

Terms and Conditions

(for New Build dwellings [OCDEA], Excess Glazing & U-Value Calculations)

1. General

- 1.1** Client instruction to commence works either written or verbal, constitutes acceptance of these Terms and Conditions.
- 1.2** The agreement shall apply in preference to and supersede any previous Terms and Conditions referred to, offered or relied upon by the client whether in writing or otherwise.
- 1.3** The agreement shall be governed by and constructed and interpreted in accordance with English Law, and the parties submit to the non-exclusive jurisdiction of the English courts.
- 1.4** Survey 7 Ltd. reserve the right to update these Terms and Conditions as necessary.

2. Definitions

The following definitions shall apply to this agreement:

- 2.1** "Client" means the organisation or individual to whom the quotation or pro-forma is addressed.
- 2.2** "Consultant" means Survey 7 Ltd.
- 2.3** "Works" means the Works, Project and Scope set out in the quotation or pro-forma in connection with which the Client has engaged the Consultant to perform the Services.
- 2.4** "Services" means the services described in the quotation or pro-forma.
- 2.5** "Additional Services" means any services undertaken by the Consultant beyond those defined in the quotation or pro-forma.
- 2.6** "Fee" means the fees for performing the Services and Additional Services (if any) stated in the quotation or pro-forma.
- 2.7** "Insolvency" means either party becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with his creditors or having a receiver or administrative receiver or administrator appointed of the whole or any part of his assets.

3. Consultant obligation

- 3.1** The Consultant shall exercise reasonable skill, care and diligence in the performance of the Services and Additional Services (if any). If in the performance of such services the Consultant has discretion exercisable as between the Client and a contractor, the Consultant shall exercise that discretion fairly.
- 3.2** The Consultant will not undertake any "design" work. As a result, no Designer's Risk Assessment will be prepared. The Consultant may make suggestions as to how compliance might be achieved, but these will be suggestions only. Should they be adopted it will be the responsibility of the relevant member of the Client's Design Team to satisfy themselves that the proposals fully meet all the statutory and performance requirements.
- 3.3** The Consultant may sub-contract the performance of any of the Services to a sub-consultant. The Consultant shall be responsible for the performance and payment of the sub-consultant.
- 3.4** Subject always to conditions beyond reasonable control, the Consultant shall use all reasonable

endeavours to perform the Services in accordance with the programme agreed between the Consultant and the Client including subsequent programmes agreed between the two parties.

3.5 The Consultant is to use any Construction Detail designs/figures provided to them from the Client, it is not for the Consultant to undertake the design of the detail.

4. Client obligations

4.1 The Client shall use his reasonable endeavours to provide to the Consultant without charge and in time so as not to disrupt the performance of the Services by the Consultant all necessary and relevant data and information in possession of the Client, his agents, servants, other consultants or contractors and give such assistance and make such decisions as shall reasonably be required by the Consultant in the performance of the Services.

4.2 The Client shall procure any data, information or reports relevant to the Service and not in his possession and required by the Consultant in the performance of the services. The client acknowledges that in the event that such data, information or reports are not procured this may adversely affect the Services provided.

4.3 The Client shall inform the Consultant if any planning requirements are to be enacted upon the development, this includes the London Plan, and noise & pollution issues. The Consultant will always assume no such requirements are to be included in their assessments, unless informed otherwise, and in writing.

4.4 The Client is responsible for keeping the Consultant fully informed of project progression. In particular, the Client must advise the Consultant as key decisions are made and milestones reached.

4.5 The Client is responsible for providing Construction Details (also known as Thermal Bridge Junction Psi-Values) where necessary – most often on all non-cavity insulated masonry wall projects.

4.6 The Client is responsible for ensuring all relevant evidence is provided to the Consultant to ensure they can process the As-Built SAP report and EPC – where any evidence is missing, the Consultant is duty bound to use default figures, which may have adverse effects on the EPC rating.

5. Payment

5.1 Payment by the Client to the Consultant for the performance of the Services shall comprise the Fees and if so agreed the disbursements.

5.2 Fees for the performance of the Services and the Additional Services (if any) shall be paid in accordance with the provided quotation.

5.3 If Additional Services and/or Additional Fees have not been agreed prior, the Consultant reserves the right to set the Fee amount to provide the Additional Service. This Additional Fee must be agreed between the Consultant and Client prior to the Additional Services beginning.

5.4 Payment due to the Consultant under this agreement, shall be made prior to release of final documentation, unless otherwise explicitly agreed in writing by the consultant.

