

**Prime Construction Consultants Limited
Standard Terms and Conditions – July 2019**

Definitions and Interpretation

1. **PCC** - Prime Construction Consultants Limited.
Client - The person or persons who has or have appointed Prime Construction Consultants Limited to undertake the services.
Approved Inspector - A Licensed individual or organisation carrying out duties given to an Approved Inspector by the Building Act 1984 and Regulations made under it.
The Act - The Building Act 1984.
The Regulations - The Building (Approved Inspectors etc.) (Amendment) Regulations 2010.
Statutory Functions - The duties of an Approved Inspector under the Building Act 1984, Regulations made under it and formal guidance issued by a Government Department.
MHCLG - Ministry of Housing, Communities and Local Government.
The project - The work described in the Initial Notice and any additional work as agreed.
The Fees - The total amount to be paid to PCC for the services and any agreed additional work.
Plans - Includes drawings, calculations, reports and any other data illustrating the designer's intentions in respect of the proposed works.

Interpretation

2. 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 should include any other gender.
 - References to any statute or statutory instruments 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.

Services

3. PCC shall carry out the function of an Approved Inspector as defined within the Building Act 1984 and Regulation 8 of the Building (Approved Inspector etc.) Regulations 2010.
4. PCC shall acknowledge receipt of instructions, brief and necessary documentation from the Client. They will also advise on procedures and programme for Building Regulations Certification.
5. On receipt of a signed/authorised Application Form, PCC shall submit an Initial Notice(s) to relevant Local Authorities with a copy to the Client.
6. PCC shall 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. PCC will also maintain appropriate records of the design assessment process.
7. PCC shall have the right to ask for and receive plans and any other relevant information, in order that they may determine the design is compliant with the Building Regulations and associated Legislation.
8. Where required by the Building (Approved Inspectors etc.) Regulations, PCC shall consult the Fire and Rescue Authority and / or sewerage undertaker and forward their observations to the client.
9. PCC shall undertake all other statutory consultations where required and forward observations to the client.

10. If requested by the client, when satisfied that the plans show no observed contravention of the Building Regulations and associated legislation, PCC will issue a plans certificate.
11. PCC shall compile a schedule of modifications specified and / or further plans or information required to demonstrate compliance of plans.
12. PCC shall prepare an inspection notification framework (INF) and provide a copy to the client.
13. PCC shall carry out inspections of the site to observe compliance with the Building Regulations.
14. PCC will maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance. Details of any observed contraventions or significant departures from plans will be communicated to the Client. On request, a copy of the Report will be provided to the Client.
15. PCC will consider the need for tests throughout construction and at completion, inform the client of the requirements; witness tests and receive certificates as appropriate. Copies of such plans as are necessary in relation to the commissioning of services prior to issue of a Final Certificate(s) will be requested.
16. PCC is not accountable for any works carried out prior to Acceptance of the Initial Notice by the Local Authority.
17. Having taken reasonable steps to be satisfied that the whole or part of the works has been completed for Building Regulations Purposes, PCC will issue a Final Certificate(s) and forward a copy to the Client. A copy will be retained as statutory records for the required period. PCC will be responsible for giving the necessary statutory notices in respect of the project to the relevant Local Authorities.

PCC's Obligations

18. PCC shall carry out the services and any agreed additional work with reasonable skill, care and diligence in accordance with the agreement.
19. PCC shall have due regard to the CIC Code of Conduct for Approved Inspectors.
20. PCC has fully adopted the Performance Standards for Building Regulations Compliance set by the MHCLG.
21. PCC shall take such steps as are reasonable to enable it to be satisfied to the projects compliance with the Building Regulations and associated legislation as necessary, 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 the Building Regulations.

Client's Obligations

22. The client shall appoint PCC in writing (signed application form) prior to any work being carried out in connection with the services of an Approved Inspector. Signing of the application form signifies full acceptance of the Terms and Conditions.
23. The client shall provide such information and assistance as PCC reasonable requires from time to time in order to facilitate the timely provision of the services and any agreed additional work.
24. The Client shall ensure that all necessary plans and information are provided to allow PCC to determine compliance with the Building Regulations.
25. The Client shall give adequate notification of the stage of work to be inspected (Normally a minimum of 24 hours' notice).
26. The Client shall ensure that reasonable access to the site and facilities are provided at all reasonable times to allow PCC to make the necessary inspections.
27. The Client shall make arrangements to allow PCC to witness tests on drainage, ventilation duct work, emergency lighting, fire alarms etc. to ensure compliance with the Building Regulations. All test equipment, training and expenses incurred to carry out such tests are the responsibility of the client.
28. The Client shall notify PCC prior commencement of work on site so that the Inspection notification framework can be implemented.

