

VES ANDOVER LIMITED
TERMS AND CONDITIONS - PRODUCTS**1 Interpretation**

In these conditions:

- "Conditions" means the standard terms and conditions of supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between us;
- "Contract" means the contract for the supply of the Goods and/or the Services;
- "Goods" means the goods which are set out in our order acceptance;
- "Services" means the services (if any) which are set out in our order acceptance ;
- "We" means VES Andover Limited; and
- "You" means the customer who places an order with us for the supply of the Goods and the Services (if any) and whose order is accepted by us.

2 Basis of the sale

- 2.1 We will sell, and you will purchase the Goods and (where appropriate) the Services in accordance with any written order provided by you, which is accepted by us, subject to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions whatsoever (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between our authorised representatives.
- 2.3 Any advice or recommendation given by us or our employees or agents to you or your employees or agents as to the suitability, content or effect of the Goods which is not so confirmed in writing by us is followed or acted upon entirely at your own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed. We would advise you to take advice on system design from a qualified engineer where appropriate.

2.4 It is your responsibility to ensure that the Goods ordered are suitable for the site conditions and application for which they have been selected.

3 Order, Specifications and Cancellation

- 3.1 No order submitted by you shall be deemed to be accepted by us unless and until confirmed in writing by our authorised representative ("order acceptance").
- 3.2 You shall be responsible to us for ensuring the accuracy of the terms of any order (including any applicable specifications or directions) submitted by you, and for giving us any necessary information relating to the Goods and / or the Services within a sufficient time to enable us to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of, and any specification for, the Goods and the description of the Services shall be those set out in your order and confirmed by us in our order acceptance.
- 3.4 We reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements.
- 3.5 You may not cancel any order that has been accepted by us for Goods or Services that are not standard Goods or Services supplied or manufactured by us or that have been modified or developed to meet your particular requirements except with our agreement in writing and on terms that you shall indemnify us in full against all loss (including loss of profit and the cost of labour and materials used) damages, charges and expenses incurred by us as a result of cancellation.
- 3.6 You may cancel any Goods or Services that are standard Goods or Services supplied or manufactured by us at any time prior to delivery provided that you shall indemnify us in full against all direct loss (including the cost of all labour and materials used) damages, charges and expenses incurred by us as a result of cancellation.
- 3.7 In the event that we cancel any order prior to delivery our liability to you shall be limited to all reasonable costs incurred by you in connection with our cancellation and which in any event shall not exceed the original cost of the order.

4 Price

- 4.1 The price of the Goods and the Services shall be the price set out in our order acceptance ("the Price"). No discount shall be given unless confirmed in such acceptance.
- 4.2 We reserve the right, by giving you notice at any time before delivery, to increase the price of the Goods and the Services to reflect any increase in our costs which is due to any change in delivery dates, quantities or specifications for the Goods or the Services which is requested by you, or any delay caused by your instructions or your failure to give us adequate information or instructions.
- 4.3 The price is exclusive of any applicable value added tax, which you are also liable to pay us.

5 Payment Provisions

- 5.1 We shall be entitled to invoice you for the price of the Goods and/or the Services at any time after delivery of the Goods or performance of the Services unless you wrongfully refuse to take delivery of the Goods or to allow us to perform the Services in which case we shall be entitled to invoice you for the price at any time after we have tendered delivery of the Goods or performance of the Services.
- 5.2 Subject to any special terms agreed in writing between us and set out in our order acceptance, you shall pay the price of the Goods and/or the Services within 30 days of the date of invoice without any deduction, whether by way of retention, set-off, counterclaim, discount, abatement or otherwise (unless you have a valid court order requiring an amount equal to such deduction to be paid by us to you before the end of the month after the month in which the invoice is rendered) notwithstanding that delivery of the Goods or performance of the Services may not have taken place and ownership in the Goods has not passed to you. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 We reserve the right to vary the above payment terms in the event that we deem it reasonably appropriate following receipt by us of a report from a credit reference agency. Any decision by us to vary the above terms will be based on your previous payment record provided by the credit agency.
- 5.4 If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled at our option to:
- 5.4.1 cancel the Contract or suspend any further deliveries to you;
 - 5.4.2 suspend the Contract until due payment is made; and/or
 - 5.4.3 charge you interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above the base lending rate from time to time of Lloyds TSB Bank plc. accruing on a daily basis until payment is made, whether before or after any judgement.
- 5.5 If we opt to cancel or suspend the Contract pursuant to clause 5.4.1, we shall be entitled, in addition to any other rights we may have against you, to the following:
- 5.5.1 in the case of cancellation, recovery of any and all costs and losses incurred by us in connection with the production of the Goods and the preparation or performance of the Services to the date of cancellation; and
 - 5.5.2 in the case of suspension, suspension, recovery of any and all costs and losses incurred by us as a result of suspension.
- 5.6 Delay in your delivery requirements once procuring and manufacturing has begun will result in invoice and storage charges as per your original order shipment date. Please note all invoices from VES are generated on the shipment date of goods.

