

Conditions of Engagement for Building Surveying Services

1. The surveyor's obligations

1.1 The surveyor shall perform the services with reasonable skill, care and diligence, but:

- no liability shall attach to the surveyor in respect of the services except such liability as ought to be covered by the professional indemnity insurance referred to in the Appointment Agreement for Building Surveying Services;
- such liability shall be limited to the sum specified in the Appointment Agreement for Building Surveying Services;
- where during the course of building works the surveyor makes periodic visits to site to monitor the contractor's workmanship and progress, to check the use of materials, the works' conformity to specification and to report generally on the progress and quality of the works, the surveyor shall not be required to make exhaustive or continuous inspections. Liability for the works shall be limited to omissions or errors reasonably discoverable by the surveyor undertaking periodic inspections of the site. Where frequent or constant inspection is necessary or required, a resident surveyor, clerk of works or resident engineer should be appointed by the client to supervise the day-to-day administration of the project;
- it is agreed that the purpose of such inspections is the provision of information, rather than for the purpose of giving any approval to the project as a whole;
- where the Client directly appoints a specialist consultant or contractor or a works contractor, the surveyor shall not be liable for any loss, injury or damage incurred through the default of the specialist or other contractor. The surveyor shall be responsible for the direction and integration of the specialist's services or contractor's works only where expressly required as a part of the services.

1.2 The client, not the surveyor, shall satisfy him or herself as to the adequacy of the Professional Indemnity Insurance (PII) of other specialists and consultants referred to.

1.3 The client shall be responsible for obtaining and satisfying him or herself of the adequacy of warranties from other specialists and consultants.

1.4 The surveyor shall not, without the consent or authority of the client, give to the main, or any other contractor, supplier or person, any instruction the necessary effect of which would be to materially vary the works, or increase the cost of, or time taken to complete, the works.

1.5 The surveyor shall promptly inform the client in writing of the likely effect of anything relating to the surveyor's scope of work as defined herein which the surveyor believes would materially vary the works, increase the cost of, or time taken to complete, the works.

2. Payment for the surveyor's services

2.1 The surveyor shall be entitled to submit a fee invoice:

- monthly, or at the conclusion of agreed service stages, whichever is the more frequent;
- at suspension or termination of the services;
- when work proves to be abortive, in respect of that work;
- at conclusion of the services.

2.2 Payments invoiced shall be calculated by reference to:

- agreed hourly or unit rates;
- agreed service stage payments or lump sums; or
- a fair proportion of agreed service stage payments or lump sums.

2.3 The client shall pay the surveyor for the performance of the services the fees and charges in such instalments as are set out in the Appointment Agreement for Building Surveying Services. All fees and charges under the Agreement are exclusive of Value Added Tax (VAT) which if due shall be paid concurrently in addition. The "due date for payment" shall be 7 (seven) days (see clause 15.3 below) after the date of the submission of the invoice. The surveyor when submitting his or her invoice shall on each invoice confirm the basis on which the stated amount is calculated.

2.4 The "final date for payment" shall be 21 (twenty-one) days after the due date for payment, and payment shall be made no later than the final date for payment.

