

QBC Standard Terms & Conditions

Definitions

1. **'QBC'** QAI Services Ltd trading as Quadrant Building Control.
'The Act' – the Building Act 1984.
'The Agent' – the person or company identified as "Agent" in the Fee Proposal who may act on the Client's behalf in respect of the Agreement.
'The Agreement' - these terms and conditions set out herein and the Fee Proposal.
'Approved Inspector'- a licensed individual or organisation carrying out the duties given to an approved inspector by the Building Act 1984 and regulations made under it.
'The Building Regulations' – the Building Regulations 2010 as amended.
'The Client' – the individual or company identified in the Fee Proposal as the "Client" in respect of the Project.
'The Fees' – the fee payable by the Client as identified in the Fee Proposal for the performance of the Services.
'The Fee Proposal' – the fee proposal to which these terms and conditions are attached.
'The Invoice Payer' – the invoice payer as identified in the Fee Proposal and if not identified then the Client shall be the "Invoice Payer" for the purposes of the Agreement.
'The Initial Notice' - an initial notice to the relevant local authority notifying them of the Project under Section 47 of the Building Act 1984.
'Insolvent' – as defined in section 113, Housing Grants, Construction and Regeneration Act 1996.
'MHCLG' – Ministry of Housing, Communities and Local Government.
'Notice of Contravention' - a notice of contravention given to the person carrying out the Works or intending to carry out the Works, pursuant to Section 52(2) of the Building Act 1984.
'Plans' – includes drawings, calculations, reports and any other data illustrating the designer's intentions in respect of the proposed Works.
'The Project' – the project as identified in the Fee Proposal.
'The Services' – the scope of services as identified in the Fee Proposal.
'The Regulations' – the Building (Approved Inspectors etc.)(Amendment) Regulations 2010.
'The Services Commencement Date' - as identified and defined in the Fee Proposal.
'The Site' – the site identified in the Fee Proposal.
'Statutory Functions' - the duties of an Approved Inspector under the Building Act 1984, regulations made under it and formal guidelines issued by a government department.
'The Works' – the construction works carried out on the Project.

QBC Services & Obligations

2. The function of QBC shall be that of an Approved Inspector. QBC shall not be responsible for supervising the Works of the contractor or any subcontractors, and is not liable for the performance and/or the quality of the works carried out by any contractor or subcontractor. QBC shall not be liable under or in connection with the Agreement for or as a result of any works and/or services provided by and/or any act or omission of any third party (including without limitation any contractor, consultant or subcontractor).
3. QBC shall carry out its functions and the Services and/or any Additional Services exercising reasonable skill, care and diligence (the "**Duty of Care**"). Notwithstanding, any other term of the Agreement, QBC shall have no greater duty than to exercise the Duty of Care under or in connection with the Agreement and QBC shall have no fitness for purpose obligations and/or liabilities (whether express or implied) under or in connection with the Agreement.
4. QBC shall have the right to ask for and receive plans from the Client as may be required to perform the Services. The Client shall ensure that all necessary plans are provided to allow QBC to determine compliance with the Building Regulations.
5. QBC shall not, in any way, be responsible for any work carried out by the Client including without limitation any work carried out by the Client before QBC agrees to act as Approved Inspector in respect of the Project.
6. The Client and not QBC shall be responsible for the Project's compliance with the Building Regulations. The Services do not include and QBC shall not be responsible for (i) confirming whether the Building Regulations have been complied with, and/or (ii) advising the Client and/or managing the Project to ensure that compliance with the Building Regulations is achieved.
7. Having taken reasonable steps to be satisfied that the whole or part of the works has been completed for Building Regulations purposes, QBC shall send the Final Certificate(s) to the Client. Any Final Certificate issued by QBC is based on the information and documents provided and the Services and/or any Additional Services performed and is not a representation that every aspect of the Project complies with the Building Regulations and/or conclusive proof of the Project's compliance with the Building Regulations.
8. If the Works to which the Initial Notice relates is carried out in stages, in such a way that part of the premises on the Site are completed and occupied, then a partial Final Certificate will be issued as detailed in Clause 7 above.
9. QBC shall not be responsible or liable for any delay in issuing the Final Certificate and shall not be responsible or liable for any additional fees that are payable to the relevant local authority and/or any other costs as a result of any delay to the issue of the Final Certificate. The Client shall not (and shall ensure that a third party shall not) take possession of the works forming part of the Project and/or issue any certificate of completion under the building contract to which the Works relate, unless the Final Certificate has been issued.

