

Standard Terms and Conditions

STROMA BUILDING CONTROL (SBC) TERMS AND CONDITIONS

1 Basis for Terms and Conditions

1.1 The following terms and conditions are based upon the Association of Building Control Approver's (ABCA's) Contract for the Appointment of a Building Control Approver, First Edition 2024

1.2 These terms and conditions relate to the parties and work details referred to in the online quotation and application system available at: <https://sbc-enquiry.stroma.com/> or any other written quotation from Stroma Building Control

2 Definitions and interpretation

2.1 Definitions

In this Contract, unless the context otherwise requires, the following expressions shall have the following meanings:

Additional Work This means any additional or varied services as a result of or in consequence of the matters described in clauses 9.1.1-9.1.5 that are not already covered by the Scope of Services, together with any additional or varied services instructed by the Client and agreed by SBC.

Agent means the person or company identified as 'Agent' in item B of the Contract Details who may act on the Client's behalf with respect to this Contract.

Building Act means the Building Act 1984 as amended.

Building Safety Act means the Building Safety Act 2022, including the Secondary Legislation.

BSR means the Building Safety Regulator under the Building Safety Act.

Building Regulations Means the building regulations made under the Building Act, including the Building Regulations 2010

Building Regulations Client means the 'client' for the purposes of the Building Regulations which may be the Client.

Client means the person who has appointed SBC under this Contract and to whom the Quotation for Principal Designer Advisory Consultancy is addressed.

Defence Costs means all costs and expenses (other than costs incurred in connection with dishonesty and fraud) which are incurred by SBC (with prior written consent of its insurer) or its insurer in connection with the defence, investigation or settlement of any claim made against SBC and notified under its insurance policy and in connection with any circumstances which might give rise to a claim.

Fee means the total amount to be paid to SBC for the Services as specified in Fee Offer in the Schedule of Appointment.

Fire Safety Claims means any claim, Defence Costs or claimant's costs and expense directly or indirectly arising out of or in any way connected to (i) the combustibility, fire protection performance, fire resistance or fire-retardant characteristics of any external cladding or roofing systems and/or (ii) any internal fire protection systems and/or (iii) any aspect of the fire safety or fire performance of a building or structure

Force Majeure means any event outside of SBC's control, including without limitation, war, terrorism, sanctions, prohibitions or restrictions under any laws or regulations (including any trade or economic sanction laws or regulations), acts of God, flood, drought, earthquake or other natural disaster, and any epidemic or pandemic, including any consequences thereof.

HRB Work means higher-risk building work as defined under the Building Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, as such definition may be amended from time to time.

Insolvent means as defined in section 113, Housing Grants, Construction and Regeneration Act 1996.

Professional Conduct Rules means the Professional Conduct Rules for Registered Building Control Approvers and the Health and Safety Executive's Building Control Professional Codes and Standards.

Professional Team means any other party appointed by or to be appointed by the Client and/or the Agent on its behalf in addition to SBC to provide services and/or works in relation to the Project.

Relevant Event means:

- (a) any change in any law, order, rules, regulations, codes of practice and/or decisions of a government body (including any changes required as a result of and/or in relation to the Building Safety Act and/or any consequences thereof), and/or
- (b) the UK no longer being a member state of the EU (including the continuing consequences of the UK having left the EU), and/or any trade agreement between the UK and any country being entered into, abandoned, or delayed.

Secondary Legislation means the secondary legislation enacted under the Building Safety Act and Building Act including, but not limited to, The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 and the Building (Registered Building Control Approvers etc.) (England) Regulations 2024.

Services means the Scope of Service contained in SBC's Quotations for Principal Designer Advisory Consultancy.

Statutory Functions means the duties of a Building Control Approver under the Building Act, the Building Safety Act and any regulations made under these Acts and formal guidelines issued by a government department.

Part 3: Conditions

3 General

3.1 In this Contract, unless the context otherwise requires:

3.1.1 the word 'include' and any derivations of it shall be construed without limitation;

3.1.2 the singular shall include the plural and vice versa; and

3.1.3 references to any statute or statutory instrument 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.

3.2 This Contract shall commence and take effect on the date SBC first commenced the Services.

3.3 This Contract is governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

3.4 This Contract constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to or connected with this Contract and/or the Services (whether oral or in writing).

