate:**

- i. Having taken reasonable steps to be satisfied that the whole or part of the works has been completed for Building Regulations purposes, issue final certificate(s) and send to the Client. If requested by the Client, provide a list of inspections carried out.
- ii. Retain statutory records for a period of 15 years.

## **8. Additional Services:**

- i. In addition to the above fore-mentioned, MC Plan and Site Services Ltd shall undertake the following additional services:
- ii. Assist with negotiations and approvals under Local Acts.
- iii. Attend design meetings, as agreed.
- iv. Undertake further consultations, as agreed.
- v. Attend site meetings, as agreed.
- vi. Make further inspections of the site, over and above those identified in the INF, as agreed.
- vii. Witness tests outside the site, as agreed.
- viii. Participate in assessing plans by electronic means (such as web collaboration tools or building information modelling).
- ix. Assist with advice on need for specialist studies and surveys of site.

## **Conditions**

### **9. Approved Inspectors general obligations:**

- i. MC Plan and Site Services Ltd shall carry out the Services and any Additional Work with reasonable skill, care, and diligence in accordance with the agreed contract.
- ii. MC Plan and Site Services Ltd shall have due regard to the CIC Code of Conduct for Approved Inspectors and where possible to any program for the project (as amended from time to time).

## **10. Clients Information and Obligations:**

- i. The Client shall provide such information and assistance as MC Plan and Site Services Ltd reasonably requires from time to time, in order to facilitate the timely provision of the Services and any Additional Works.
- ii. The Client shall be responsible for safe access to the project being provided when MC Plan and Site Services reasonably requires it.

## **11. Design, Permits and Approvals:**

- i. Except where permitted by law (in the case of a domestic Client, under Regulation 10 of The Building, (Approved Inspectors etc. Regulations 2000, the Approved Inspector may be responsible for some elements of design or construction), and to the extent set out in part 2: Services, the Client shall be entirely responsible for the design, construction, and management of the Project and any Additional Work.
- ii. 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 Works.

## **12. Compliance with Building Regulations:**

- i. The Client shall be responsible for the Projects compliance with the Building Regulations and the Services do not include advising the Client or managing the Project to ensure that compliance is achieved.
- ii. MC Plan and Site Services Ltd shall take such steps as are reasonable to enable them to be satisfied as to the Projects compliance with the Building Regulations, and if so satisfied, they shall issue a Final Certificate. The Final Certificate is not as representation that every aspect of the project complies with the Building Regulations.

## **13. Payment:**

- i. Fee's quotations are based upon estimated cost of works (or the floor area in respect of domestic extensions). All fees are charged in accordance with the standard terms and conditions laid out by MC Plan and Site Services Ltd.
- ii. In order to validate an application with the relevant Local Authority, a non-refundable '**plan examination**' payment fee equal to 25% of the total fee quotation will be required at the application stage of the process. This must be received '**within five working days**' of any works commencing. The remaining 75% of the fee quotation balance will be due on commencement of site works.
- iii. The final date for payment of any invoice will be 28 days after the due date for payment. The Fee is exclusive of VAT, which shall be paid in addition, if applicable.
- iv. Any sum due under an agreed contract with MC Plan and Site Services Ltd, (does not apply in the case of a domestic Client) 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.
- v. An additional charge may be levied against the Client for the printing service applicable for electronic submissions of project plans.
- vi. Application fees can be paid online, faster payment, cheque and by INTUIT online using a credit/debit card. The financial department will contact the responsible person to arrange for telephone payment to be taken by credit/debit card.

#### **14. Changes to the Project and Additional Work:**

- i. MC Plan and Site Services Ltd shall notify the Client in writing as soon as they become aware that any Additional Work will be required because of:
  - ii. Changes in the design, size, scope, and complexity of the Project.
  - iii. Changes in the timing or programming of the Project.
  - iv. A failure by the Client to comply with its obligations under an agreed contract.
  - v. Additional meetings and / or visits and / or other work are required.
  - vi. The Client shall pay MC Plan and Site Services Ltd for the Additional Work on a timed charged basis, at a rate of £100 per hour.
  - vii. MC Plan and Site Services Ltd may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

#### **15. Insurance:**

- i. MC Plan and Site Services Ltd shall maintain professional Indemnity Insurance and Public Liability Insurance in compliance with the guidelines issued by the Department for Communities and Local Government (a scheme approved by The Secretary of State under the Building Act 1984 S47(6)).
- ii. On the Clients written request, MC Plan and Site Services Ltd shall provide evidence that these insurances are being properly maintained.
- iii. 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 1<sup>st</sup> of 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’.

#### **16. Assignment and Sub-Contracting:**

- i. Either party may assign its rights and benefits under an agreed contract. MC Plan and Site Services Ltd 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.

#### **17. Termination and Discharge:**

- i. The Client may terminate this contract forthwith if;
- ii. MC Plan and Site Services Ltd 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 the Client; or MC Plan and Site Services Ltd becomes insolvent.
- iii. MC Plan and Site Services Ltd may terminate an agreed contract forthwith if;
- iv. The Client is within material breach of its obligations under an agreed contract and has failed to remedy the breach within 28 days of a Notice of the Breach from MC Plan and Site Services Ltd.
- v. MC Plan and Site Services Ltd reasonably believe that they will not be in a position to issue a Final Certificate on completion; or the Client becomes Insolvent.
- vi. Following termination by MC Plan and Site Services Ltd or the Client, MC Plan and Site Services Ltd 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, the building control function will revert to the Local Authority and MC Plan and Site Services Ltd will be discharged from all requirements to complete the Services or any Additional Works.
- vii. The right of either party to terminate for material breach of an agreed contract, shall lapse if it has not been exercised within 35 days after giving Notice of the Breach to the other party.

