

## ICW BUILDING CONTROL LIMITED TERMS AND CONDITIONS

### 1. ICW Building Control Limited's obligations

- 1.1. The function of ICW Building Control is that of an Approved Inspector, as defined within the Building Act 1984 and Regulations under it.
- 1.2. ICW Building Control shall carry out these functions, exercising the reasonable skill, care, and the diligence to be expected of an appropriately qualified and competent expert, with knowledge of the standards of construction required by the Building Regulations.
- 1.3. ICW Building Control Ltd shall carry out the function in accordance with the CIC Code of Conduct for Approved Inspectors and the DCLG Building Control Performance Standards.
- 1.4. The Approved Inspector hereby agrees to provide the following Building Control service:
  - 1.4.1. To issue to the appropriate local authorities an Initial Notice upon receipt of a completed Application Form or other recognised and accepted means of appointment/Instruction of services (the instruction to proceed must be received by ICW Building Control Ltd a minimum of 5 working days before works commence on site).
  - 1.4.2. To carry out statutory consultations.
  - 1.4.3. Where requested to provide one, issue a Plans Certificate when the plans and details show no observed contraventions with current Building Regulations
  - 1.4.4. To make periodic visits to the site to observe compliance with Building Regulations.
  - 1.4.5. To issue a Final Certificate to the Client and the appropriate local authority upon satisfactory completion of building works.
- 1.5. ICW Building Control Ltd surveyors may provide advice relating to designs and relevant statutory requirements, but this does not make them designers. Responsibility for design rest solely with the client or their appointed consultants and contractors.
- 1.6. The Initial Notice does not include works which will be carried out by an installer registered with a competent person scheme as this must be separately certified to the Local Authority. The works excluded from our services include electrical works to domestic properties, any works carried out under the Gas Safety (Installation and Use) (Amendment) Regulations 2018 and any works in connection with a biomass, oil, renewable heating, or other solid fuel installation.
- 1.7. Where it is found after acceptance of an Initial Notice that an installer does not have the relevant accreditation, ICW Building Control reserve the right to charge an additional fee to cover additional inspections and testing of the work. This work will be carried out by ICW Building Control or other third-party inspection and test bodies which ICW Building Control are required to appoint to confirm likely compliance.

### 2. Clients obligations

- 2.1. The Client or their appointed agents hereby agrees, as is required for ICW Building Control Ltd to carry out its duties at such times as is reasonably required, to provide copies of all appropriate design information, and relevant information about the site to include, locations of sewers, presence of contaminants etc.
- 2.2. The Client or their appointed agents shall notify ICW Building Control Ltd in writing of any instruction to vary the services.
- 2.3. The client or their representative shall be responsible for providing safe access to the project, during working hours, when the approved inspector reasonably requires it.
- 2.4. ICW Building Control Services Ltd require 48 hours notification prior to works commencement and agreed stage inspections to arrange site inspection in accordance with our terms and conditions. Notification should be given on a working day before 16:00.
- 2.5. The client, designers and contractors shall be responsible for the project's compliance with the building regulations and ICW Building Control Ltd services do not include managing the project to ensure that compliance is achieved. ICW Building Control Ltd 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 evidence (but not conclusive evidence) that the requirements specified in the certificate have been complied with.
- 2.6. When the applicant appoints ICW Building Control Ltd as the Approved Inspector, permission for us to sign the Initial Notice on behalf of the person carrying out the work will be automatically assumed. Any agents of third parties that are instructing ICW Building Control Ltd as the Approved Inspector must make the client aware of our terms and conditions.
- 2.7. It is the responsibility of the client to ensure that all information provided, including any agent acting on their behalf, provided for quotation purposes and the submission of the Initial Notice is correct and relates to the work being undertaken.

### 3. Assignment and subcontracting

- 3.1. ICW Building Control Ltd may occasionally use competent sub-contract surveyors or companies to undertake site inspections on its behalf. The work they undertake will be for ICW Building Control Ltd and any liability resulting from these inspections will be the responsibility of ICW Building Control Ltd.
- 3.2. A person or company who is not a party to this Agreement has no rights under the Contract (Rights of Third Party) 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 & Fees