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- 2.5 The client must, not later than 5 (five) days after the due date for payment, give to the surveyor written notice stating the amount which the client proposes to pay and the basis on which that amount is calculated. Where no such notice is given the amount to be paid is that stated in the invoice.
- 2.6 Where the client intends to withhold payment of any amount either stated in the surveyor's invoice or in a written notice given by the client under clause 2.5 above, the client must give written notice to the surveyor not later than 5 (five) days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.
- 2.7 Any amounts due to the surveyor under this Agreement which remain unpaid by the client after the final date for payment shall bear interest at a rate of 4% (four per cent) above the base rate, in force from time to time at the bank holding the surveyor's current account, calculated from the date for final payment or from the date 7 (seven) days after publication of an adjudication settlement, which ever is the later.
- 2.8 In the event that the client is in default over payment of amounts at the final date for payment and no notice of intention to withhold payment from such amount has been given under clause 2.6 above, the surveyor may suspend performance of any or all of the services. This right is subjected to the surveyor first giving the client not less than 7 (seven) 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. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the services. Such suspension shall not be treated as a suspension under clause 5 below.
- 2.9 The specified fees do not include, and the surveyor shall be entitled to reimbursement of expenditure comprising:
- fees, other charges and disbursements of any main or other contractor, supplier, clerk of works, other surveyor, professional or consultant engaged with the prior written consent of the client whether directly or as agent for the client, and whether or not working under the direction or supervision of the surveyor;
 - the reasonable cost of producing or reproducing documents, drawings, maps, photographic and other records and presentation materials;
 - reasonable travel and hotel expenses (including mileage for car travel);
 - unit charges (but not standing charges) for communications by telephone, telex, facsimile transmission, post, messenger, etc;
 - fees and advertising costs in connection with applications for local government consents such as planning permission and building regulation consent;
 - any other fees or expenses which the client has authorised the surveyor in writing to incur.
- 2.10 Unless expressly agreed to the contrary the specified fees do not include, and the surveyor shall be entitled to payment at the specified hourly rate for, any work arising out of or in connection with:
- preparing maintenance manuals or other documents (drawings, maps, photographic and other records, models and presentation materials);
 - varied instructions resulting in additional or abortive work;
 - defects in materials or in the work of others;
 - reinstatement of damaged work;
 - determination of a main or other contractor's employment under a building contract and the appointment of new (main or other) contractors;
 - overrun of a contract administered by the surveyor where such overrun is beyond the surveyor's control;
 - Investigating, negotiating and agreeing loss and expense claims.
- 2.11 On written demand by the client, the surveyor shall provide as appropriate:
- time sheets where the fee is based on time charges;
 - original receipts or other appropriate evidence of expenses or disbursement.
- 2.12 Where the surveyor's fees are expressed as a percentage of total construction costs, that total shall include:
- adjustments consequent upon variations and fluctuations;
 - expenditure of provisional, prime cost sums, or contingencies;
 - value of materials, labour or services provided by the client free of charge;
- but shall exclude the value of any loss and expense claims.
- 2.13 All fees are exclusive of VAT.
- 2.14 The surveyor shall notify the client in writing as soon as it becomes reasonably apparent that any work additional to the subject of the Agreement will be required.
- 2.15 Where the surveyor is involved in additional work because of:
- changes in the scope of works; and/or
 - changes in the programme of the works; and/or
 - changes instructed to the services; and/or
 - the commencement of adjudication, arbitration or litigation, the client shall pay to the surveyor additional fees calculated (unless otherwise agreed) on the time charge basis set out in the Appointment Agreement.

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2.16 Any interest earned where client's money is held will be retained in full by Adelaide Jones unless a signed statement is received from the client to state otherwise.

3. Professional Indemnity Insurance (PII)

3.1 The surveyor is required to comply with the regulations of The Royal Institution of Chartered Surveyors in respect of the maintenance of Professional Indemnity Insurance. He or she shall use reasonable endeavours to take out and maintain such Professional Indemnity Insurance above RICS limits, provided that it is available at commercially reasonable rates, as defined by reference to an amount and for a period in the Appointment Agreement. Such insurance shall be with an insurer who is listed for this purpose by the RICS.

4. General Insurance Mediation Activity (GIMA)

4.1 Adelaide Jones offer general insurance mediation activity (GIMA) which is limited to arranging insurance through brokers and will obtain advice and quotes from brokers who will either look at the whole of the market; limited market or single insurer based on the clients demands and needs.

4.2 Adelaide Jones will offer recommendations based upon information received from brokers and client's demands and needs, where appropriate.

4.3 The Directors of Adelaide Jones are Mr. T. R. Edwyn-Jones and Mr. M. R. Nimba and both persons are responsible for overseeing all GIMA activity.

5. RICS Client Money Protection Scheme (CMPS)

5.1 Adelaide Jones confirms that a valid claim against the Firm for loss arising out of the work which is not met in full by the Firm, may be met by RICS Client Money Protection Scheme (CMPS). A copy of the CMPS is available upon request.

6. Communications between the client and the surveyor

6.1 If the client's representative has ceased for any reason to act as such, the client shall promptly inform the surveyor in writing of the identity of the new representative.

6.2 All the client's instructions to the surveyor with regard to the services (including those to vary, add to or suspend the services) shall be given to the surveyor in writing, or, if given orally, confirmed in writing within 7 (seven) days.

6.3 The client shall promptly convey to the surveyor any decision or information held by the client necessary for the proper performance of the services.

6.4 Any formal notice shall be deemed to have been duly given if mailed by registered post to the representative at the address specified in the Appointment Agreement for Building Surveying Services.

7. Suspension and termination

7.1 The client may suspend performance by the surveyor of all or any of the services by giving 7 (seven) days' notice to the surveyor. If the services have been suspended for a period of more than 12 (twelve) months, either party may terminate the Agreement by giving written notice to that effect.

7.2 The client may terminate the appointment of the surveyor under this Agreement by giving 7 (seven) days' written notice to the surveyor.

7.3 Where the services have been suspended by the client and the Agreement has not been terminated, the client may, by giving reasonable notice to the surveyor, require the surveyor to resume the performance of the services.

