

**ncea: national commercial energy assessors**

## **TERMS & CONDITIONS OF ENGAGEMENT IN RESPECT OF NON DOMESTIC ENERGY ASSESSMENTS**

### **1.0 DEFINITIONS**

In these Terms:

"Agreement". Agreement will be made when the Client receives a copy of the terms or gives instructions to NCEA whichever shall be the later and will be subject to the terms in this document.

"Client" means the person(s), firm(s), company(ies) or trustee(s) to whom NCEA is to provide services in accordance with the Terms.

"NCEA" means NCEA Limited trading as ncea: national Commercial energy assessors.

"Property" means the property which is the subject of the Client's instructions to NCEA.

"Terms" means the terms and conditions set out in this document and (unless the context otherwise requires) includes any other terms and conditions set out in any letter accompanying the Terms.

"Engagement Letter" means letter setting NCEA's understanding of the appointment and accompanying and/or varying the Terms.

### **2.0 GENERAL**

1. NCEA undertakes to perform all services on the basis of the Terms only, which shall apply to the exclusion of any other terms and conditions which the Client may seek to impose.
2. No variation of the Terms shall be binding unless previously agreed in writing by a NCEA.
3. In the event of any ambiguity or conflict between the Engagement Letter or document accompanying the Terms the former will take precedence.
4. Third party rights. Nothing in this Agreement confers or purports to confer on any third party any benefit or right to enforce any terms of this Agreement. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but shall not affect any right or remedy of any Third Party which exists or is available other than under the Act.
5. NCEA's duties shall be limited to those set out in the Terms and in the letter accompanying the terms.
6. NCEA shall be entitled to accept and act on any instruction given to NCEA by any person who is an employee of, or advisor to, the Client.
7. If any provision or term of the Terms shall become or be declared illegal, invalid or unenforceable for any reason such term or provision shall be divisible from the Terms and shall be deemed to be deleted from the Terms.

### **3.0 SERVICES**

NCEA will seek to provide a service such as would be expected of a firm of consultant surveyors acting as non domestic energy assessors in a proper professional manner and will perform its services with all reasonable care and skill and will act in good faith at all times.

These services are, however, provided on the basis that:

1. NCEA reserves the right to carry out instructions in accordance with such procedures, principles or methodologies as NCEA deem to be appropriate.
2. NCEA may, if it considers appropriate, secure performance of any or all services by instructing one or more other persons, firms or companies (whether as sub-contractor or in any other capacity) upon such terms as NCEA considers appropriate. In these circumstances the Client's written approval shall first be obtained and no additional fee shall be payable by the Client in the absence of prior agreement to such additional fee but the Client shall be liable to pay all fees and other sums payable to NCEA as if all services had been performed by NCEA.

## **4.0 THE PROPERTY**

### **4.1 INFORMATION**

1. The Client warrants, represents and undertakes to NCEA that (save as specifically notified to NCEA by the Client in writing):
2. NCEA shall be entitled to rely upon information and documents provided by the Client or the Client's advisor(s) as being, to the best of the Client's knowledge, information and belief, accurate and is not misleading (either on its face or by inference or omission) and the Client will advise NCEA and will instruct any advisor(s) to inform NCEA in the event that the Client and/or any advisor(s) receive notice or become in any other way aware that any information given to NCEA is or becomes misleading or inaccurate.
3. The Client will provide legible true copies of any relevant documents and will make arrangements for the inspection of the Property by NCEA on reasonable notice.

## **5.0 OTHER MATTERS**

Unless otherwise agreed in writing:

1. NCEA will not be responsible for making any local search or other enquiries of local or any other authorities including town planning enquiries or investigation of title regarding the Property which will be the Client's sole responsibility and NCEA may rely on any such information provided by the Client or the Client's advisors without further enquiry.
2. Subject to agreement of the terms of any subsequent instruction, NCEA shall not be responsible for making any structural or site survey or audit of the Property such as may be required under the Disability Discrimination Act 1995 or The Control of Asbestos at Work Regulations 2002 nor for testing or warranting any services, plant or equipment to, from or within the Property.
3. Whilst NCEA will endeavor to treat all information which is relevant to the Client's instruction as confidential, NCEA may at its sole discretion provide any information to other professionals or third parties as is usual practice and, in any event, NCEA may be required to provide such information to a Court, Tribunal or even to the other parties.