Responsibility of the Client

11. The Client shall ensure that reasonable access and safe access to the Site and facilities are provided, at all reasonable times, to allow QBC staff to make necessary inspections. The Client shall procure such access and certification from any consultant, contractor or sub-contractor as is reasonably requested.
12. The Client shall give QBC at least 48 hours' notice before commencement of Works on Site.
13. The Client shall ensure that QBC are regularly kept informed of the progress of the Works, including without limitation in relation to:
 - a. ground excavations and foundations;
 - b. structural reinforcement and other structural elements;
 - c. damp proof courses and membranes;
 - d. above and below ground drainage and ventilation ducts; and/or
 - e. occupation or completion.
14. The Client shall ensure that QBC is given reasonable notice and as a minimum no less than 24 hours to inspect the items pursuant to Clause 13 above, save for in respect of Clause 13(e) in respect of which QBC shall be given no less than 15 days' notice prior to occupation of the Site and/or completion of the Project.

15. The Client shall make arrangements to allow QBC staff to witness tests as required by QBC for performance of the Services and/or any Additional Services, including without limitation, in respect of drainage, ventilation ductwork, emergency lighting, and/or fire alarms for Building Regulations compliance purposes. Payment of all test equipment, training and expenses incurred to carry out such tests shall be the responsibility of the Client.
16. The Client is responsible for making any required build over agreement with the relevant water authority and is liable to make payment of any related fee payable to that water authority.
17. The Client shall provide such information, documents and assistance as QBC may reasonably require or request from time to time in order to facilitate the timely provision of the Services and/or any Additional Services.
18. The Client shall be entirely responsible for the design construction and management of the Project save to the extent set out in the Services and/or agreed in writing by QBC before undertaking any Additional Services.
19. The Client shall be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, save to the extent set out in the Services and/or agreed in writing by QBC before undertaking Additional Services.
20. The Services do not include the carrying out of inspections and/or plan checking relating to the Building Regulations Part P 'Electrical Safety'. The Client shall ensure that the electrical contractor appointed to the Project is registered with one of the Building Regulations Part P certification schemes and is able to provide the appropriate certification.
21. The Client accepts that for domestic schemes, that the Client shall ensure that all electrical and heating systems on the Project shall be installed by competent persons under self-certification schemes as set out on the UK government's website page entitled "Competent person scheme - current schemes and how schemes are authorised" (accessible at website address: <https://www.gov.uk/guidance/competent-person-scheme-current-schemes-and-how-schemes-are-authorised>) in respect of, without limitation, the Building Regulations Part P, Gas Safe, NICEIC, OFTEC, and HETAS. The Client acknowledges that any work relating to self-certification schemes does not form part of the Services, including without limitation any Building Regulations approvals provided by QBC.

Fees

22. The Invoice Payer shall make payment to QBC of the Fee, any Additional Fee and/or any disbursements, expenses, charges and/or other amounts incurred by QBC in respect of the performance of the Services and/or any Additional Services.
23. In accordance with the terms of the Fee Proposal, QBC shall submit an invoice to the Invoice Payer for the monies due under the Agreement on the dates and/or intervals stated in the Fee Proposal.
24. The Invoice Payer shall pay QBC the sum stated as due in QBC's invoice(s) no later than 30 days from the date of each invoice issued to the Invoice Payer by QBC ("Final Date for Payment").
25. QBC may suspend the Services and/or any Additional Services (in whole or in part) and/or any obligation under the Agreement by giving not less than 7 days' written notice following a failure by the Invoice Payer to pay the sum stated as due and payable in the relevant invoice issued to the Invoice Payer by QBC.
26. Without prejudice to Clause 25, in the event that the Invoice Payer fails to pay any amount due and payable to QBC by the Final Date for Payment, the Invoice Payer shall pay interest to QBC at 8% above the Bank of England official dealing rate on the amount due, payable and unpaid from the Final Date for Payment to the date payment of the amounts due and payable are made. Acceptance of a payment of interest under this Clause 26 shall not be construed as a waiver of QBC's right to proper payment of the principal amount due and payable.
27. The Invoice Payer shall comply with the payment information set out in the Fee Proposal.
28. The Invoice Payer is responsible for any fees that may be incurred to facilitate a third party review of computational fluid dynamics analysis for fire engineered projects.
29. The Invoice Payer is responsible for any fees that may be incurred to facilitate a third party review of the structural design calculations and drawings.
30. QBC shall not be liable for the appointment or payment of any consultant who may need to be appointed to prove compliance with Building Regulations.
31. If:
 - a. the Client instructs QBC, to perform any services and/or other duties than the Services;
 - b. QBC provides any additional or alternative services to the Services and/or variation of the Services;
 - c. the Services and/or any services pursuant to Clauses 31 (a) and (b) are delayed, disrupted and/or prolonged;
 ("Additional Services") in either case for reasons outside QBC's control and which do not arise as a result of any negligence, breach or default by QBC, QBC shall be entitled to payment of an additional fee to the Fee, calculated in accordance with QBC's hourly rates as set out in the Fee Proposal ("Additional Fee") and QBC shall be entitled to a fair and reasonable extension of time to any programme and/or timescales set out in the Agreement.
32. For the purpose of the Agreement, "Relevant Event" shall mean:
 - a. any change in any law (including without limitation any change in law as a result of or in connection with the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt);
 - b. COVID-19, any pandemic, any epidemic and/or the consequences of COVID-19, any pandemic, and/or any epidemic, and/or
 - c. the UK having ceased to be a member state of the EU ("Brexit") and/or any consequences of Brexit.
33. If QBC performs any Additional Services due to a Relevant Event, QBC shall be entitled to (i) payment of an Additional Fee; and/or (ii) a fair and reasonable extension of time to perform the Services and/or Additional Services in respect of any programme and/or timescale pursuant to the Agreement.