7.4 If the client materially breaches their obligations under this Agreement, the surveyor may serve on the client a notice specifying the breach and requiring its remedy within 28 (twenty-eight) days, and if the client thereafter fails to remedy that breach within that period, the surveyor may terminate this Agreement given written notice to the client.

7.5 If either party:

- commits an act of bankruptcy or has a receiving or administrative order made against it; and/or
- goes into liquidation; and/or
- becomes insolvent; and/or
- makes any arrangements with its creditors;

the other may suspend performance of the services or may terminate the appointment by giving written notice.

7.6 These rights are in addition to those granted to the surveyor under clause 2 above.

8. Consequences of suspension and termination

8.1 If performance of the services has been suspended under clause 2 or clause 5 above, or the Agreement has been terminated pursuant to the provisions of clause 5 above:

- (a) the client shall pay the surveyor any instalments of the fees due to the surveyor up to the date of suspension or termination together with a fair and reasonable proportion of the next following instalment commensurate with the services performed by the surveyor.
- (b) unless the Agreement has been terminated by the client because of a material breach by the surveyor, the client shall pay the surveyor within 28 (twenty-eight) days of written demand the consequential costs necessarily incurred as a result of the suspension or termination.

8.2 Termination of the Agreement shall be without prejudice to the rights and remedies of the parties.

9. Complaints

9.1 In the event that the client has a complaint in respect of the performance of the surveyor's services under this Agreement, without prejudice to any other remedy available under the Agreement, he or she shall be entitled to have access to the complaints handling procedure maintained by the surveyor, written copies of which should be available on request from the surveyor.

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- 9.2 This Firm is not authorised by the Financial Services Authority. However, we are included on the Register maintained by the Financial Services Authority so that we can carry out insurance mediation activity which is broadly advising on selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Royal Institution of Chartered Surveyors (RICS). The register can be accessed via the Financial Services Authority website www.fsa.gov.uk/register.
- 9.3 Once we receive your written summary of the complaint, we will contact you in writing within seven days to inform you of our understanding of the circumstances leading to your complaint. You will be invited to make any comments that you may have in relation to this.
- 9.4 Within twenty-one days of receipt of your written summary, the person dealing with your complaint will write to you in order to inform you of the outcome of the investigation into your complaint and to let you know what actions have been or will be taken.
- 9.5 If you remain dissatisfied, please contact the following firms:

Consumer Clients please contact: (Individuals) Ombudsman Services: Property PO Box 1021 Warrington WA4 9FE	Telephone: 0330 440 1634 Website: http://www.ombudsman-services.org/contact-us-property.html
Business clients please contact: (Companies) IDRS Limited International Dispute Resolution Centre 70 Fleet Street London EC4Y 1EU	Adelaide Jones' preferred dispute resolution operated by IDRS is Arbitration Procedure for Surveying Disputes . Telephone: 020 7520 3800 Fax: 0845 1308 117 Email: info@idrs.ltd.uk Website: www.idrs.ltd.uk

10. Copyright

- 10.1 Unless otherwise agreed in writing, the surveyor shall retain copyright in and ownership of, all specifications, or other documents, drawings, maps, photographic and other records, models and presentation materials prepared by the surveyor.
- 10.2 The surveyor may publish or join in publishing any description or illustration of the works with the prior consent of the client.

11. Assignment (England and Wales)*

- 11.1 The client may assign or transfer all (but not part) of this Agreement upon giving written notice to the surveyor to that effect.
- 11.2 The surveyor may assign or transfer all or part of this Agreement but only with the prior written consent of the client which shall not be unreasonably withheld.

12. Waiver

- 12.1 No acquiescence in a breach shown by either the client or the surveyor shall prevent the other subsequently insisting upon his or her rights and remedies under this Agreement.

