

CONDITIONS FOR THE APPOINTMENT OF A BUILDING CONTROL APPROVER

DEFINITIONS AND INTERPRETATION

Building Act – Building Act 1984 as amended by the Building Safety Act 2022

Building Safety Act – Building Safety Act 2022 and any associated secondary legislation

Building Regulations – Building Regulations 2010 (as amended)

BSR – Building Safety Regulator

Statutory Functions – duties of a Registered Building Control Approver under the Building Act, Building Regulations, the Building (Registered Building Control Approvers etc.) (England) Regulations 2024 and formal guidance issued by the BSR

Operational Standards Rules – Operational Standards Rules issued by the BSR governing the performance of Registered Building Control Approvers.

HRB Work – work to a Higher-Risk Building as defined in the Building Safety Act 2022 and associated regulations.

Initial Notice – a notice given under section 47 of the Building Act.

Final Certificate – certificate under section 51 of the Building Act.

Fire Safety Claims – any claim relating to combustibility, cladding systems, fire protection systems, fire resistance, fire performance or compliance with fire safety requirements under the Building Regulations.

Additional Work – any services provided by the Building Control Approver in addition to the Services, including work arising from design changes, non-compliance, re-inspections, additional consultations or changes in statutory requirements.

Force Majeure – any event beyond the reasonable control of the affected party, including but not limited to acts of God, war, terrorism, civil unrest, strikes, pandemics, governmental action or failure of utilities.

Relevant Event – any event affecting the performance of the Services including delay by the Client, incomplete information, changes in legislation or Force Majeure.

PART 1: CONDITIONS

1. General

- 1.1. In this Contract, unless the context otherwise requires:
 - 1.1.1. the word 'include' and any derivations of it shall be construed without limitation;
 - 1.1.2. the singular shall include the plural and vice versa;
 - 1.1.3. references to any statute or statutory instrument include any statute or statutory instrument amending, consolidating or replacing it.
- 1.2. This Contract shall commence and take effect on the date the Building Control Approver first commenced the Services.
- 1.3. This Contract is governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.
- 1.4. This Contract constitutes the entire agreement between the Parties and supersedes any previous agreement, understanding, representation or arrangement (whether written or oral) relating to its subject matter. Each Party acknowledges that it has not relied on any statement or representation not expressly set out in this Contract.
- 1.5. SwellRock Construction Compliance Ltd is registered by the Building Safety Regulator under registration number RBCP05817B7T.
- 1.6. SwellRock may undertake functions within England only.
- 1.7. SwellRock Construction Compliance Ltd has no formal sanctions recorded.

2. Building Control Approver's General Obligations

- 2.1. The Building Control Approver shall perform its Statutory Functions in accordance with the Building Act 1984, the Building Regulations 2010 (as amended), the Building (Registered Building Control Approvers etc.) (England) Regulations 2024, the Professional Conduct Rules and the Operational Standards Rules issued by the Building Safety Regulator. In the event of any conflict between this Contract and the Building Control Approver's statutory obligations, the statutory obligations shall prevail.

- 2.2. The Building Control Approver shall be entitled to take such steps as it considers necessary to comply with the Operational Standards Rules, including intervention, escalation, reporting to the Building Safety Regulator, or refusal to issue a certificate. The Building Control Approver shall not be liable for any loss arising from compliance with such obligations.
- 2.3. The Building Control Approver shall carry out the Services and any Additional Work using reasonable skill, care and diligence.
- 2.4. Nothing in this Contract imposes any obligation, warranty or guarantee that the Services and/or any Additional Work shall be suitable or fit for any specified purpose.
- 2.5. The Building Control Approver shall have due regard to the Professional Conduct Rules and any agreed programme.
- 2.6. The Building Control Approver shall provide copies of relevant company policies upon request.
- 2.7. The Building Control Approver shall have no responsibility for supervision, management, or quality control of the works.
- 2.8. The Building Control Approver shall have no liability for failure by the Client or Professional Team to comply with statutory obligations.
- 2.9. The Building Control Approver may rely on information and materials provided by or on behalf of the Client.
- 2.10. The Building Control Approver shall not be liable for inaccuracies or omissions in such materials.

3. Client's Information and Obligations

- 3.1. The Client confirms, to the best of its knowledge and belief, that the Project does not constitute HRB Work unless expressly confirmed in writing.
- 3.2. The Client shall immediately notify the Building Control Approver if the Project becomes HRB Work.
- 3.3. Where the Project constitutes HRB Work and the Building Control Approver is not lawfully permitted to act, the Building Control Approver may terminate this Contract immediately upon written notice.
- 3.4. The Client shall provide all information required for the Services.