29. The Client shall be entirely responsible for the design, construction and management of the project, and any agreed additional work.
30. The Client shall be entirely responsible for obtaining and implementing all necessary permits, licenses and approvals, except those that provide part of the services or any agreed additional work.
31. 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.
32. For new dwellings or dwellings by conversion, the requirement for a Standard Assessment Procedure (SAP) calculation and Energy Performance Certificate (EPC) and any associated fees is the responsibility of the Client.
33. For Commercial buildings the requirement of a Simplified Building Energy Model (SBEM) calculation and any associated fees is the responsibility of the Client.
34. For domestic schemes, electrical and heating systems should be installed by Competent Persons (<https://www.gov.uk/guidance/competent-person-scheme-current-schemes-and-how-schemes-are-authorised>) e.g. Gas Safe, NICEIC, Oftec, HETAS, etc. When this element of work is completed the relevant certification for the installation should be provided. Such installations do not form part of the Building Regulation Approval provided by PCC. The Client is responsible for fees in connection with such certification. When an installer does not have accreditation, PCC reserve the right to charge an additional fee to cover additional inspections of the work.

Changes to the Project and Additional Work

35. PCC shall notify the Client in writing as soon as it becomes aware that any additional work will be required, because of:
 - a. Changes in the design, size and scope or complexity of the project
 - b. Changes in the timing or programming of the project
 - c. A failure by the Client to comply with its obligations under this contract
 - d. Additional meetings and / or visits and / or other work is required.
36. The Client shall pay PCC for the additional work on a time charge basis, to be agreed with the Client prior to the additional works being carried out. PCC may include the charge in the next payment instalment after the additional work (or part of it) has been performed.

Terms of Payment

37. The application form should clearly state the person or company responsible for the payment of fees with the address for invoices, an email address and a contact telephone number clearly indicated.
38. Where an application is submitted on behalf of a third Party, the client must take responsibility for payment of the fee.
39. All invoices are due for payment within 14 days of the issue date including VAT as applicable.
40. Any sum due under this agreement which is not paid by the final date for payment shall be subject to late payment charges as stated on the Invoice.
41. 50% of the fee will be invoiced on submission as validation of the application.
42. The validation fee is non-refundable.
43. The balance of 50% will be invoiced as the site inspection fee on commencement of the project on site.
44. The site inspection fee is non-refundable if the first inspection has been carried out.
45. Where a project has not commenced on site within 12 months of the date of the Initial Notice an annual increase to the inspection fee of 5% will be applied.
46. Where a project has not commenced on site on within 3 years of the date of the Initial Notice, then that Initial Notice will be

deemed to have expired under the Building (Approved Inspectors etc.) Regulations and a new application will be required. No refund of fees will be given.

47. Failure to pay fees may result in the project being cancelled with the Local Authority and / or suspension of visits to any site.
48. Instalments may be arranged in advance at the discretion of the Building Control Manager.
49. All fees must be paid in full prior to the issue of the Final Certificate.
50. The full amount of the fee is payable regardless of the number of site visits undertaken and / or the project is abandoned.
51. If the scope of the works materially changes to an extent that it becomes substantially different to that described in the Initial Notice thus requiring a submission of an Amendment Notice, or amendments are made to the project requiring additional plan checking, consultations or inspection, PCC shall be entitled to an additional payment. The amount will be subject to prior agreement with the Client.
52. PCC is not liable for appointment or payment of any consultant who may need to be appointed to prove compliance with the Building Regulations.
53. PCC reserve the right to charge additional fees for abortive site inspections or where repeated site visits have been required to ascertain likely compliance.

Assignment and Sub-Contracting

54. Either party may assign its rights and benefits under this agreement. PCC may sub-contract any part of the service and any additional work, with the prior approval of the client not to be unreasonably withheld or delayed.

Cancellation of Initial Notices

55. PCC shall cancel the Initial Notice by sending a Notice of Cancellation to the relevant Local Authority in the following circumstances:
 - a. After a formal notice of contravention has been served and no action has been taken by the client to rectify the contravention within 28 days.
 - b. PCC is prevented carrying out their legitimate functions as an Approved Inspector for the project due to undue restrictions imposed by the Client or their Agents allowing reasonable access to inspect works on site.
 - c. PCC is prevented to make site inspections due to dangerous or unsafe conditions.
 - d. Failure on part of the Client or any other relevant person to submit the plans in a reasonable period.
 - e. Any other situation or condition that prevents PCC from carrying out their function as an Approved Inspector.
 - f. Non-payment of fees to PCC.

