

Terms and conditions of appointment

Ball and Berry Limited's (BBL) standard terms and conditions are set out below and will apply to all projects to which Ball and Berry are appointed unless agreed otherwise in writing.

Questions or clarification regarding any of the terms and conditions may be made in writing or alternatively through our website contact page www.ballandberry.co.uk/contact/

Ball and Berry Ltd
Unit 5 Eastway Business Village
Oliver's Place
Fulwood
Preston
PR2 9WT

BBL responsibilities

1. BBL will provide the services as detailed with reasonable skill, care and diligence, and in accordance with the Construction Industry Council's Code of Conduct for approved inspectors.
2. BBL shall hold and maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the Department for Communities and Local Government (or any successor department responsible for the Building Act 1984). Evidence of these insurances can be found here <http://cic.org.uk/services/register.php> or on request.
3. BBL shall take such steps as are reasonable to enable it to be satisfied as to a project's compliance with the Building Regulations, and if so satisfied, shall issue a Final Certificate. The Final Certificate is not a representation that every aspect of the project complies with the Building Regulations or that all elements of work have been inspected and approved.

Client responsibilities

4. The Client shall be ultimately responsible for the project's compliance with the Building Regulations and our services do not include managing the project to ensure that compliance is achieved.
5. It is the client's responsibility to ensure BBL are informed that works are due to commence and at each key stage as listed in the service plan documentation.
6. It is the client's responsibility to notify BBL at completion of work to enable BBL to carry out a final inspection. Failure to inform BBL of completion resulting in aborted visits or additional administration may be subject to addition charges.
7. The client shall supply such information requested by BBL at such times as is reasonably required for the delivery of the services.
8. Receipt of information via file sharing websites has not been allowed for in our fee proposal. Supplementary charges may apply on projects where these systems are to be utilised unless it has been agreed by us at fee quotation stage.
9. The client shall make available during normal working hours proper access to the site for the Approved Inspector or his appointed Agent in order to carry out inspections of work in progress.
10. The client is responsible for ensuring planning permission is obtained where required for the proposed works.
11. The client is responsible for complying with the requirements of the Party Wall etc. Act 1996.
12. If the Client materially breaches their obligations under this Agreement, or fails to respond to any notification of a breach of building regulations, BBL may serve on the Client a Notice specifying the breach and requiring it to be remedied within 3 months. If the Client thereafter fails to remedy that breach within that period BBL may terminate this Agreement by giving written notice to the Client. This would also result in the Initial Notice being cancelled by BBL.
13. BBL's appointment shall be terminated and Initial Notice cancelled if the Client fails to provide information or the reasonable opportunity for site inspections such that BBL is unable to satisfy itself as to the reasonable compliance of the project with the Regulations within the normal statutory timescales.

Payment and fees

14. All fee proposals or quotations provided by BBL will be valid for a period of three months from the date of the proposal or quotation and be subject to the limitations included therein.
15. The client shall pay the Charges and amount in respect of VAT by the date stated in the invoice. Payment may be made by BACS, card or cheque. For BACS payments, bank account details for NATWEST are as follows:
 - i. Account Name – Ball and Berry Limited
 - ii. Account Number – 65274016
 - iii. Sort Code – 01-67-14

16. All correspondence in relation to invoices and VAT invoices shall be sent to BBL for the attention of the Finance Manager at the address set out above or such other address as BBL notifies to the Client in accordance with this agreement.
17. Where the Client intends to withhold payment of any amount stated in a BBL invoice, the Client must give written notice to BBL not later than 5 days before the final date for payment, stating the amount to be withheld and the grounds for withholding payment.
18. The Final Certificate for the project will not be issued until any outstanding fees are paid in full.
19. Unless agreed otherwise, all invoices are subject to the following:
 - i. If an invoice remains unpaid without challenge for 30 days from issue, BBL may levy a £50.00 + VAT charge to cover our additional costs incurred in pursuing payment.
 - ii. If an invoice remains unpaid without challenge for 60 days from issue, BBL may suspend service in relation to the project by notification to the client in writing.
 - iii. If an invoice remains unpaid without challenge for 90 days from issue, BBL may formally terminate involvement with the project and cancel the Initial Notice. BBL accept no liability for any costs, damages, delay, expenses, fees, works etc. that arise out of such a cancellation of the Initial Notice.
20. Should the application be withdrawn by the client after the Initial Notice has been submitted BBL reserve the right to charge an administration fee to cover our work to the date of withdrawal (see supplementary charges).