5.5 The Client may not withhold payment after the final date for payment of any sum due under this Agreement unless the Client gives no later than seven days before such final date a notice specifying the amount to be withheld and the grounds for withholding payment.

5.6 All fees are exclusive of Value Added Tax, the amount of which shall be at the rate and in the manner prescribed by law and shall be paid by the Client to the Consultant.

6. Additional payment

6.1 If the Consultant has to carry out additional work and/or suffers delay or disruption in the performance of the Services for reasons beyond the control of the Consultant, the Client shall make an additional payment to the Consultant in respect of the additional work carried out and the additional resources employed and/or the delay or disruption suffered. The additional payment shall be calculated on a time basis at the hourly rates set out in the attached fee letter and shall be paid prior to the release of any reports/completed Services. The Consultant shall where practicable and if so requested by the Client give an initial estimate of the additional payment likely to be incurred.

6.2 The Consultant will not be expected to pay for third-party works (e.g. Thermal Bridge Junction Psi-Values; Overheating Dynamic Thermal Modelling; change of designs, etc.), unless this has been agreed separately and in writing. These fees will be paid by the Client.

7. Insurance

7.1 The Consultant shall maintain professional indemnity insurance sufficient to cover the Consultant's liabilities hereafter for any one occurrence or series of occurrences arising out of the Agreement (other than for claims arising out of pollution or contamination which will be in aggregate) and for the period of six years after completion of the Services, provided always that such insurance is available at commercially reasonable rates.

8. Copyright, licence and publicity and Confidentiality

8.1 The copyright in all drawings, reports, specification, bills of quantities, calculations and other documents provided by the Consultant in connection with the Works shall remain vested in the Consultant, but the Client shall have a licence to use all completed documents issued to the Client, other consultant or consultants or contractors for the purpose of the design, construction and completion, maintenance and repair of the Works. In the event of the Client being in default with regards to payment of any Fees or other amounts due to the Consultant under this Agreement, the Consultant may revoke the licence herein granted on seven days' written notice to the Client.

8.2 The Consultant shall not be liable for the use by any person of any documents for any purpose other than that for which the same were prepared on behalf of the Client.

8.3 The Consultant shall not without the written permission of the Client publish alone or in conjunction with any other person any article, photograph or other illustration relating to the Works.

8.4 Client information will not be shared with a third party unless required in the undertaking of the service, as required by accreditation bodies, registration schemes or at the specific request of the Client or where required by Law.

9. Termination

9.1 In the event of a material breach of this Agreement by either party or in the event of the Insolvency of one of the parties the party who is not in breach or not insolvent may terminate the Agreement upon not less than two weeks' written notice to the other party.

9.2 Upon such termination the Client shall pay to the Consultant all monies accrued due to the Consultant up to the days of such termination following submission of the Consultant's invoice therefore and the provision of paragraph (5.) of the Agreement shall then apply to such payment.

9.3 Termination of the consultant's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party.

10. Assignment

10.1 Neither party may assign or transfer any benefit or obligation under this Agreement without the prior written consent of the other party.

11. SAP Assessments/Calculations

11.1 Where appointed to carry out SAP Calculations the Consultant will carry out an initial calculation plus one minor design variation of SAP Calculations within the agreed fee, unless stated/agreed otherwise (excludes U-Value Calculations/Thermal Justification Works, whereby single calculations will be provided unless otherwise stated/agreed). Additional variations will be subject to Additional Fees at the Consultants discretion. The Consultant will make the Client aware of any additional fees for client acceptance prior to completion of further works.

11.2 Where works have already commenced, major design variations, such as architectural redesign or reconfiguration of general arrangement plans will attract additional fees. The Consultant will make the Client aware of any additional fees for client acceptance prior to completion of further works.

11.3 U-Value Calculations are created by the Consultant for the sole purpose to identify what U-Value figure will be achieved. The design of which is often provided by the Client or their representatives, it is for them to ensure they follow the manufacturers requirements when building the specific element, and to notify the Consultant to provide an updated design where this differs from the Consultants' original U-Value Calculation.

11.4 U-Value Calculations created by the Consultant are for the sole purpose of assessing the thermal performance of an element. They are not created to ensure structural stability, which is the Clients' responsibility to ascertain by speaking to manufacturer's and Structural Engineers. They are not created to ensure damp protection. It is not for the Consultant to carry out a Condensation Risk Analysis, it is however the responsibility of the Client to check this with the product manufacturer and building control body. It is not for the Consultant (who is an energy assessor, not a builder/engineer/designer) to ascertain the correct use of items.

