



BUILDING
CONTROL

Standard Terms and Conditions

3_20_22/07/2021



Standard Terms and Conditions

1. Services and obligations of jhai limited

1.1. The function of jhai limited (jhai) shall be that of an Approved Inspector, as defined within the Building Act 1984 and Regulation 8 of the Building (Approved Inspectors etc.) Regulations 2010; and they shall carry out these functions with integrity, adequate resources and in a professional and practical manner, exercising reasonable skill, care and the diligence to be expected of an appropriately qualified and competent expert with knowledge of the standards of construction.

1.2. jhai limited has fully adopted the MHCLG Building Control Performance Standards.

1.3. On receipt of a signed Project Information sheet, jhai limited shall submit an Initial Notice to the relevant local authority, as required by The Building (Approved Inspectors etc.) Regulations. Please note that an email cover to the Project Information Sheet which contains confirmation of acceptance of our terms and conditions will also be received by jhai as being of the same status as a signed Project Information Sheet. Acceptance of these terms and conditions authorises jhai to sign any legal documents which are jointly served on the local authority.

1.4. jhai limited shall have the right to ask for plans and any other relevant information, in order that they may determine whether the design is compliant with the Building Regulations.

1.5. jhai limited may check the plans for compliance with the Building Regulations and send the nominated party or Agent a request for further information as jhai deem necessary.

1.6. Where required by The Building (Approved Inspectors etc.) Regulations, jhai limited shall consult the fire and rescue authority and/or sewerage undertaker and forward their comments when applicable. It is brought to the attention of the person responsible for the building work that if the work involves commercial property or in the case of flats which contain common areas that they will bound by their obligation to Regulation 38 of the Building Regulations 2010; and provide all fire safety information to the buildings occupier prior to the buildings occupation. The Fire Safety (Regulatory Reform) Order 2005 states that a Fire Risk Assessment should be in place on the day of occupation of any part of the property. For further information, please enquire with your local jhai office. jhai limited reserve the right to request that this obligation has been undertaken.

1.7. jhai limited is not accountable for works undertaken on site prior to acceptance of the Initial Notice by the local authority.

1.8. jhai limited will undertake site inspections in line with the building control inspection regime which is available at the following link: http://upload2.evocdn.co.uk/jhai/uploads/download/3_0_inspections-when-to-call-us.pdf. jhai limited reserves the right to request that we are notified at other stages of works. Such stages will be notified either via the plan check or approval document or on the site inspection record sheet.

1.9. jhai reserve the right to undertake such site inspections as are reasonable on a remote basis using photographic or other suitable electronic media evidence at the Company's discretion. Where such future changes in legislation occur removing the ability of jhai to accept such remote inspection evidence, jhai reserve the right to increase the agreed fee to cover the additional cost of providing the required physical site inspection by a jhai surveyor.

1.10. The fee, unless otherwise stated within the quotation, is exclusive of the expense involved in third party checks required to check fire engineering solutions, including CFD analysis etc. This is charged in addition to the jhai building regulation fee at a cost recovery basis for jhai named fire engineer or fire engineering consultant.

1.11. jhai limited have the right to request certificates and witness tests to any applicable element of the construction to assist with the assessment of reasonable compliance with the relevant regulation. jhai reserve the right to request information such as, but not limited to that detailed in the Building Control Completion Checklist which is available at the following link: http://upload2.evocdn.co.uk/jhai/uploads/download/3_0_completion-checklist-25022015-for-web.pdf.

1.12. jhai limited will issue a Final Certificate once it is satisfied that the work appears to satisfy the requirements of Regulation 8 of the Building (Approved Inspector etc.) Regulations 2010.

1.13. jhai limited take full responsibility for giving the necessary statutory notices and certificates in respect of the project to the relevant local authorities.

1.14 jhai limited shall not be responsible for the supervision of any contractor or subcontractor, nor shall they have any responsibility for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor.

2. Responsibility of the client

2.1. The client shall pay jhai limited for the services and the performance of any additional work in accordance with the terms of this contract. Where different types or distinct pieces of work are included on the same project these are to be undertaken concurrently. If the works are to be undertaken separately, the client must notify jhai immediately and an additional fee may be required.

2.2 The client shall be entirely responsible for the design, construction and management of the project and any additional work.

2.3 The client shall be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, except those which form part of the Services or any additional work.

2.4 The client shall ensure that all necessary plans and information are provided to allow jhai limited to determine compliance with the Building Regulations.