4 Stroma Building Control Limited's (SBC's) general obligations

4.1 SBC shall carry out the Services and any Additional Work using reasonable skill, care and diligence in accordance with this Contract. Notwithstanding any other provision of this Contract: (i) SBC shall have no greater obligation under or in connection with this Contract than to exercise reasonable skill, care and diligence and (ii) nothing in this Contract or otherwise shall impose any obligation, warranty or guarantee (whether express or implied) on or from SBC that the Services and/or any Additional Work shall be suitable or fit for any specified purpose or that they shall comply with the Building Regulations.

4.2 SBC shall exercise the standard of skill and care required by clause 4.1 in performing the Services and any Additional Work to have due regard to the Professional Conduct Rules and, where possible, to any programme for the Project (as amended from time to time and provided to SBC in writing).

4.3 SBC shall have no responsibility and/or liability under or in connection with this Contract for the performance and/or the supervision of any member(s) of the Professional Team in relation to the Project and SBC shall have no responsibility and/or liability in respect of quality control of the works.

4.4 SBC shall have no responsibility and/or liability for any failure by the Client or any member(s) of the Professional Team to comply with their obligations under the Building Safety Act, Building Act or relevant statutes. Any delay arising as a result of such failure shall entitle SBC to an additional fee and extension of time in accordance with clause 9.3.

4.5 Where, prior to the date of this Contract, the Client had previously appointed a party to undertake services the same or substantially similar to the Services in respect of the Project, the Client shall provide (or procure that others in the Professional Team provide) prior to commencement of the Services such information, designs and materials previously prepared or provided by the relevant party to SBC as required for SBC to perform the Services. SBC shall be entitled to rely on any such information, designs, reports or other materials provided to it by or on behalf of the Client (whether or not the same was prepared by or on behalf of the Client).

4.6 SBC shall not be responsible and/or liable for (i) the use of any information, and/or (ii) any inaccuracy, discrepancy, errors, or omissions contained in any materials and/or information, provided to SBC pursuant to clause 4.5.

5 Client's information and obligations

5.1 The Client shall provide, or procure that other duty holders under the Building Safety Act, Building Act or relevant statutes provide, such information, documents, assistance and approvals as SBC reasonably requires or requests from time to time in order to facilitate the timely provision of the Services and any Additional Work and to allow SBC to comply with its obligations under any applicable legislation.

5.2 The Client shall be responsible for safe access to the Project being provided when SBC reasonably requires it and shall procure such access and certification from any consultant, contractor or subcontractor as is reasonably requested by SBC.

5.3 The Client shall give SBC not less than 7 days' written notice before any works forming part of the Project are commenced and shall keep SBC regularly informed of the progress of the Project.

5.4 The Client shall give advance written notice to SBC at any stage at which an inspection (as previously instructed by the Client) by SBC is required.

5.5 The Client hereby indemnifies SBC against any liabilities which SBC may incur (i) acting as the Client's consultant provided SBC was acting with reasonable care and skill in the performance of its obligations as agent under this agreement and (ii) in respect of any inaccuracy, inadequacy or other deficiency in the details provided by the Client to SBC in relation to any schedule form as describe under clause 5.5.

5.6 The Client will notify SBC in writing of any Agent appointed to act on its behalf and of any change or dismissal of the Agent.

5.7 The Client shall notify SBC immediately if it does not consider itself to be, or ceases to be, the person carrying out the works for the purposes of the Building Regulations and will confirm the identity of the person carrying out the works to SBC. The Client will procure the necessary consents and approvals from any other person carrying out the works in a timely manner to enable SBC to perform the Services and any Additional Work.

5.8 The Client shall notify SBC forthwith if the Project constitutes or involves work in relation to a Higher Risk Building as defined under the Building Safety Act and Building Act, including if there is any change in design or construction during the Project that results in it constituting or involving work in relation to a Higher Risk Building.

6 Design, permits and approvals

6.1 The Building Regulations Client shall be entirely responsible for the design, construction and management of the Project.

6.2 The Client shall be entirely responsible for obtaining and implementing (or the procuring thereof) all necessary permits, licences, consents and approvals, unless the Parties have otherwise agreed in writing and provided always that the obtaining and implementing of any necessary permits, licences, consents and approvals by SBC shall be deemed Additional Work for the purposes of this Contract.