- 4.1. The Client or their appointed agents shall pay ICW Building Control Ltd for the performance of the services the fees and charges in such instalments as stated in the Quotation. All fees and charges under the Agreement are exclusive of Value Added Tax which, if due, shall be paid at the prevailing rate.
- 4.2. All fee quotations are valid for three months.
- 4.3. All fees liable to ICW Building Control Ltd should be paid by the client or their appointed agents within 21 days from date of invoice and prior to the release of the final certificate.
- 4.4. Fees are calculated as follows:
  - 4.4.1. Where the total fee is greater than £800.00 + VAT then two invoices will be issued with the validation fee equal to 40% of the total fee, and the site inspection fee as the remaining balance, due after the first inspection of the works.
  - 4.4.2. Where the total fee is £800.00 + VAT or less, then full payment should be made with the application, as validation of the application.
- 4.5. The validation fee must be paid in full prior to the submission of the Initial Notice. Failure to do so may incur additional charges. The validation fee is non-refundable.
- 4.6. Unless otherwise agreed, an invoice for the Inspection Fee will be issued on commencement of building work on site. The site inspection fee is non-refundable after the first inspection has been carried out.
- 4.7. Where the Client intends to withhold payment of any amount stated in the invoice, the Client must give written notice to ICW Building Control Ltd, no later than 5 days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.
- 4.8. 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 4.7 above, ICW Building Control Ltd may suspend performance of any or all of the services. This right is subject ICW Building Control Ltd 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.
- 4.9. Failure to pay fees may result in the project being cancelled with the local authority, and/or suspension of visits to any site. ICW Building Control Ltd will be entitled to the full amount of the fee should debt recovery need to be instigated and charges will be added for collection.
- 4.10. Unless otherwise agreed with ICW Building Control Ltd, work carried out on an hourly basis will be invoiced at the end of each month.
- 4.11. ICW Building Control Ltd will notify the client or their agent in writing as soon as it becomes reasonably apparent that the scope of the work has changed to an extent that it becomes substantially different to that described in the original Initial Notice thus requiring the submission of an amendment notice, or amendments are made to the project requiring additional plan checking, consultations or inspection, then ICW Building Control Limited shall be entitled to additional payment. The amount will be subject to prior agreement between ICW Building Control Ltd and the client.
- 4.12. Where a project has not commenced on site within 12 months of the date of the Initial Notice, then ICW Building Control Ltd reserve the right to apply an annual increase to the inspection fee of 5%.
- 4.13. ICW Building Control Ltd reserve the right to make the following additional charges to the client or agent:

Initial Notice Cancellation to Local Authority	Minimum 25% of total fee + VAT
Extension of time request to Local Authority	£50.00 + VAT
Issue of copy document	£50.00 + VAT
Retrieval of project from archive	£150.00 + VAT

- 4.14. Failure to provide a safe access in and round the site or failure to notify ICW Building Control Ltd of completion of works:

Requiring additional correspondence	£50.00 + VAT
Resulting in aborted/additional inspections	£100.00 + VAT

- 4.15. Circumstances where ICW Building Control Ltd require third party checking of specialist design details, the cost of this would not normally be included within our quoted fee and will be passed onto the client at face value (the client will be advised of this at the time of appointment or as considered necessary).
- 4.16. Where an Initial Notice is cancelled and a refund of the fees is requested, ICW Building Control Ltd reserve the right to retain part or the whole of the fee paid in the following circumstances:
  - 4.16.1. In all instances an administration fee of £150.00 or 10% of the total fee, whichever is greater, will be retained.
  - 4.16.2. Where a plan check has been undertaken, 40% of the total fee excluding the administration fee will be retained.
  - 4.16.3. Where an inspection of the works has been made, 60% of the total fee excluding the administration fee.
  - 4.16.4. Where a plan check and inspection of the works has been made, the full fee will be retained.

#### 5. Suspension and Termination

- 5.1. The Client may terminate the appointment of ICW Building Control Ltd under this Agreement by giving 7 days' written notice to them. In such cases the client shall pay ICW Building Control Ltd any instalments of the fee due up to date of termination.

- 5.2. If the Client materially breaches its obligations under this Agreement ICW Building Control Ltd may serve on the Client a notice specifying the breach and requiring it to remedy within 28 days, and if the Client thereafter fails to remedy that breach within that period ICW Building Control Ltd may terminate this Agreement by giving written notice to the Client.
- 5.3. If either party;
  - 5.3.1. Commits an act of bankruptcy or has a receiving or administrative order made against it, and/or,
  - 5.3.2. Goes into liquidation, and/or,
  - 5.3.3. Becomes insolvent, and/or,
  - 5.3.4. Makes any arrangement with its creditors,
  - 5.3.5. The other may suspend performance of the services or may terminate the appointment by giving written notice to the party.

## 6. Professional Indemnity Insurance

- 6.1. ICW Building Control Ltd is required to comply with the guidelines issued by the office of the MHCLG in respect of the maintenance of professional indemnity insurance; details published at [www.cic.org.uk/services/register.php](http://www.cic.org.uk/services/register.php).
- 6.2. ICW Building Control Ltd shall, on written request of the client, provide evidence that the insurance is properly maintained.
- 6.3. ICW Building Control Ltd shall immediately inform the client if the insurance referred to above ceases to be valid.