2.5. The client shall ensure that adequate notification of the necessary stage of work and safe access to the site and facilities are provided, at all reasonable times, to allow employees of jhai limited to make necessary inspections.

2.6. The client shall make arrangements to allow employees of jhai limited to witness tests on drainage, ventilation ductwork, emergency lighting, fire alarms etc. to determine likely compliance with the Building Regulations. All test equipment, training and expenses incurred to carry out such tests are the responsibility of the client.

2.7. The client shall appoint jhai limited in writing, by way of signed application form, prior to any work being carried out with respect to the function. The Client may also submit the application via email provided that confirmation of acceptance to the Standard Terms and Conditions has been confirmed.

2.8. The client shall notify jhai limited prior to commencement of work on site so that the Building Control Inspection Regime can be implemented. This is available at the following link: <https://bit.ly/3sPtpio>
jhai limited reserves the right to request that we are notified at other stages of works. Such stages will be notified either via the plan check or approval document or on the site inspection record sheet.

2.9. For new dwellings or dwellings created by a material change of use, the requirement for a Standard Assessment Procedure (SAP) calculation and Energy Performance Certificate (EPC) and any associated fees is the responsibility of the client and not jhai limited.

2.10. For new commercial buildings, the requirement for a Simplified Building Energy Model (SBEM) calculation and any associated fees is the responsibility of the client and not jhai limited.

2.11. For domestic schemes, electrical and space heating systems should be installed by competent persons

(see <https://www.gov.uk/government/policies/building-regulation>) and they should provide the relevant certification e.g. Gas Safe, NICEIC, ELECSA, OFTEC, NAPIT etc. when the work is completed.

When work is undertaken by a registered competent person, such installations do not form part of the Building Regulations approval provided by jhai limited; and, maybe at any time excluded from then initial notice-controlled works. If certification is not available a copy of the competent persons details maybe sufficient for jhai to judge whether the works have been competently undertaken. jhai will require the name of the installer and the relevant competent person scheme registration details in order that it can confirm likely compliance.

Where an installer does not have accreditation, jhai limited reserve the right to charge an additional fee to cover additional inspections of the work. This work will be carried out by jhai or other third-party inspection and test body jhai are required to appoint to confirm likely compliance.

3. Cancellation of Initial Notices and Termination

jhai limited shall cancel the Initial Notice by sending a Notice of Cancellation to the local authority in the following circumstances:

3.1 jhai limited may terminate this contract forthwith if the client is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from jhai Limited.

3.2 After a formal Notice of Contravention has been served and no action has been taken by the client to regularise the contraventions within the prescribed time limit (three months).

3.2 jhai limited is prevented from carrying out their legitimate functions as an Approved Inspector for the project by undue restrictions placed upon them by the client or their agents.

3.4 jhai limited is prevented from making site inspections due to dangerous or unsafe conditions.

3.5 Failure on the part of the client to submit requested information in a reasonable period of time.

3.6 Any other condition or situation that prevents jhai limited from carrying out their function as an Approved Inspector or where jhai limited reasonably believes that it will not be in a position to issue a final certificate upon the completion of work.

3.7 Non-payment of fees on time will result in jhai being unwilling to provide the Service and as such the Service will be withheld. In these circumstances under Section 52(3) of the Building Act 1984 the person undertaking the work (the building owner) is required to cancel the Initial Notice and the control of the work will revert to the Local Authority.

3.8 The client may terminate this contract forthwith if jhai limited is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from the client; or jhai limited becomes insolvent.

3.9 The client shall look only to the Approved Inspector (and not to individuals engaged by the Approved Inspector or any individual directors or members of the Approved Inspector) for redress if the client considers that there has been any breach of this contract. The client agrees not to pursue any claims in contract, in tort (including negligence), for breach of statutory duty or otherwise against any individuals as a result of carrying out its obligations under or in connection with this contract at any time. The client acknowledges that such individuals are entitled to enforce this term of the contract pursuant to the Contracts (Rights of third parties) Act 1999.

3.10 The client and jhai limited can give notice to each other in writing under this contract by personal delivery. They can also give notice by recorded delivery or special delivery, in which case delivery is effective two working days after posting.

4. Professional indemnity insurance

4.1. jhai limited is required to comply with the guidelines issued by the office of the DCLG in respect of the maintenance of professional indemnity insurance; details published at:

www.cic.org.uk/services/register.php

jhai limited is number 10 in the Approved Inspector Register.

4.2. jhai limited is duty bound to ensure that the declaration of insurance on the CICAIR Approved Inspector Register is up to date.