General

21. If required, Ball and Berry's quoted fees only allow for entering into the 'Contract for the appointment of an approved inspector' published by the Construction Industry Council. Copies of which are available on request.
22. If the client is not satisfied with the performance of the services, they may ask to implement the BBL complaints handling procedure, a copy of which is available to download from our website www.ballandberry.co.uk/complaints-procedure/
23. BBL cannot be held responsible for the cancellation of the Initial Notice by the local council or any subsequent enforcement action undertaken by the same in circumstances whereby work is completed without appropriate notification being made to BBL and the opportunity given to BBL to carry out a final inspection within statutory time limits.
24. BBL accept no responsibility for works which commence prior to acceptance of the Initial Notice by the Local Authority or the expiration of a period of five days from the submission of the Initial Notice to the Local Authority.
25. If considered necessary, BBL reserve the right to request completed works be uncovered to show compliance with the Regulations.
26. The liability of BBL shall be limited to the amount of the professional indemnity insurance required by the virtue of Clause 2 above.
27. For any domestic schemes comprising of electrical works, all electrical installations **must** be carried out by a Part P registered competent electrician and the installation **must** be registered under one of these government registered schemes.
28. Any work involving gas appliances **must** be undertaken by a qualified member of the Gas Safe Register. Ball and Berry may ask for certificates of installation to confirm this prior to completion of work.
29. Please note that initial notices are valid for three years. Should the work not commence within three years of the date of the initial notice, we reserve the right to cancel the initial notice. Should you wish to proceed with the project after the initial notice has been cancelled it will be necessary to submit a new initial notice.
30. BBL shall not be responsible for or have any duty or liability in connection with the supervision of any contractor or sub-contractor, nor shall BBL have any responsibility, duty or liability as a result of in connection with the performance of any contractor or sub-contractor or any contractor or sub-contractor's standard of workmanship.
31. Site inspections carried out by BBL during construction are to 'verify and audit' the works on site and observe whether at the time of inspection compliance with the Building Regulations is being met. BBL do not provide 'quality control' or a guarantee of compliance both of which are the responsibility of the client and contractor. It is the client and contractor who carry prime responsibility for compliance with the regulations and the quality of the finished product.
32. Unless agreed otherwise, repeated additional inspections required to be undertaken by Ball and Berry to resolve contraventions of building regulations may be subject to an additional charge. Single inspections to resolve contraventions would not normally be charged for.
33. Any changes to the specification produced for the works should be subject to agreement between the contractor and the client or their agent. BBL cannot accept responsibility relating to changes in specification agreed on site where the resultant work still complies with the requirements of the Building Regulations.
34. The appointment of Ball and Berry Ltd shall not be assigned or novated to other 3rd parties following the initial appointment. This includes novation from the client to the contractor.

35. Exclusion of Third-Party Rights

Nothing in these terms and conditions or any agreement subsequently entered into by BBL confers or purports to confer on any third party any benefit or any right to enforce a term of any agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

36. Compliance with the Building Regulations

The (Client/Employer/Developer/Person carrying out the work) has the statutory responsibility for the Project's compliance with the Building Regulations and the Services do not include advising the Client or managing the Project to ensure that compliance is achieved or give rise to any duty to do so.

The Approved Inspector shall, in performing the Services exercising the level of skill and care provided in clause 1 take such steps as are reasonable to enable it to be satisfied as to the Project's compliance with the Building Regulations and if so satisfied, they shall issue a Final Certificate. The final Certificate is not a representation the Project as a whole or every aspect of the Project complies with the Building Regulations.

37. Termination Right

The Approved Inspector may terminate this contract forthwith by notice in writing if the Approved Inspector reasonably believes that it is impossible or impracticable to perform the Services as a result of any circumstances for which the consultant is not responsible and/or that the Consultant will not be in a position to issue a final certificate on completion. Following termination by the Approved Inspector or the Client. The Approved Inspector is entitled to write to the Local Authority (with a copy to the Client) cancelling the Initial Notice under the Building regulations, in which case the Approved Inspector functions will revert to the Local Authority and the Approved Inspector will be discharged from all requirements to complete the Services or any Additional work. The Approved Inspector shall not be liable for any losses, costs, expenses, damages or liabilities [the Client] may incur in such circumstances.

38. Limitations of Liability

The Approved Inspector's obligation in relation to the performance of the Services shall be limited to the exercise of the level of skill and care provided in clause 1 and he shall only be liable if and to the extent that it has failed to exercise such skill and care.

The Approved Inspector shall not be responsible for or have any duty or liability in connection with the supervision of any contractor or sub-contractor, nor shall the Approved Inspector have any responsibility, duty or liability as a result of in connection with the performance of any contractor or sub-contractor or any contractor or sub-contractor's standard of workmanship.