## 7. Copyright & Data Protection

- 7.1. The copyright in all documents prepared by ICW Building Control Ltd in providing the services shall remain their property. Subject to payment by the Client of the fees properly due to ICW Building Control Ltd under this Agreement ICW Building Control Ltd grants to the Client an irrevocable non-exclusive royalty-free licence to copy and use the documents for any purpose related to the project.
- 7.2. ICW Building Control Ltd shall not be liable for any use of the documents for any purpose other than that for which they were prepared and provided by them.
- 7.3. As part of the Initial Notice submission ICW Building Control Ltd must disclose the applicant's name and address. This data 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.

## 8. Complaints

- 8.1. In the event that the client has a complaint in respect of the performance of ICW Building Control Ltd, a copy of the complaint procedure will be made available upon request.

## 9. Force Majeure

- 9.1. Neither ICW Building Control Ltd nor the Client shall, except as otherwise provided in these Conditions, be responsible for any loss, damage, delay, or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, boycotts, lockouts, riots, civil commotions and arrest or restraint of princes, rulers, or people.

## 10. Liability

- 10.1. Nothing in this clause 10 shall limit ICW Building Control Ltd.'s liability for negligence resulting in death or personal injury. Subject to that:
- 10.2. Notwithstanding any other provisions in this contract (apart from clause 11.1), ICW Building Control Ltd.'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 ten times the fees charged by ICW Building Control Ltd.
- 10.3. Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of ICW Building Control Ltd 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 ICW Building Control Ltd to pay having regard to the extent of its responsibility for the loss or damage and on the assumption that:
  - 10.3.1. 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 1 to the Client in respect of the carrying out of their obligations in connection to the Project.
  - 10.3.2. there are no exclusions of or limitations nor joint insurance or co-insurance provisions between the Client and any other party engaged in connection with the Project 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
  - 10.3.3. all the parties engaged in connection with the Project 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.
- 10.4. ICW Building Control Ltd shall not be responsible for the supervision of any contractor or subcontractor, nor shall ICW Building Control Ltd have any liability for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor.

- 10.5. The Client shall look only to ICW Building Control (and not to individuals engaged by the Approved Inspector or any individual directors or members of ICW Building Control Ltd) for redress if the Client considers that there has been any breach of this contract, in tort (including negligence), for breach of statutory duty or otherwise against 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 (Right of Third Parties) Act 1999.

## 11. Notice

- 11.1. Any notice to be given under this Agreement shall be in writing.
- 11.2. 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.
- 11.3. 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.

## 12. Local Acts

- 12.1. Local Acts are not enforced by Approved Inspectors and a separate application may need to be submitted and an additional fee may be payable to the enforcing body. ICW Building Control Ltd will not be responsible for the submission of the application or payment of fees. ICW Building Control Ltd may, however, assist with negotiations subject to the agreement of fees for this service.

## 13. CDM regulations

- 13.1. ICW Building Control Ltd is not responsible for checking if the work is notifiable under the Construction Design and Management (CDM 2015) regulations. A suitable qualified Principal Designer will need to be appointed prior to works commencement if required.

## 14. Planning Permissions

- 14.1. NEW DWELLINGS ONLY - Where a copy of the planning consent has not been provided as part of this application, ICW Building Control Ltd hold no responsibility for checking any planning conditions, including those specific to the accessibility and water efficiency associated to the proposed works. In all circumstances it remains the responsibility of the client/designer to notify ICW Building Control Ltd of any specific requirements relating to accessibility and water efficiency over and above the baseline Building Regulations. Where no information is provided, only the minimum level of compliance will be checked in accordance with the Building Regulations.
- 14.2. ALL BUILDINGS - In all circumstances it remains the client's responsibility to ensure all necessary planning approvals are gained where applicable and adhered to. ICW Building Control Ltd hold no responsibility for checking such legislative approvals have been obtained, nor any associated conditions are complied with.

## 15. Water Authority Approvals and Conditions

- 15.1. ALL BUILDINGS - In all circumstances it remains the client's responsibility to ensure all necessary Water Authority approvals and conditions are gained where applicable and adhered to.

## 16. Environment Agency

- 16.1. ALL BUILDINGS - In all circumstances it remains the client's responsibility to ensure all necessary Environment Agency approvals and conditions are gained where applicable and adhered to.

## 17. Contamination

- 17.1. ALL BUILDINGS - In all circumstances it remains the client's responsibility to ensure all associated legislations, approvals and conditions regarding contamination are adhered to and not the responsibility of ICW Building Control Ltd to ensure compliance has been achieved outside the Building Regulations 2010.

## 18. Rights of third parties

- 18.1. 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 10.5 this does not affect the rights of the Client and ICW Building Control Ltd in relation to this contract. [Standard Form of Appointment Document Conditions 2014, developed from the ACAI & CIC Contract for the Appointment of an Approved Inspector (2nd Ed.), with no copyright infringements intended]