4.3. jhai limited shall immediately inform the client if the insurance referred to above ceases to be valid.

5. Local Acts

5.1. Local Acts are not enforced by Approved Inspectors and a separate application may need to be submitted and an additional fee may be payable to the enforcing body. jhai limited will not be responsible for the submission of the application or payment of fees. jhai limited may, however, assist with negotiations subject to the agreement of fees for this service.

6. CDM regulations

6.1. jhai limited is not a 'dutyholder' under the Construction (Design and Management) Regulations 2015 and therefore do not prepare or modify designs for a building, product or system relating to construction work.

6.2. jhai limited advise that you seek guidance from a CDM professional to ensure compliance with your responsibilities under these regulations: <http://www.hse.gov.uk/pubns/books/l153.htm>.

7. Terms of payment

7.1. All applications and Project Information Sheet should state the person or company responsible for the payment of fees with address for invoices, an email address and a contact telephone number.

7.2. Where an application is placed on behalf of a third party, this client must take responsibility for payment of the fee. It is the responsibility of the person who places the submission with jhai limited to ensure that this client is fully apprised of the fee and the terms of its payment.

7.3. All requests for payment are due for payment within 30 days of the issue date, including VAT as applicable unless terms have otherwise been formally agreed.

7.4.1. All fees will be invoiced in accordance with the quotation document issued. Generally, plan fees are invoiced upon the receipt of the submission; and inspection fees will be invoiced as works commence on site. Staged inspection fees may be agreed upon request.

7.4.2 All fees stated on the quotation will be exclusive of VAT unless otherwise stated.

7.5. Requests for payment for site inspection will be issued once the first inspection is carried out unless other payment terms have been agreed between parties.

7.6. Where a project has not commenced on site within 12 months of the date of the Initial Notice, then jhai limited reserve the right to apply an annual increase to the inspection fee of 5%.

7.7. Where a project has not commenced on site within 3 years of the date of the Initial Notice, then that Initial Notice has deemed to have expired under The Building (Approved Inspectors etc.) Regulations and a new application will be required.

7.8. Non-payment of fees on time will result in the service being suspended and therefore any details submitted to us will not be checked for compliance and site inspections will not be undertaken. All work will therefore be undertaken at the client's own risk. Non-payment of fees on time will result in jhai being unwilling to provide the service and as such under Section 52(3) of the Building Act 1984 the person undertaking the work will be required to cancel the Initial Notice and the control of the work will revert to the Local Authority.

http://www.financial-ombudsman.org.uk/publications/technical_notes/debtcollecting-note.html

7.9. Instalments may be arranged in advance, at the discretion of any of the Regional Manager, Directors or the Invoice Recovery Manager.

7.10. All fees must be paid in full prior to the issue of a Final Certificate.

7.11. Regardless of the number of site visits made where the project is abandoned, jhai limited will be entitled to the full amount of the fee.

7.12. If the scope of the work changes to an extent that it becomes substantially different to that described in the Initial Notice, or amendments are made to the project requiring additional plan checking, consultations or inspection, then jhai limited shall be entitled to additional payment. The amount will be subject to agreement between jhai limited and the client.

7.13. If the project should result in a dispute between the client and a third party, then jhai limited shall be entitled to make reasonable charges to recover additional costs on the project.

7.14 jhai limited reserve the right to charge additional fees for any of the following; where different types or distinct pieces of work on the same project are not undertaken concurrently; for abortive site inspection work; where repeated visits have been required to ascertain likely compliance; where the scope of the inspections requested exceeds the jhai inspection regime; all additional fees will be charged at the Regional Offices hourly rate. This will normally be notified to you prior to any additional site inspections.

8. Copyright

8.1. The copyright in all documents prepared by jhai limited in providing the services shall remain the property of jhai limited unless a financial agreement is made.

9. Information

9.1. For the benefit of applications which involve developments which create new dwellinghouses or any works subject to a building guarantee or warranty, the Client permits jhai limited to pass on a copy of relevant inspection history including site notes, photographs and certification of services etc. to their third-party Warranty provider. If the Client would prefer that this information was not passed on for any reason, representation to their local or jhai limited head office prior to the commencement of works.

9.2. jhai may share your information with Partnered Company's in order that they may contact you for the purposes of providing quotations relevant to the proposed work in the fields of Energy Surveying, Warranty/Latent Defects cover, Air and Sound Testing, Fire Safety and Inclusive Design services. You are not obliged to take up any offer, but these capabilities are to add value to our service offering. If you would prefer not to be contacted with such offers, please let your Project Manager know.