- 3.5. The Client shall ensure safe access to the Project.
- 3.6. The Client shall give not less than 7 days' written notice before works commence.
- 3.7. The Client shall notify inspection stages in advance.
- 3.8. The Client shall ensure Initial Notice details are correct before submission.
- 3.9. The Client shall notify the Building Control Approver of any Agent appointed.
- 3.10. The Client shall notify the Building Control Approver if it ceases to be the person carrying out the works.
- 3.11. Where an Agent enters into this Contract on behalf of the Client, the Agent shall be jointly and severally liable with the Client for the performance of the Client's obligations under this Contract, including payment of the Fee and any Additional Work.
- 3.12. The Client acknowledges that under Section 32 of the Building Safety Act 2022 and Regulation 16 of the Building (Registered Building Control Approvers etc.) (England) Regulations 2024, an Initial Notice shall cease to be in force if the works do not reach statutory commencement within three years of submission.
- 3.13. The Client shall notify the Building Control Approver of the anticipated commencement date prior to submission of the Initial Notice.
- 3.14. Conflicts of Interest and Regulatory Independence
 - 3.14.1. The Client shall promptly disclose any circumstance which may give rise to a conflict of interest affecting the Building Control Approver.
 - 3.14.2. The Building Control Approver may suspend or terminate this Contract where it reasonably considers that a conflict of interest exists or may arise which prevents it from properly discharging its Statutory Functions.
 - 3.14.3. The Client acknowledges that the Building Control Approver is required to act independently in accordance with the Professional Conduct Rules and Operational Standards Rules and shall not seek to influence or interfere with any regulatory decision.

4. Design, Permits and Approvals

- 4.1. The Client is responsible for design, construction and management.
- 4.2. The Client is responsible for obtaining permits and approvals unless otherwise agreed.

5. Compliance with Building Regulations

- 5.1. The Client is responsible for compliance with the Building Regulations.
- 5.2. A Final Certificate confirms only that the Building Control Approver has taken reasonable steps, based on the information available at the time, to satisfy itself that the works comply with the Building Regulations. It does not constitute supervision, approval of design, warranty, guarantee, or confirmation that defects do not exist, and is not conclusive proof of compliance.
- 5.3. The Building Control Approver is not liable for delay in issuing a Final Certificate.

6. Payment

- 6.1. The Client shall pay the Fee together with any fees for Additional Work.
- 6.2. The Building Control Approver shall not be obliged to submit an Initial Notice or commence substantive Services until any mobilisation invoice, deposit or initial fee stated in the Fee Quote has been received in cleared funds.
- 6.3. The Due Date is the date of invoice.
- 6.4. The Final Date for Payment is 28 days after the Due Date.
- 6.5. Interest shall accrue at 8% above the Bank of England rate (excluding Domestic Clients).
- 6.6. If the Client fails to make payment by the Final Date for Payment, the Building Control Approver may suspend performance of the Services, including suspension of Statutory Functions where permitted by law, upon giving not less than seven days' written notice. The Building Control Approver shall not be liable for any delay, cost or consequence arising from such suspension.
- 6.7. Where the Services extend beyond twelve months from commencement, the Building Control Approver may review and adjust its rates annually in line with the Consumer Prices Index (CPI) or any successor index.

- 6.8. The Client shall not withhold or set off any amount due under this Contract unless required by law.

7. Changes to the Project and Additional Work

- 7.1. Additional Work may arise due to changes in design, scope, timing, Client default, or change in law.
- 7.2. Additional Work shall be charged at the rates set out in the Fee Quote.
- 7.3. The Building Control Approver shall be entitled to a fair and reasonable extension of time.

8. Intellectual Property

- 8.1. Intellectual property in Documents remains vested in the Building Control Approver.
- 8.2. A non-exclusive license is granted upon payment in full.

9. Insurance

- 9.1. The Building Control Approver shall maintain professional indemnity insurance and public liability insurance subject to such insurance being available at commercially reasonable rates and terms and subject to the terms, exclusions and limitations of the relevant policies.

10. Assignment and Sub-Contracting

- 10.1. Neither Party may assign without consent.
- 10.2. The Building Control Approver may subcontract any part of the Services to suitably qualified and competent persons in accordance with its internal competence and onboarding procedures. The Building Control Approver shall remain responsible for performance of the Services under this Contract.

11. Rights of Third Parties

- 11.1. No third party may enforce this Contract.
- 11.2. No collateral warranties shall be required.