7 Compliance with Building Regulations

7.1 The Client and not SBC shall be responsible for the Project's compliance with the Building Regulations. The Services do not include and SBC is not 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 compliance with the Building Regulations is achieved.

7.2 SBC shall not be responsible and/or liable to any party under or in connection with this Contract for any delay in the client receiving the Final Certificate and shall not be responsible and/or liable for any additional fees that are payable to the relevant local authority and/or any other costs.

7.3 SBC does not guarantee or warranty that the design and/or works will comply with the Building Regulations. SBC's obligation will be limited to providing advice (exercising the standard of skill and care required at clause 4.1) on design solutions and materials that in its reasonable opinion and on the information available is likely to satisfy Building Regulations.

8 Payment

8.1 The Client shall pay SBC the Fee for the Services together with any additional fees incurred pursuant to clause 9 and any expenses, disbursements and charges.

8.2 SBC shall submit invoices to the Client in accordance with the Payment Terms specified in item A of the Schedule of appointment and where payment is on a time charge basis, invoices shall be submitted at each stage specified in item A of the Schedule of Appointment.

8.3 The Fee together with any additional fee incurred pursuant to clause 9 and any expenses, disbursements and charges shall become due on the date of submission of SBC's invoice (the "Due Date"). SBC's invoice shall specify the sum it considers is due on the payment Due Date and the basis on which that sum is calculated.

8.4 The final date for payment of any sum due under this Contract shall be 28 days after the Due Date (the "Final Date for Payment").

8.5 The sum stated as being due in SBC's invoice shall be paid by the Final Date for Payment unless the Client has not later than seven (7) days before the Final Date for Payment given notice that it intends to pay less specifying the sum that the

Client considers to be due on the date the notice is served and the basis on which the sum is calculated (the "Pay Less Notice"). The sum stated as due in any Pay Less Notice shall be paid on or before the Final Date for Payment.

8.6 If the Client has appointed an Agent, the Agent shall remain jointly and severally liable with the Client in respect of all sums due to SBC under this Contract.

8.7 Any sum due under this Contract which is not paid by the Final Date for Payment shall carry interest at 8% above the Bank of England official dealing rate applicable from the Final Date for Payment until the date on which payment is made.

8.8 In the event that any sum is not paid on or before the Final Date for Payment in accordance with this clause 8 SBC shall be entitled to:

8.8.1 Suspend performance of all or any part of the Services by giving not less than 7 days' notice in writing to the Client stating the ground or grounds on which it intends to suspend performance unless, where applicable, the Client has given a valid Pay Less Notice; and/or

8.8.2 Terminate this Contract immediately by notice in the event the Client has not paid any sums due and outstanding to SBC in accordance with this clause 8 within 30 days of written notice from SBC requiring such sums to be paid.

8.9 SBC's right to suspend performance of all or any part of the Services shall cease when the Client makes payment in full of any sums owed to SBC in accordance with this clause 8.

8.10 SBC shall be entitled on an annual basis to review and revise, in accordance with the Office of National Statistics Consumer Prices Index, its rates set out in item D of the Schedule of Appointment or, if none are stated, SBC's standard rates applicable at the relevant time. The Fee and any additional fee shall be calculated in accordance with the rates as revised under this clause and SBC shall be paid in accordance with such revised rates and Fee.

9 Changes to the Project and Additional Work

9.1 SBC shall notify the Client in writing as soon as reasonably possible if it becomes aware that any Additional Work will be required, because of:

9.1.1 Changes in the design, size, scope or complexity of the Project;

9.1.2 Changes in the timing or programming of the Project including without limitation delay, disruption and/or prolongation to the Project and/or Services;

9.1.3 A failure by the Client to comply with its obligations under this Contract;

9.1.4 Additional meetings and/or visits and/or other work is required; and/or

9.1.5 Any change in law (including without limitation any changes required as a result of and/or in relation to the Building Regulations and/or the Building Act and/or Building Safety Act and/or any consequences thereof).