Termination and Discharge

56. The Client may terminate this agreement forthwith if:
 - a. PCC 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
 - b. PCC becomes insolvent.
57. PCC may terminate this contract forthwith if:
 - a. The Client is in material breach of its obligations under this agreement and has failed to remedy the breach within 28 days of the date of the notice of the breach from PCC;
 - b. PCC reasonably believes that it will not be in a position to issue a Final Certificate on completion; or
 - c. The Client becomes insolvent.
58. Following termination by PCC or the Client, PCC is entitled to write to the Local Authority cancelling the Initial Notice under the Building Regulations, in which case the Approved Inspector Functions will revert to the Local Authority and PCC will be

discharged of all requirements to comply with the services or any additional work.

59. The Right of either Party to terminate for material breach of this agreement shall lapse if it has not been exercised within 35 days after giving Notice of the breach to the other party.
60. If this agreement has been terminated, the client shall pay PCC 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 carried out prior to the notice of termination.
61. Termination of this agreement shall not affect any rights or remedies of the client or PCC which exist at the date of termination.

Insurance

62. PCC shall maintain Professional Indemnity Insurance and Public Liability Insurance in compliance with the Guidelines issued by MHCLG (or any successor department responsible for the Building Act 1984).
63. On the Client's written request, PCC shall provide evidence that these Insurances are being properly maintained.
64. PCC shall immediately inform the Client if the insurance referred to above ceases to be available.

Limitation of Liability

65. PCC's obligation in relation to the performance of the services shall be limited to the exercise of the level of skill and care provided in Clause 18 and shall only be liable if and to the extent that it has failed to exercise such skill and care.
66. PCC shall not be responsible for or have any duty or liability in connection with the supervision of any contractor or sub-contractor, nor shall PCC have any responsibility, duty or liability as a result of or in connection of the performance of any contractor or sub-contractor or any contractor or sub-contractors standard of workmanship.
67. Notwithstanding anything to the contrary in this agreement, the liability of PCC under or in connection with this agreement whether in Contract or in Tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed in aggregate the sum of two million pounds (£2,000,000.00).
68. If no amount is inserted above, the liability of PCC shall not exceed in aggregate a multiple of ten times the total of the fees payable to PCC by the Client.
69. 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 agreement.
70. 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 PCC, if any, for any loss of damage in respect of any claim or claims shall not exceed such sum as it would be just and equitable for PCC to pay having regard to the extent of PCC's responsibility for the loss or damage and on the assumptions that:
 - a. All other consultants and advisors, contractors and sub-contractors involved in the project shall have provided contractual undertakings to the Client on terms no less onerous than those set out in this agreement in respect of carrying out their obligations in connection with the project; and
 - b. There are no exclusions of or limitations of liability nor joint insurance or co-insurance 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 and damage; and

- c. All the parties referred in (a) above have paid to the Client such proportion of the loss or damage which it will be just and equitable for them to pay having regard to the extent of their responsibility for loss or damage.

71. No action or proceedings under or in respect of this agreement whether in contract, in Tort, in negligence, for breach of statutory duty or otherwise shall be commenced against PCC after the expiry of 6 years from the date of completion of services or the termination of the services if earlier.
72. No one has any right to enforce any term of this agreement under the Contracts (Rights of Third Parties) Act 1999. This does not affect the rights of the Client and PCC in relation to this agreement.
73. Whatever the date of this agreement it shall have effect as if it had been signed on the date when PCC commenced the services.

Notices

74. The Client and PCC can give notice to each other in writing under this agreement 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 registered address of the Client and PCC, or any other addresses notified.

Copyright and General Data Protection Regulation (GDPR)

75. The Copyright in all documents prepared by PCC in providing the services shall remain the property of PCC unless a financial agreement is made.
76. Unless otherwise stated to the contrary, PCC will be given permission to take photographs of the project during the course of works and on completion for use as promotional material.
77. In accordance with GDPR Regulations, PCC confirm that your information will be retained securely and only used for the purposes that it has been supplied for. This includes sending information to Statutory Undertakers (including the relevant Local Authority, Fire and Water Authorities). Please note that PCC have a responsibility to share information with organisations that are charged with the detection and prevention of fraud.

Complaints

78. In the event that the Client has a complaint in respect of the performance of services by PCC under this agreement without prejudice to any other remedy available under this agreement they shall be entitled to have access to the Complaints Handling Procedure (CHP) which is available on request.

Construction (Design and Management) Regulations 2015

79. PCC is not a "Duty Holder" under these Regulations and therefore do not prepare or modify designs for a building, product or system relating to construction work.
80. PCC advise that you seek guidance from a CDM professional to ensure compliance with your responsibilities under these Regulations.
81. Guidance can be obtained from the Health and Safety Executive, and the Association for Project Safety.

The Party Wall etc. Act 1996

82. PCC is not responsible for dealing with any Party Wall matters which may be needed for the project. Guidance can be obtained from the Royal Institution of Chartered Surveyors, the Faculty of Party Wall Surveyors or the Pyramus and Thisbe Club.