12. Termination and Discharge

- 12.1. The Client may terminate this Contract in the event of material breach or insolvency of the Building Control Approver, including administration, liquidation, company voluntary arrangement, bankruptcy or any analogous process.
- 12.2. The Building Control Approver may terminate this Contract in the event of material breach or insolvency of the Client (including administration, liquidation, company voluntary arrangement, bankruptcy or any analogous process), Force Majeure, inability to issue a Final Certificate, conflict with statutory duties, cancellation of the Initial Notice, inability to maintain insurance, restriction by the Building Safety Regulator, or where the Project becomes HRB Work for which the Building Control Approver is not appointed.
- 12.3. Where this Contract is terminated after submission of an Initial Notice, the Building Control Approver may cancel the Initial Notice in accordance with statutory requirements and shall have no further statutory responsibility thereafter.

13. Consequences of Termination

- 13.1. The Client shall pay sums owed up to termination.
- 13.2. Termination does not affect accrued rights.

14. Limitations of Liability

- 14.1. Nothing limits liability for death, personal injury or fraud.
- 14.2. Total aggregate liability shall be limited to the lesser of ten times the Fee or £250,000.
- 14.3. The liability for Fire Safety Claims is limited to the amount recoverable under professional indemnity insurance at the time the claim is notified.
- 14.4. No liability for asbestos, pollution or contamination.
- 14.5. No liability for indirect or consequential loss.

- 14.6. The Building Control Approver's liability to the Client under or in connection with this Contract shall not exceed such sum as it would be just and equitable for the Building Control Approver to pay having regard to the extent of the Building Control Approver's responsibility for the loss and/or damage and on the assumption that all other members of the Professional Team and/or other persons involved in the Project have paid to the Client such sums as it would be just and equitable for them to pay having regard to their responsibility for the same. No action, claim or proceedings arising out of or in connection with this Contract shall be commenced after the expiry of six years from completion of the Services or termination of this Contract, whichever is earlier, save in respect of any shorter statutory limitation period which shall apply instead.
- 14.7. The Client shall not enter into any agreement with any member of the Professional Team which limits that party's liability without the prior written consent of the Building Control Approver.

15. Force Majeure and Relevant Events

- 15.1. Additional Work due to Relevant Event or Force Majeure shall be charged at time rates.
- 15.2. The Building Control Approver may terminate if performance is prevented.
- 15.3. No liability arises from delay caused by Relevant Event or Force Majeure.

16. Consumer Clients

- 16.1. Consumers may cancel within 14 days using the form in Part 4.

17. Notices

- 17.1. Any notice required to be given under this Contract shall be in writing and shall be validly served only if:
- 17.1.1. sent by email to info@swellrock.co.uk (or such other email address as may be notified in writing); or
- 17.1.2. sent by pre-paid first class post or recorded delivery to the registered office address of the Building Control Approver as stated in the Contract.

- 17.2. A notice sent by email shall be deemed received on the next working day after transmission, provided no delivery failure notification is received.
- 17.3. A notice sent by post shall be deemed received two working days after posting.
- 17.4. Notices served by any other method shall not be valid.

18. Disputes and Complaints

- 18.1. The Building Control Approver maintains a written complaints handling procedure. A copy shall be provided to the Client upon request. The existence of a complaint shall not prevent the Building Control Approver from complying with its Statutory Functions.
- 18.2. The Parties shall consider mediation before court proceedings, subject to the jurisdiction clause of this Contract.

PART 2: SCHEDULE OF SERVICES

Exercising the reasonable skill and care as set out in this Contract, the Building Control Approver shall undertake the following services:

Instructions - Receive instructions brief and necessary documentation from the Client. Advise on procedure and programme for Building Regulation certification.

Initial Notice - Submit an Initial Notice(s) to relevant local authorities and copy to the Client.

Assessment of plans – Review design information to identify observed contraventions of the Building Regulations and communicate such observations to the Client. Maintain appropriate records of the design assessment process.

Statutory consultations – Consult with the fire authority and forward observations to the Client. Undertake all other statutory consultations forming part of the Statutory Functions and forward observations of consultees to the Client. Consider the desirability of undertaking additional consultations and communicate to the Client any consultees' observations or advice beyond the scope of the Building Regulations. Alert the Client to provisions of legislation outside the Building Regulations believed to be relevant.

Plans certificate – If requested by the Client, when satisfied that the plans show no observed contraventions of the Building Regulations, issue a plans certificate. Compile a schedule of modifications specified and/or further plans or information required to demonstrate compliance of plans.