9.2 Where the Client instructs SBC to undertake Additional Work, the Client shall pay SBC on a time charge basis for undertaking the Additional Work, at the rates set out in item D of the Schedule of Appointment and SBC shall be entitled to a fair and reasonable adjustment to the programme for performing the Additional Work. SBC may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

9.3 Notwithstanding the foregoing, if due to circumstances outside of SBC's control there are changes in the timing or programming of the Services and/or any Additional Work, or if SBC is delayed, disrupted or prolonged in all cases for reasons other than SBC's default, then the Client shall pay SBC on a time charge basis for the additional work undertaken by SBC as a result of the change in the timing or programming of the Services and/or any Additional Work or as a result of any delay, disruption or prolongation, at the rates set out in item D of the Schedule of Appointment and SBC shall be entitled to a fair and reasonable adjustment to the programme.

9.4 SBC reserves the right to make the following additional charges where none are provided in Item D of the Schedule of Appointment:

Director: £245.00+VAT Per hour

Principal: £195.00+VAT Per hour

Senior: £145.00+VAT Per hour

10 Intellectual Property

10.1 The intellectual property rights in all documents produced and/or prepared by SBC under or in connection with this Contract (the "Documents") shall vest or remain vested in SBC. Subject to payment in full by the Client of all sums owed to SBC under this Contract, SBC grants to the Client an irrevocable, non-exclusive, royalty free licence to copy and use the Documents for any purpose related to the Project.

10.2 SBC shall not be liable for any use of any of the Documents for any purpose other than that for which they were prepared and provided by SBC.

11 Insurance

11.1 SBC shall, provided it is available at commercially reasonable rates and on commercially reasonable terms, maintain professional indemnity insurance and public liability insurance with such aggregate limit of indemnity as is sufficient to cover its liability under this Contract, subject to any limitations, exceptions and/or exclusions from cover as are commonly included in professional indemnity insurance and public liability insurance policies.

12 Assignment and subcontracting

12.1 Neither Party may assign its rights and/or benefits under this Contract without the prior written consent of the other Party. SBC may subcontract any part of the Services and/or any Additional Work, with the prior approval of the Client, such approval not to be unreasonably withheld or delayed.

13 Rights of third parties

13.1 A person who is not a party to this Contract may not by virtue of the Contracts (Rights of Third Parties) Act 1999 enforce any of its terms.

13.2 It is agreed and acknowledged that SBC 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 Contract.

13.3 SBC shall not be required to comply with any agreement between the Client and any third party and SBC shall have no obligations and/or liabilities arising out of or in connection with any agreement between the Client and any third party.

14 Termination and discharge

14.1 The Client may terminate this Contract forthwith by written notice to SBC if:

14.1.1 SBC is in material breach of its obligations under this Contract and has failed to remedy the breach within 28 days of the Client notifying SBC of the same; or

14.1.2 SBC becomes Insolvent.

14.2 SBC may terminate this Contract forthwith by written notice to the Client if:

14.2.1 The Client is in breach of its obligations under this Contract and has failed to remedy the breach within 28 days of SBC notifying the Client of the same;

14.2.2 SBC is prevented or impeded in performing the Services as a result of (i) Force Majeure and/or (ii) a Relevant Event;

14.2.3 The Client becomes Insolvent;

14.2.4 SBC considers that there is a conflict between its obligations under this Contract and the Statutory Functions;

14.2.5 SBC is unable to maintain professional indemnity insurance and/or public liability insurance as required under this Contract;

15 Consequences of Termination

15.1 If this Contract has been terminated, the Client shall pay to SBC all sums owed under this Contract in respect of Services and/or Additional Work carried out up to the date of termination and not previously paid to SBC by the Client at the date of termination along with any costs or expenses incurred by SBC as a result of termination where the Contract is terminated in accordance with clauses 8.8 and/or 14.2.

15.2 Termination of this Contract shall not affect any rights or remedies of the Client or SBC which exist at the date of termination.

16 Limitations of liability

16.1 Nothing in this clause 16 shall limit SBC's liability for negligence resulting in death or personal injury and/or for fraud or fraudulent misrepresentation.

16.2 Notwithstanding anything to the contrary contained in this Contract and without prejudice to any other provision of this Contract whereby SBC's liability is excluded or limited to a lesser amount, SBC's total aggregate liability (including, without limitation, legal costs and interest) under or in connection with this Contract, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, shall be limited to the amount set out in item C of the Schedule of Appointment

16.3 Subject to clause 16.2, SBC's liability (including, without limitation, legal costs and interest) under or in connection with this Contract in respect of Fire Safety Claims shall be limited to the amount, if any, recoverable by SBC by way of

indemnity against the Fire Safety Claim in question under SBC's professional indemnity insurance policy in force at the time that the Fire Safety Claim is notified.