13. Disputes

- 13.1 If a dispute arises out of this Agreement, the client and the surveyor shall attempt to reach a settlement in good faith. The internal complaints procedure mentioned in clause 9.0 should facilitate this for disputes less than £50,000.
- 13.2 If the dispute is not thus resolved, either the client or the surveyor may at any time give notice to the other that he or she wishes to refer the dispute to an adjudicator, provided the contract is in writing. The person who is to act as the adjudicator shall be agreed between the client and surveyor within 28 (twenty-eight) days of such notice having been given or, failing agreement at the end of that period, be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators (or in Scotland, the Chairman or Vice-Chairman of the Chartered Institution of Arbitrators (Scottish Branch)) within 5 (five) days of such notice having been given. The referring party shall refer the dispute in writing to the adjudicator with 7 (seven) days of such notice having been given.
- 13.3 The adjudication shall be conducted in accordance with the Construction Industry Council Model Adjudication Procedures (subject to amendments if the adjudication is in Scotland - see clause 4.3 on p.8) current at the time of entering into this Agreement. Clause 30 of the Construction Industry Council Model Adjudication Procedures shall be amended to add the following sentence:
"No party shall be entitled to raise any right of set-off, counterclaim and/or abatement in connection with any enforcement proceedings".
- 13.4 The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.
- 13.5 The adjudicator shall reach a decision:
(a) within 28 (twenty-eight) days of the referral of the dispute to the adjudicator; or
(b) within 42 (forty-two) days of the referral of the dispute to the adjudicator if the referring party so consents; or
(c) in a period exceeding 28 (twenty-eight) days from referral of the dispute to the adjudicator as the client and the surveyor may agree after such a referral.
- 13.6 The adjudicator is not liable for anything he or she does or omits to do so in the discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith. Any employee or agent of the adjudicator shall be similarly protected from liability.
- 13.7 The decision of the adjudicator shall, subject to the provisions of clauses 11.8 and 11.9 below, be binding until the dispute is finally determined by arbitration either under the contract, or as part of the surveyor's internal complaints procedure for disputes less than £50,000.

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- 13.8 The client and the surveyor may agree to accept the decision of the adjudicator as finally determining the dispute.
- 13.9 If the client or the surveyor is dissatisfied with the decision of the adjudicator, then:
- (a) the dispute may be determined by agreement between the parties; or
 - (b) the dispute may be referred at the instance of either of the parties to be determined by an arbitrator in accordance with clause 12 below.
- 13.10 The client agrees not to commence any proceedings in litigation or arbitration against the surveyor arising out of, under, or in connection with, any adjudication award until the award has been finally determined by legal proceedings by arbitration or by agreement between the parties, and/or until the work subject to the project in connection with which the surveyor is appointed shall be completed, whichever is the later, and irrespective of whether the project is completed by the original contractor or any subsequent contractor or by the client.
- 13.11 Enforcement of awards
- It is hereby agreed that:
- (a) non-payment of any award without cause will constitute a separate breach of the contract contained herein; and
 - (b) any award may be enforced as a judgement.
- 13.12 It is hereby agreed that "stating that the provisions of the Construction Act 1996 have been incorporated into contracts effected by simple exchange of letters and may be incorporated by reference in telephone conversations to the use by the parties of a standard form of building contract."
- 14. Arbitration**
- 14.1 Any dispute under this Agreement, including those for more than £50,000 and/or those where adjudication would not apply, may be referred at the instance of either of the parties to be determined by an arbitrator. The person who is to act as an arbitrator shall be agreed between the parties within 28 (twenty-eight) days of the one giving written notice of his or her wish to refer the decision to an arbitrator or, failing agreement at the end of that period, shall be a person appointed by the President or Vice-President of the Chartered Institute of Arbitrators (or in Scotland, the Chairman or Vice-Chairman of the Chartered Institution of Arbitrators (Scottish Branch)) at the instance of either party. The arbitration shall be conducted in accordance with the Construction Industry Model Arbitration Rules current at the time of entering into this Agreement.
- 15. Liability**
- 15.1 The liability of the surveyor shall be limited to such sum as it would be just and equitable for the surveyor to pay having regard to the extent of the responsibility of the surveyor for the loss or damage suffered, on the basis that all other consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the client on terms no less onerous than those applying in the case of this Agreement. They shall be deemed to 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 such loss or damage.
- 15.2 The liability of the surveyor shall be limited to the amount of the Professional Indemnity Insurance required by virtue of clause 3.1 above.
- 16. Notice**
- 16.1 Any notice to be given under this Agreement shall be in writing and delivered by hand or sent by recorded delivery post to the party at the address shown in the Agreement or to such an address as the other party may have specified from time to time by written notice to the other.
- 16.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand and otherwise on the next working day.
- 16.3 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 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.
- 17. Surveyors and legal advice - Client guide**
- 17.1 Surveyors may advise on which form of contract is suitable, but they cannot advise as to whether the 1996 HGCR Act will or will not apply.
- 17.2 The client should therefore employ a solicitor to advise on this issue. The surveyor will at the written request of the client employ a solicitor to address and advise on this issue. If the client does so request, then the surveyor will be under no liability in relation to any advice obtained. As for other professionals, the client should employ and brief the solicitor themselves rather than the surveyor doing so, and should bear the costs of instructing the solicitor.
- 17.3 If the client does not obtain advice from a solicitor it is agreed that no liability will attach to the surveyor for any loss and damage howsoever suffered by the client arising out of, under, or in connection with the application, or non-application of the HGCR Act of 1996.

I agree to the above terms and conditions

*Signature:.....