Inspection notification – Prepare an inspection and intervention plan (IIP) and if requested provide a copy to the Client.

Framework – Adopt an appropriate site inspection regime taking account of relevant factors, and keep under review. Make inspections of the site to observe works and record any observed departures or contraventions of the Building Regulations. Maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance. Communicate any observed contraventions of Building Regulations. Notify observed significant departures from plans to consultees. Consider the need for tests throughout construction and at completion, inform the Client of the requirements; witness tests and receive certificates as appropriate. Request copies of such plans as are necessary in relation to the commissioning of services prior to issue of a Final Certificate(s).

Final certificate – Having taken reasonable steps to be satisfied that the whole or part of the works forming part of the Project has been completed for Building Regulations

purposes, issue a Final Certificate(s) and send to the Client. If requested by the Client, provide a list of inspections carried out. Retain statutory records for an appropriate period.

Negotiations – Assist with negotiations and applications for approvals under local Acts.

Design Team Meetings – Attend design team meetings, as agreed.

Consultation – Undertake further consultations, as agreed.

Site Meetings – Attend number [] site meetings, as agreed.

Further Inspection – Make further inspections of the site over and above those identified in the IIP, as agreed.

Outside Tests – Witness tests outside the site, as agreed.

Plans – Participate in assessing plans by electronic means (such as web collaboration tools or building information modelling).

Specialist Studies – Assist with advice on need for specialist studies and surveys of site.

PART 3 - PROJECT SPECIFIC SCHEDULE

SCHEDULE X - MOD BUILDING REGULATIONS COMPLIANCE SYSTEM (BRCS)

1. Status of Appointment

This Schedule shall apply only where expressly referenced in the Fee Quote or Appointment documentation. In the event of any inconsistency between this Schedule and the Conditions, this Schedule shall prevail in respect of this Project only.

The Building Control Approver is appointed solely in the capacity of Building Control Adviser (BCA) under the MOD Building Regulations Compliance System (“BRCS”).

The Building Control Approver is not appointed as:

- a statutory Building Control Authority;
- an enforcing authority;
- a regulator;
- a designer or checking engineer;
- or a certifier of design compliance;
- a Building Regulations Principal Designer or
- a Building Regulations Principal Contractor.

Nothing in this appointment confers upon the Building Control Approver any statutory authority beyond the Statutory Functions defined in the Contract.

2. Scope of Services under BRCS

The Services under BRCS are limited to:

- Reviewing information provided by the Appointed Contractor and members of the Professional Team;
- Recording observed non-compliance with the Building Regulations as adopted under BRCS;
- Communicating such observations to the Client and/or Appointed Contractor;
- Validating compliance with BRCS procedural requirements only;
- Taking reasonable steps to determine whether certification may be issued in accordance with the MOD Building Regulations Compliance System (BRCS).

3. The Building Control Approver does not:

- Approve, warrant or guarantee the design;
- Assume responsibility for achieving compliance;

- Manage or supervise construction works;
- Undertake quality control of the works;
- Provide structural, fire engineering, seismic, blast, acoustic, security or specialist design advice;
- Certify compliance with host nation legislation.

4. Responsibility for Compliance

Responsibility for compliance rests entirely with the Client, the Appointed Contractor, the Building Regulations Principal Designer, the Building Regulations Principal Contractor, and relevant members of the Professional Team.

The Appointed Contractor remains responsible for certifying compliance in accordance with BRCS requirements.

The Services do not transfer, dilute or share any statutory or contractual compliance obligations.

5. Overseas Application and Host Nation Standards

Where the Project is located outside England, the Services are limited to the application of the Building Regulations compliance process as adopted by MOD BRCS.

The Building Control Approver shall have no responsibility for compliance with host nation legislation, seismic standards, military or security requirements, or any standard exceeding or differing from the Building Regulations unless expressly agreed in writing as Additional Work.

Responsibility for operational departures from Approved Documents rests with the Appointed Contractor and design professionals.

6. Nature of Certification

Any Final Certificate issued is not a warranty, guarantee, approval of design, or confirmation that every aspect complies.

7. Jurisdiction

This appointment remains governed exclusively by the laws of England and Wales.

PART 4: TEMPLATE CONSUMER NOTICE OF CANCELLATION

Dear Building Control Approver,

Notice of Cancellation

We [insert name of Client] or [insert name of Agent acting on behalf of the Client], hereby gives notice that the Contract between the [Client] and the Building Control Approver on [enter date of the contract] is cancelled.

Yours sincerely,

[Client's Name] or [Agent's name for and on behalf of the Client]

[Signature]

[Date]