16.4 SBC shall have no liability whatsoever and however so arising out of or in connection with war, civil disorder, terrorism, mould, spores, asbestos, pollution and/or contamination and any fitness for purpose requirement in relation to the Project.

16.5 SBC shall not be liable for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, wasted management time, loss of anticipated savings, loss of, damage to or corruption of data, or for any special, indirect or consequential loss or damage of any kind, in each case howsoever arising, whether foreseeable or in the contemplation of the Parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.

16.5(a) SBC cannot guarantee that the services provided and the advice given will receive approval from the HSE or the relevant approving authority. It is the Client's responsibility to accept and appoint SBC, understanding that while SBC may reasonably believe the design complies with applicable legislation, it may not align with the views of the approving body.

16.6 SBC'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 SBC to pay having regard to the extent of SBC's responsibility for the loss and/or damage and on the assumption that all 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.

16.7 Without prejudice to any shorter statutory limitation period, no action, claim or proceedings arising out of or in connection with this Contract (howsoever arising) shall be commenced, and SBC shall have no liability for a claim arising out of or in connection with this Contract (howsoever arising) after the expiry of six years from the date of completion of the Services or the termination of this Contract, whichever is earlier.

17 Force Majeure and Relevant Events

17.1 If as a result of (i) a Relevant Event, and/or (ii) any Force Majeure, any Additional Work is required to be carried out by SBC, the Client shall pay SBC on a time charge basis for the Additional Work undertaken by SBC as a result of the Relevant Event and/or Force Majeure, at the rates set out in item A of the Schedule of Appointment and SBC shall be entitled to a fair and reasonable adjustment to the programme to reflect any delay and/or disruption as a result of the Relevant Event and/or any Force Majeure.

17.2 If any Relevant Event and/or Force Majeure prevents or significantly impedes the performance by SBC of the Services and/or any Additional Work under this Contract, materially impacts the performance of the Services and/or Additional Work and/or materially increases the cost of performing the Services and/or any Additional Work, SBC may forthwith by written notice terminate this Contract.

17.3 SBC shall not be in breach of this Contract and shall have no liability under or in connection with this Contract as a result of (i) any act, omission, or default, (ii) any failure to perform the Services and/or Additional Work in accordance with this Contract (iii) any prolongation or delay to the Services and/or Additional Work, and/or (iv) any termination of SBC's appointment under this Contract, to the extent that any of the preceding is caused or contributed to by any Relevant Event and/or Force Majeure.

17.4 The existence of a Relevant Event and/or Force Majeure shall not relieve the Client from any obligation to make payment to SBC under this Contract.

18 Notices

18.1 The Client and SBC can give notice to each other in writing under this Contract by personal delivery. They can also give notice by post, in which case delivery is effective two working days after posting. Notices must be sent to the address specified in the covering offer letter of Schedule of Appointment or any other address notified by the Party.

19 Disputes and complaints

19.1 Notwithstanding any other provision of this Contract either party may refer a dispute arising under this Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 ("Scheme"), which Part shall take effect as if it was incorporated into this Contract, subject to the following:

19.1.1 For the purposes of the Scheme, the adjudicator shall be the person nominated by the Royal Institution of Chartered Surveyors;

19.1.2 The adjudicator may adjudicate at the same time on more than one dispute under the same contract;

19.1.3 The adjudicator shall give reasons for their decision and shall deliver their decision to the parties as soon as practicable.

19.1.4 The adjudicator shall notify the parties as soon as practicable, if they become aware that they have any interest in the contract, the subject matter of the adjudication, or the parties.

19.2 Without prejudice to clause 20.1

19.2.1 If the Client is not satisfied with SBC's performance of the Services or any Additional Work, it may ask SBC to implement SBC's complaints handling procedure. SBC shall provide a copy of the procedure on request; and

19.2.2 The Client and SBC 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. Subject to clause 16.7 and 20.1, either Party may, at any time, commence court proceedings to resolve any dispute.