## **6.0 FEES AND DISBURSEMENTS**

1. NCEA will set out the level of fees to be charged, and if appropriate a payment schedule in the engagement letter.
2. VAT at the statutory rate is payable on all fees.

## **7.0 TERMS OF PAYMENT**

1. NCEA reserves the right to charge the Client interest (both before and after any judgment) on any unpaid invoice at the rate of 3% per annum above the base lending rate of the Bank of England calculated on a daily basis from 28 days after the date of its invoice until the date of settlement in full.
2. If any sum due to NCEA from the Client remains unpaid for more than 28 days after the date of the invoice NCEA shall be entitled to suspend all further work for the Client until the outstanding sum is paid to NCEA in full. In these circumstances NCEA shall not be liable for any delays, losses or expenses resulting from such suspension.

## **8.0 INDEMNITY**

The Client shall indemnify and keep indemnified NCEA from and against all and any liability, losses, damages, penalties, fines, costs and expenses (including legal costs and expenses) suffered or incurred by NCEA arising out of or by virtue of the Client's instructions to NCEA or otherwise under this Agreement other than any losses, damages, costs and expenses arising by virtue of the negligence or willful default of NCEA.

## **9.0 COPYRIGHT**

1. Copyright in any information documents or other material provided by the Client to NCEA remains the property of the Client.

2. The Copyright of all reports, forecasts, drawings, accounts and other documents originated by NCEA in relation to its instructions remains the property of NCEA.
3. If in each case an appropriate license is being granted to the other to use the copyright it shall be for the purposes and duration of this Agreement only.

#### **10.0 LIABILITY LIMITATION**

Whilst NCEA will make every effort to fulfill the client's instructions in accordance with the Terms, NCEA shall not be liable in any manner whatsoever: -

1. To any third party who, without NCEA's prior written consent seeks to rely on NCEA's performance of the Agreement of which the terms form any part or any advice or information resulting from the Client's instructions.
2. Unless the client has paid in full all sums due to NCEA.
3. Unless NCEA had previously agreed in writing to the particular use being made of NCEA's services/advice giving rise to the alleged loss.
4. In respect of any services outside the scope of the Terms unless NCEA has agreed to perform the services in writing in advance.

#### **11.0 COMPLAINTS**

NCEA aim to perform on the Instruction from a Client in an efficient and professional manner. We, therefore, hope that the Client will not need to complain but recognise that in any isolated circumstance, there may be complaints. These should be addressed initially to Mr Brian Lumb, Director. As a company, we adopt the complaints handling procedures that are required of us by the Royal Institution of Chartered Surveyors who regulate NCEA. A copy of these procedures is available on request.

#### **12.0 TERMINATION OF INSTRUCTIONS**

The instruction from the Client to NCEA may be terminated by either the Client or NCEA on reasonable notice in writing being given by either party to the other whereupon NCEA shall be entitled to charge a fee (plus disbursements incurred if appropriate) on one of the following bases (at NCEA's option):-

1. A fair and reasonable proportion of the full fee which would have been payable if the work had been carried through to a conclusion and as if NCEA had become entitled to payment in accordance with paragraph 6 above, or
2. On a quantum meruit basis for the work undertaken up to and including the date of termination plus disbursements.

#### **13.0 LAW**

The Terms and any Agreement of which they form part shall be governed by and construed in all respects in accordance with English Law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts in relation to any dispute or proceedings arising out of or in connection with the Terms or any such Agreement but without prejudice to NCEA's right to take proceedings in any other jurisdiction in order to enforce payment of any sums owed to NCEA.

#### **14.0 MONEY LAUNDERING**

To conform to the Money Laundering Regulations 2003, NCEA are under a duty to require appropriate proof of identity before we can accept instructions. NCEA are also under a duty to raise inquiries concerning funds, especially funds remitted from abroad, as part of the identification and checking procedures. NCEA reserve the right to request from the client proof of identity such as a certified copy of a valid passport or driving license and/or company documents. NCEA reserves its right to refuse any instruction or terminate any instruction immediately at NCEA's absolute discretion on these grounds. NCEA will not normally accept cash payments from or on behalf of clients in accordance with these rules.