



HARVEY'S

Structural Surveys and Inspections



THE PARTY WALL ECT. ACT 1996 – APPOINTMENT OF SURVEYOR TERMS AND CONDITIONS (THE TERMS)

1. General

1.1. In addition to being a statutory appointment this appointment and these Terms together comprise a legal contract between us. Please read them carefully and let me know if you have any questions.

1.2. These Terms are subject to the 1996 Act. In the event of a conflict between these Terms and any provision of the 1996 Act the provisions of the 1996 Act shall prevail.

1.3. Notices Served by Me

(a) Notices are prepared based upon the drawings and information provided to me by the Building Owner or their consultant(s). We do not automatically make a prior inspection to verify the drawings and we will make enquiries and reasonable assumptions to obtain any information which is not provided but we cannot be responsible for any losses that may arise from any defects with the notices arising from errors or omissions in the information provided. If requested to do so we will make a prior inspection but this would incur an additional fee of £165.00.

(b) Where excavations are being carried out near to an adjacent property and a section 6 notice is required a sectional drawing must be provided showing the depth of the intended excavations/foundations. Your architect or structural engineer should provide them. However, if this is not possible or practical, we may be able to prepare a sectional drawing showing the detail required for an additional fee. We will not accept responsibility for any losses arising from this and if this risk is to be avoided notices should not be served until adequate architectural or engineering information is available.

(c) The Party Wall Act requires that notice be served on any person who has a tenancy agreement of more than 1 year and such tenants may not be listed on the Land Registry. We would serve notice on owners who are listed on the Land Registry and any other persons or entities that you advise us are owners. We would also make enquiries with freeholders when and if they respond to our notices but we would not accept responsibility for failing to serve notice on adjoining owners that, following the above process, we are not aware of.

1.4. Payment of Fees for Notices

(d) Fees for notices are charged at £100.00 per neighbour and are payable in full at the time of booking. If a site visit is requested an addition fee will be required, see clause 1.3 (a), which will be payable at the time of booking.

1.5. I draw your attention to clause 5 below.



2. The Role of the Surveyor

2.1. As a surveyor appointed under the 1996 Act my role is to safeguard the interests of the adjoining owner whilst enabling the building owner to exercise their statutory rights under the 1996 Act.

2.2. In performing this role I am required to act independently and impartially. Although I will always listen to your concerns I will not take instructions from you.

2.3. I must use my own skill and judgement in determining any disputes or differences between you and your neighbour in respect of the works your neighbour proposes to undertake.

3. Fees

3.1. My fees are based on the time I spend dealing with issues arising out of the proposed works. My hourly rate is £110.00 per hour plus out-of-pocket disbursements. My invoice is payable upon presentation, which is normally issued when the award is served.

3.2. Alternatively, my fees may be based on a fixed fee, where agreed and when appointed as an Agreed Surveyor, of £980.00 with the Building Owner and one neighbour and £1,500.00 with the Building Owner and two neighbours, subject to clause 3.6. These fees are broken down as follows: £870.00 for serving the award and £110.00 for the final inspection and £1,280.00 for serving the award and £110.00 for each final inspection respectively. My invoices are payable upon presentation, which is normally issued when the award is served and after the final inspection is complete .

3.3. The fixed fee includes the preparation of a condition survey of the neighbour's property, the drawing up and serving of an award and one final inspection of the neighbour's property. Should additional visits be required these will be charged at the hourly rate noted in 3.1 above.

3.4. Although an award may determine that your neighbour is required to reimburse some or all of my fees you will remain responsible for any outstanding fees until they are paid.

3.5. To enable me to recover any fees due to you from your neighbour directly you agree to assign to me upon request any legal right you have to pursue your neighbour for my fees.

3.6. Where a fixed fee has been agreed there will be additional fees charged at the hourly rate noted in 3.1 above for dealing with any Third Surveyor referral and or the calculation of expenses in accordance with the 1996 Act.

3.7. All reasonable fees will be payable in accordance with the 1996 Act for work properly done in preparing an award even when an award is not made.

4. Your Obligations

4.1. You agree to assist me in performing my role by:-



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- (a) ensuring that any documents you provide to me are complete and accurate;
- (b) co-operate with any reasonable request I make;
- (c) comply with the terms of an award made under section 10 of the 1996 Act
- (d) forward to me upon receipt any notices or other documents relating to the works;
- (e) Allow access to your property or other land upon reasonable notice; and
- (f) inform me as soon as possible of any damage that may be caused to your property.

5. Limitation of Liability

5.1 Subject to clause 5.3 below I will not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with my appointment or these Terms.

5.2 My total liability to you in respect of all other losses arising under or in connection with my appointment or these Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of any fees that I have billed or incurred in arising out of or connected with my appointment.

5.3 Nothing in these Conditions shall limit or exclude any

liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation or the terms implied by section 2 of the Supply of Goods and Services Act 1982.

5.4 Clause 3 shall survive termination of my appointment and/or these Terms.

6. Suspending or Terminating my Appointment

6.1 I draw your attention to section 10(2) of the 1996 Act which provides that you may not terminate my statutory appointment.

6.2 I may deem myself incapable of acting under section 10(5) of the 1996 Act. If I deem myself incapable of acting then the contract between us shall be terminated save that any rights or remedies accrued to me and obligations or liabilities upon you as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of these terms and conditions which existed at or before the date of termination or expiry.

6.3 Without limiting my other rights or remedies, I may suspend my services if you fail to pay any amount due on the due date for payment.

7 Miscellaneous

7.1 I will retain copyright, any related rights and any other intellectual property rights (whether registered or unregistered) in any documents I produce in the course of my appointment.

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7.2 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.

7.3 A waiver of any right under these Terms or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by me in exercising any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

7.4 Any disputes or difference between us shall be referred to an expert determination by a solicitor or barrister to be agreed between us, or in the absence of agreement to be appointed by the Chairman or equivalent office for the time being of the Pyramus Thisbe Club or the Faculty of Party Wall Surveyors.