Cancellation of Initial Notices

34. QBC shall cancel the Initial Notice by sending a Notice of Cancellation to the Local Authority in the following circumstances:
 - a. after a formal Notice of Contravention has been served by QBC and no action has been taken by the Client to rectify the contraventions within 3 months of receipt of the notice;
 - b. QBC is prevented from carrying out their legitimate functions as Approved Inspector for the Project due to undue restrictions imposed by the Client or their agents allowing reasonable access to inspect the Works on Site;
 - c. QBC is prevented from making Site inspections due to dangerous or unsafe conditions on Site;
 - d. failure on the part of the Client or any other relevant person to submit plans in a reasonable period of time as notified to QBC;
 - e. any other condition or situation that prevents QBC from carrying out its Statutory Functions as Approved Inspector; and/or
 - f. non-payment of any sums due and payable to QBC (part or full) by the Final Date for Payment pursuant to Clause 24.

Professional Indemnity Insurance

35. QBC shall, provided it is available at commercially reasonable rates and on commercially reasonable terms, maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the MHCLG in respect of the maintenance of suitable insurance.
36. QBC shall on written request from the Client provide evidence that the insurance pursuant to Clause 35 is properly maintained. QBC shall inform the Client if the insurance referred to in Clause 35 above ceases to be available.

37. Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of QBC for any loss or damage ("the loss or damage") under the Agreement shall be limited to that proportion as it would be just and equitable for QBC to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:
 - a. 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 Clauses 2 to 9 inclusive to the Client in respect of the carrying out of their obligations in connection with the Project;
 - b. there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this Clause 37 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
 - c. all the parties in this Clause 37 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 the loss or damage.
38. Notwithstanding any other term of the Agreement, QBC's total aggregate liability (including, without limitation, legal costs and interest) under or in connection with the Agreement, whether in contract, tort (including negligence), or for breach of statutory duty or otherwise, shall be limited to £1,000,000.
39. Without prejudice to the limitation of liability in Clause 38, QBC's liability (including without limitation legal costs and interest) under or in connection with the Agreement in respect of any losses, claims, damages, costs, expenses, demands, and/or any other liability directly or indirectly arising out of the fire resistant and/or fire retardant characteristics of external cladding systems, shall be limited to the lesser of £1 million (one million pounds) or the amount recoverable under QBC's professional indemnity insurance policy.
40. QBC shall not be liable under or in connection with the Agreement (whether in contract, tort (including negligence) or otherwise) for any loss of investment, loss of contract, loss of production, loss of profit, loss of time, loss of use or any indirect or consequential loss, howsoever incurred.
41. Notwithstanding the manner of the execution of the Agreement, no action or proceedings shall be commenced against QBC under or in connection with the Agreement after the expiry of 6 years from the date of completion of the Services and/or any Additional Services under the Agreement or, if earlier, 6 years from the date of termination of the Agreement.
42. Under in connection with the Agreement, QBC shall have no liability whatsoever and however so arising out of or in connection with asbestos.
43. QBC shall not be in breach of the Agreement and shall have no liability arising under or in connection with the Agreement as a result of (i) any failure to perform the Services and/or any Additional Services, and/or (ii) delay and/or prolongation to the Services and/or any Additional Services, as a result of a Relevant Event.
44. QBC shall not be responsible for the supervision of any contractor or subcontractor and/or for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor. QBC shall not be liable under or in connection with the Agreement 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).