#### **18. Consequences of Termination:**

- i. If an agreed contract has been terminated, the Client shall pay MC Plan and Site

Services Ltd any instalments of the fee, due up to the 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 MC Plan and Site Services Ltd, prior to Notice of the termination.

- ii. Termination of an agreed contract shall not affect any rights or remedies of the Client or MC Plan and Site Services Ltd, which exist at the date of termination.

## **19. Limitations of Liability:**

- i. Nothing shall limit MC Plan and Site Services Ltd liability for negligence resulting in death or personal injury.
- ii. Subject to that:
- iii. Notwithstanding any other provisions in an agreed contract, MC Plan and Site Services Ltd total liability to the Client for any claims arising under or in connection with an agreed contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to the amount as agreed by the professional indemnity insurance company.
- iv. Without prejudice to any other exclusion or limitation of liability, damages, loss, expense, or costs, the liability of MC Plan and Site Services Ltd for any loss or damage (the loss or damage) under an agreed contract shall be limited to that proportion as it would be just an equitable for MC Plan and Site Services Ltd to pay having regard to the extent of their responsibility for the loss or damage and on the assumption that;
- v. All other consultants, contractors, sub-contractors, and advisors engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those of MC Plan and Site Services Ltd to the Client in respect of the carrying out of their obligations in connection with the Project.
- vi. There are no exclusion or limitations of liability nor joint insurance or co insurance provisions between the Client and any other party referred to and any such other party who is responsible to any extent to the loss or the damage is contractually liable to the loss or damage;
- vii. And all the parties referred to above have paid to the Client such proportion of the loss or damage which it would be just an equitable for them to pay, having regard to the extent of their responsibility for the loss or damage.
- viii. MC Plan and Site Services Ltd, shall not be responsible for the supervision of any contractor or sub-contractor, nor shall MC Plan and Site Services Ltd have any liability for ensuring the performance or adequate standard of workmanship of any contractor or sub contractor.
- ix. The Client shall look only to MC Plan and Site Services Ltd (and not to individuals engaged by MC Plan and Site Services Ltd or any individual directors or members of MC Plan and Site Services Ltd) for redress if the Client considers there has been any breach of an agreed contract.
- x. 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 their obligation under or in connection with an agreed contract at any time.
- xi. The Client acknowledges that such individuals are entitled to enforce this Term of Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **20. Notices:**

- i. The Client and MC Plan and Site Services Ltd can give notice to each other in writing

under an agreed contract by personal delivery. They can also give notice by Recorded Delivery or Special Delivery, in which case delivery is effective 2 working days after posting. Notices must be sent to the address of MC Plan and Site Services Ltd and the Client respectively or any other address notified.

## **21. Disputes and Complaints**

- i. If the Client is not satisfied with MC Plan & Site Services Ltd's performance of the Services or any Additional Work, it may ask MC Plan & Site Services Ltd to implement the complaints handling procedure. MC Plan & Site Services Ltd shall provide a copy of the procedure on request. The operation of MC Plan & Site Services Ltd's complaints handling procedure does not affect the Client's right to refer a dispute to the courts.
- ii. [The Client and MC Plan & Site Services Ltd 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], (Does not apply in the case of a Domestic Client).
- iii. [ Either the Client or MC Plan & Site Services Ltd may at any time refer a dispute or difference rising under or in connection with this contract to adjudication in accordance with the edition of the CIC Model Adjudication Procedure current at the date of the adjudication notice. The Adjudicator shall be appointed by the CIC] (Does not apply in the case of a Domestic Client).

## **22. Novation**

MC Plan & Site Services Ltd are not permitted by their insurer to enter into any novation agreement, and or any Collateral Warranty agreements.

The Insurer will not be liable in respect of:

Any Claim arising out of, or liability assumed under a Third-Party Contract entered into on or after the 1<sup>st</sup> July 2021 other than such liability that would have attached to the Insured in the absence of such Third Party Contract.

A Third-Party Contract is defined as:

Any Collateral Warranty, Letter of Reliance, or any other contract with a third party other than the Insured's appointment for the provision of services.

- Collateral Warranty
- Letter of Reliance
- Use of the Contracts (Rights of Third Parties) Act 1999
- Novation
- Assignment of the Appointment

The rights and obligations of MC Plan & Site Services Ltd in respect of the Project shall otherwise remain unchanged.

## **23. 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 in clause 3-13.4. This does not affect the rights of the Client and the Approved Inspector in relation to this contract.

## **24. Commencement**

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.

## **PART 4: DEFINITIONS AND INTERPRETATION**

### **1. Definitions**

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

**Additional Work** Means the type of 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** The total amount to be paid to the Approved Inspector for the Services and any Additional Work.

**Services** Means the Services listed in Part 2.

**Statutory Functions** Means the duties of an Approved Inspector under the Building Act 1984, regulations made under it and formal guidelines issued by a Government Department.

## 2. 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;
- Any 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.