10. Complaints

10.1. In the event that the client has a complaint in respect of the performance of services by jhai limited, under this agreement, without prejudice to any other remedy available under this agreement, they shall be entitled to have access to the Complaints Handling Procedure (CHP) which can be accessed at: <https://bit.ly/3uS5mB9>

Written copies of the CHP are available upon request from:

jhai limited
Head Office
3 George Street
West Bay
Bridport
Dorset
DT6 4EY

or via email: info@jhai.co.uk or via telephone: 01308 428020.

10.2 Clarification on what may be considered a complaint is contained on our web site in the Level of Service. A link to this document follows: <https://bit.ly/2PzyU6r>

10.3 As with all building work, the owner and occupier of the property or land in question is ultimately responsible for complying with the building regulations. The role of checking that Building Regulations are, as far as can reasonably be determined, being complied with falls to a Building Control Body.

10.4 The client and jhai limited shall consider 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 of difference by mediation [this section does not apply to a domestic client].

10.5 The client or jhai limited may at any time refer a dispute or difference arising under or in connection with this contract to adjudication in accordance with the edition of the CIC model adjudication procedure current at the date of the adjudication notice. The adjudicator shall be appointed by the CIC [this section does not apply to a domestic client].

The role of building control is to act as an independent third party check and Approved Inspectors are required to take such steps as are reasonable to enable the Approved Inspector to be satisfied, within the limits of professional

skill and care, that the applicable aspects of the Building Regulations are complied with.

It is not the role of building control to:

- Provide quality control of the Works.
- Provide a 'clerk of works' service monitoring every stage of the construction process.
- Provide a service to address issues such as the finish and aesthetics of the Works where these are not Building Regulation matters.
- Provide a service to offer contractual protection between the person carrying out the work and the parties engaged in the design and/or construction of such work.
- Provide a guarantee of compliance with the Building Regulations.

The appointment of a Building Control Body does not remove the obligation of the person carrying out the work to achieve compliance. Further information is available within our Frequently Asked Questions (FAQs) which is available at the following link: <https://bit.ly/3bgrGNa>

11. Liability

11.1. The liability of jhai limited shall be limited to such sum as would be just and equitable for jhai limited to pay, having regard to the extent of the responsibility of jhai limited for the damage suffered on the basis that all other consultants 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 and 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. In assessing any liability rising from this agreement, jhai limited liability will be determined as that of the local authority having due regard to the limitations imposed by findings in the *Murphy v Brentwood District Council* (1989) 88 LGR 333CA. This refers to a House of Lords decision which limits the financial recovery from a building control body of pure economic loss in tort. We would also reference the Court of Appeal decision in *Lessee and Management Company of Herons Court v Heronslea Ltd and others* (2019) and the High Court decision in *Zagora Management and others Ltd v Zurich Insurance PLC and others*.

11.2 Subject to such other sum we may agree in writing, without affecting any other limitation or exclusion clauses, jhai limited's liability under or in connection with this contract shall be limited in the aggregate to the lesser of:

11.2.1 a sum equivalent to ten times the total fee payable under this contract;

11.2.2 £1,000,000.00;

provided always that jhai limited's liability shall be further limited and shall not exceed such sum as jhai limited is entitled to recover under the terms of its professional indemnity insurance policy (provided always that jhai limited is not in breach of either the terms of such policy or its obligation to maintain professional indemnity insurance in accordance with this contract). This limit shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause 11.2 shall not exclude or limit jhai's limited's liability for:

11.2.4 death or personal injury caused by jhai limited's negligence; or

11.2.5 fraud or fraudulent misrepresentation.

11.3 Jhai limited shall not be liable under or in connection with this contract for any consequential or indirect loss, expense or damage or loss of profit.

11.4 Clarification of the role of a building control body such as jhai limited is contained within the our Frequently Asked Questions (FAQs) document which is available at the following link:
<http://www.jhai.co.uk/key-information/page/2>

11.5 Either party may assign its rights and benefits under this contract. Jhai limited may subcontract any part of the services and any additional work, with the prior approval of the client, not to be unreasonably withheld or delayed. If any of the links which are contained within the jhai website are not available to you, please contact our Head Office and a copy of the documents can be sent to you in the Post or via a preferred email address.

Contact information:

jhai limited
Head Office
3 George Street
West Bay
Bridport
Dorset
DT6 4EY

or via email: info@jhai.co.uk or via telephone: 01308 428020.