Termination

45. The Client may terminate the Agreement forthwith by written notice to QBC if:
 - a. QBC is in material breach of its obligations under the Agreement and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Client; or
 - b. QBC becomes insolvent.
46. QBC may terminate the Agreement forthwith by written notice to the Client if:
 - a. the Client is in material breach of the Agreement of its obligations under the Agreement and has failed to remedy the breach within 28 days of the date of a notice of the breach from QBC;
 - b. the Invoice Payer has failed to make payment of any sums due and payable under the Agreement by the Final Date for Payment and the Invoice Payer has failed to remedy its failure to make payment of such sums within 28 days from the date of a notice from QBC notifying the Invoice Payer to make payment of such sums;
 - c. QBC reasonably believes that it will not be in a position to issue a Final Certificate;
 - d. the Client becomes insolvent;
 - e. QBC considers that there is a conflict between its obligations under the Agreement and the Statutory Functions;
 - f. QBC considers that it is necessary to cancel the Initial Notice under Section 52(1) of the Building Act 1984;
 - g. QBC reasonably believes that it is impossible or impracticable to perform the Services and/or any Additional Services as a result of any circumstances for which QBC is not responsible; and/or
 - h. QBC is unable to maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the MHCLG.
47. Following any notice of termination by QBC or the Client, QBC shall be entitled to:
 - a. write to the relevant local authority (with a copy to the Client) cancelling the Initial Notice, in which case QBC's functions as Approved Inspector will revert to the relevant local authority and QBC will be discharged from all requirements to complete the Services and/or any Additional Services; and/or
 - b. at QBC's discretion, issue a Final Certificate in respect of part of the Works forming part of the Project.

Consequences of termination

48. If the Agreement has been terminated, the Invoice Payer shall pay QBC any instalments of any monies due and payable up to and including the date of termination together with a fair and reasonable proportion of the next instalment of the Fee commensurate with the Services performed, any Additional Fee in respect of any Additional Services performed by QBC, any disbursements, expenses, charges and/or other amounts incurred in respect of the Services and/or Additional Services up to the date of termination.
49. Termination of the Agreement shall not affect any rights or remedies of the Client or QBC which exist at the date of termination.

Intellectual Property Rights

50. The intellectual property rights in all documents produced by QBC under the Agreement (the "Documents") shall vest or remain vested in QBC. The Client shall have a revocable, non-exclusive, terminable, royalty free licence which shall be revocable following non-payment of any sums due and payable to QBC under the Agreement.
51. QBC shall only be liable for the use of the Documents for the purposes for which they were prepared.

Miscellaneous

52. The Client agrees not to pursue any claims under or in connection with the Agreement (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) against any individuals engaged by QBC or any individual directors or members of QBC. Nothing in the Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999. QBC shall not be required to enter into any collateral warranties with any third parties, provide any letters of reliance and/or grant any rights to any third parties under or in connection with this Agreement.
53. Neither Party may assign its rights and/or benefits under the Agreement.
54. The Agreement is subject to the law of England and Wales and the Client and QBC submit to the exclusive jurisdiction of the courts of England

and Wales.

55. If the Client is not satisfied with QBC's performance of the Services or any Additional Services, it may ask QBC to implement QBC's complaints handling procedure. QBC shall provide a copy of the procedure on request. The operation of QBC's complaints handling procedure does not affect the Client's right to refer a dispute to the courts.
56. The Client and QBC 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.
57. The date of the Agreement shall have effect as if it had been signed on the Services Commencement Date.
58. Any notice to be given by QBC, the Client, the Agent and/or the Invoice Payer shall be deemed to be duly given if it is (i) delivered by hand, (ii) sent by recorded (signed for), (iii) sent by special delivery, and/or (iv) sent by electronic mail or other electronic means ("Electronic Communication") to QBC, the Client, the Agent and/or the Invoice Payer at their respective addresses as identified in the Fee Proposal and/or the addresses otherwise communicated in writing before the date the relevant notice is sent by the party sends the notice (the "Sending Party") to the party who receives the notice (the "Receiving Party"). Any such notice, if sent by recorded (signed for) or special delivery, shall be deemed to have been received 48 hours after being posted (subject to proof to the contrary) and/or if delivered by hand and/or Electronic Communication, the relevant notice shall be deemed to be delivered on the date of receipt of the notice by the Receiving Party. Any other effective means of service of notice, agreed by the parties in writing, shall also be treated as valid service for the purposes of the Agreement.
59. Any reference to "days" in this Agreement shall for the avoidance of doubt mean calendar days.