39. Financial Cap

Notwithstanding anything to the contrary in these terms and conditions, the liability of BBL under or in connection with these terms and conditions whether in contract or in tort [*delict*], in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed in aggregate the sum of []

If no amount is inserted above, the liability of BBL shall not exceed in aggregate a multiple of ten times the total of the fees payable to BBL by [*the Client*].

40. Economic Loss

Neither Party shall under any circumstances whatsoever be liable to the other for any direct or indirect loss of profit, loss of business or anticipated savings or special, indirect or consequential damage suffered by the other Party that arises under or in connection with this Agreement.

41. Net Contribution

Further and notwithstanding anything to the contrary contained in these terms and conditions and without prejudice to any provision in these terms and conditions whereby liability is excluded or limited to a lesser amount, the liability of BBL, if any, for any loss or damage ("the loss or damage") in respect of any claim or claims shall not exceed such sum as it would be just and equitable for BBL to pay having regard to the extent of BBL's responsibility for the loss or damage and on the assumptions that:

- i. all other consultants and advisers, contractors and sub-contractors involved in [the Project] shall have provided contractual undertakings to [the Client] on terms no less onerous than those set out in these terms and conditions in respect of the carrying out of their obligations in connection with [the Project]; and
- ii. there are no exclusions of or limitations of liability nor joint insurance or coinsurance provisions between [the Client] and any other party to [the Project] and that any such other party who is responsible to any extent for the loss or damage is contractually liable to [the Client] for the loss or damage; and
- iii. all parties referred to in (i) above, have paid to [the Client] such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.

42. Time Limitation

No action or proceedings under or in respect of these terms and conditions whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced against BBL after the expiry of six years from the date of completion of services or the termination of the services if earlier.

43. Any residential project involving new electrical installation work must fall into one of the following categories:

- i. That the electrical installation is by a Part P registered competent installer, with Part P certification provided to BBL within four weeks of completion of work to confirm this.

- ii. That the electrical installation is undertaken by a qualified electrical contractor (not Part P registered), with copies of their qualifications (typically City & Guilds) and the electrical certification under BS7671 18th Edition provided to BBL within four weeks of completion of work to confirm this.
- iii. That no electrical work will be undertaken for which notification to a building control body is required. This includes where no new circuits have been installed.

If you will be unable to obtain a certificate under 1 and 2 above from the installing electrician, BBL can arrange for the work to be certified by an alternative qualified Part P registered competent installer at a cost of £500.00 + VAT and you must provide reasonable access for us to do this at both pre-plaster and completion stages.

44. Data Protection

Ball and Berry will not share any of your personal details unless required by law as part of our duties, for example inclusion within the Initial Notice submitted to the council. We may write to you from time to time during the course of our appointment to request certain details or arrange the performance of our services and this will not extend beyond the scope and duration of our appointment.

45. Schedule of service

Unless notified otherwise, BBL's schedule of services will include the following work:

1. Submission of the Initial Notice to the local authority.
2. Assessment of submitted plans for compliance with the building regulations and the provision of a report confirming our findings.
3. The carrying out of formal consultations with the fire service and statutory undertakers (as appropriate).
4. When requested, the provision of a plans certificate approval.
5. Inspection of works in progress to verify and audit compliance with the building regulations.
6. Provision of a final certificate when we are reasonably satisfied the works comply with the requirements of the building regulations

46. Supplementary charges

BBL reserve the right to make the following charges in relation to our service:

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| 1. Submission of an amendment notice to the local council | £50.00 + VAT (plus fee for additional work) |
| 2. Cancellation of an Initial Notice: | |
| • Prior to plan check | £50.00 + VAT |
| • Prior to works commencing onsite | 25% of total fee + VAT |
| • Following commencement of work onsite | 50% of total fee + VAT |
| 3. Issue of copy documentation | £30.00 + VAT |
| 4. Failure to notify BBL of the completion of work: | |
| • Necessitating additional correspondence | £50.00 + VAT |
| • Resulting in aborted or additional site visits | £100.00 + VAT per inspection |
| 5. Undertaking additional site inspections to resolve contraventions of building regulations | at £100.00 + VAT per inspection |
| 6. In circumstances whereby BBL require 3 rd party checking of specialist design details, the cost of this would not normally be included within our quoted fee and will be passed on to the client at face value (the client will be advised of this at the time of appointment or as considered necessary). | |
| 7. Ball and Berry is required to utilise a web-based file sharing format in order to access information | Fee by agreement |