11.5 It is not the responsibility of the Consultant to provide calculations/assessments with specific SAP ratings or efficiencies, nor a Pass mark showing general compliance having been achieved or a valid Energy Performance Certificate (EPC). It is the responsibility of the Consultant to provide an assessment which shows an accurate representation of the proposed/as-built dwelling, not to design a building that meets compliance with the Building Regulations, achieve building control approval or equates to a valid EPC.

11.6 It is the responsibility of the Client to use the assessment as guidance with an understanding of its design in relation to energy ratings/efficiencies. This includes informing the Consultant prior to the

Works beginning whether they require the assessment to have specific outcomes (e.g. minimum SAP rating/efficiency; % TER improvements as set by the Clients' Planning requirements; meet the general requirements of the Building Regulations, etc.)

11.7 It is the Consultants responsibility to state whether the specification meets the thermal performances stated within the SAP guidelines, not to provide designs. Where designs are given, these are provided to show one potential method to meet the SAP guideline and act as suggestions only. It is the responsibility of the Client to ensure the design of the property meets the building regulations and we recommend the client discusses the full design with their building control body, product manufacturers & architect to confirm they are satisfied with the design/specification.

11.8 Where thermal modelling is required to provide improved non-default Psi-Values for thermal bridge junctions (often required for non-traditional masonry construction), it is the responsibility of the Client to provide these to the Consultant (often available via timber frame and manufacturer companies) or for the Client to pay the additional fees to undertake the modelling.

11.9 It is the responsibility of the Client to inform the Consultant if they anticipate using alternative products to those stated within the Consultants U-Value creations. Any change to the Consultants design can alter the overall calculations and if design changes are required, the Consultant may consider this a re-design of the works, necessitating additional Fees.

11.10 Where the Consultant has stated a specific product (e.g. insulation as Celotex GA4000), this has been provided as a potential option only. It is the responsibility of the Client to request alternative products if they believe they will not obtain the initial product, nor if they will manage to find a product with similar values, such as with the same or better thermal conductivity ratings. Where additional designs are requested, the Consultant may feel it necessary to charge Additional Fees.

11.11 The majority of SAP assessments will not require the Consultant to undertake a site visit. However, if this is required or requested, additional fees may be necessary, which the Consultant reserves the right to charge what they believe is an appropriate amount, the fee to be agreed with the Client prior to the site visit taking place.

11.12 Where photographic evidence is required by the Consultant, it is the responsibility of the Client to gather and provide, in a manner specified by the Consultant during the project.

11.13 All items in section 12 "Overheating Assessments" to be followed.

12. Overheating Assessments

12.1 All items in section 11 "SAP Assessments/Calculations" to be followed.

12.2 It is the responsibility of the Client to ensure an Overheating assessment is carried out. Though it is beneficial to have this undertaken (and passed) prior to a SAP assessment, it is not the Consultants responsibility to check whether one has been done (successfully or not) prior to beginning their SAP Calculations/assessment. If the SAP assessment needs to be re-done due to an overheating assessment retrospectively being undertaken, the Consultant reserves the rights to charge Additional Fees.

12.3 Survey 7 only provides the "Simplified Method" of assessing Overheating, as stated within Approved Document O. They do not offer the "Dynamic Thermal Modelling" form of assessment.

Should the “Simplified Method” result in a fail, it is the Clients’ responsibility to engage with a third-party company to get the property to pass via the “Dynamic Thermal Modelling” assessment. The fee for this additional assessment is owed by the Client, not Survey 7. The findings of this assessment will then be passed onto Survey 7 to continue undertaking the SAP report. It should be noted it is not the responsibility of the Consultant to get the Overheating assessment to pass, however the Consultant may offer a re-design option, where applicable/practicable, potentially at Additional Fees.

12.4 It is the responsibility of the Client to ensure the design of the property meets the building regulations, this includes where the Overheating assessment may require alterations to the design, such as with noise assessments, opening angles, security shutters/louvres, etc. Survey 7 recommends the client discusses the full design with their Building Control body, product manufacturers & architect to confirm they are satisfied with the design/specification.

13. Rights of the Client to cancel the Contract

13.1 The Client has the right to withdraw from the Contract at any point. Formal notice of withdrawal must be made in writing to the Consultant. The Consultant reserves the right to charge an abortive fee, pro rata, for work completed up to the point of the receipt of the Client’s Withdrawal Notice.

14. Data Protection

14.1 The Consultant will hold personal information in accordance with the Data Protection Act [1998] and this information will not be used for any purpose other than for the agreed Works.