6 Delivery

- 6.1 Subject to any special requirements agreed in writing between us, delivery of the Goods and / or the Services shall take place at the location requested by you. For the avoidance of doubt, offloading of the Goods from the delivery vehicle is your responsibility and at your risk unless otherwise agreed in writing.
- 6.2 Time of delivery shall not be of the essence of the Agreement. Any dates or times quoted for delivery of the Goods and performance of the Services are intended to be an estimate only and we will not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused.
- 6.3 In the event that we fail to deliver the Goods and/or perform the Services for any reason whatsoever our liability to you shall be limited to all reasonable costs incurred by you in connection with our failure to deliver and which in any event shall not exceed the original cost of the order.
- 6.4 If for any reason you refuse to accept delivery of the Goods when they are ready for delivery or within seven (7) days of notification by us that they are ready or fail to take delivery on the agreed delivery date then:
- 6.4.1 risk in the Goods will pass to you (including for loss or damage caused by us, save where caused by our negligence or the negligence of our employees or agents);
 - 6.4.2 the Goods will be deemed to have been delivered; and
 - 6.4.3 We may store the Goods until deliver whereupon you will be liable for all related costs and expenses (including, without limitation, storage, insurance and costs of redelivery).

7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall, subject to clause 6.4.1, pass to you from the time of delivery Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, ownership of the Goods shall not pass to you until we have received in cash or cleared funds payment in full of the Price and all other goods and services agreed to be provided by us to you for which payment is then due.
- 7.2 Until such time as the goods pass to you, you will:
- 7.3.1 hold them as our fiduciary agent and bailee;
 - 7.3.2 keep the Goods properly stored and in good condition and fully insured;
 - 7.3.3 mark and store the Goods so as to identify them as our property; and
 - 7.3.4 not sell mortgage, pledge, lend, hire or otherwise dispose of or transfer or part possession of physical possession of the Goods.
- 7.4 Until such time as the ownership of the Goods passes to you, we will be entitled at any time to require you to deliver up the Goods to us and, if you fail to do so forthwith to enter upon your premises or those of any third party where the Goods are stored and repossess the Goods.

8 Change Request

- 8.1 If you identify a requirement for a change to the Contract, a change request shall be sent to us detailing the change requirements. The receipt of the change request by us will constitute a request to us to state in writing the effect that such a change will have on the estimated delivery time and the price. We shall then supply the details of the effect of change on the estimated delivery time and the revised Price to you within fourteen (14) days of receipt of the request.
- 8.2 You must then decide whether or not to implement the change. If the change is implemented, the amended goods and price shall become the Goods and price for the purpose of the Contract.

9 Warranties and Liability

- 9.1 Subject to the conditions set out below we warrant to you that:
- 9.1.1 the Goods will correspond with their description and will be of satisfactory quality for a period of twelve (12) months from delivery;
 - 9.1.2 the Services will be performed with a reasonable degree of skill and care.
- 9.2 We give the above warranty subject to the following conditions:
- 9.2.1 we will not be liable for any defect in the Goods arising from any drawing, design or specification supplied by you;
 - 9.2.2 we will not be liable for any defect arising from wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or in writing), misuse or alteration or repair of the Goods without our approval; and
 - 9.2.3 we will not be liable under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and the Services has not been paid by the due date or dates for payment.
- 9.3 Any claim by you which is based on unsatisfactory quality of the Goods or Services, or their failure to correspond with specification (including for the avoidance of doubt, any claims for missing parts) shall be notified to us in writing within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within seven (7) days after discovery of the defect or failure.
- 9.4 Where any valid claim in respect of any of the Goods and/or the Services which is based on the unsatisfactory quality, the unfitness of the Goods or their failure to meet specification is notified to us in accordance with these Conditions, we shall be entitled to repair or replace the Goods and/or (as appropriate) provide further Services free of charge or, at our sole discretion refund the price of the Goods and/or the Services to you (or a proportionate part of the price), but we shall have no further liability to you. For the avoidance of doubt, claims for incidental and/or third party costs are specifically excluded.
- 9.6 Except in respect of death or personal injury caused by our negligence, our liability to you by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence, or the negligence of our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or the Services or the use of the Goods by you shall be limited to the price of those Goods or Services.
- 9.7 Where continuous operation of a system which incorporates any of the Goods is a critical requirement for your business, you must ensure that adequate stand-by or back-up facilities are in place, that you hold sufficient spare parts and that there is adequate access to the Goods and that system for repairs to be carried out.

10 Warranty Claims

- 10.1 All claims for breach of the warranties in clause 9.1 must be submitted in writing.
 - 10.2 All claims for breach of warranty requiring a site visit by us in order to examine the Goods and, if necessary, repair them must be accompanied by a commissioning report covering:
 - 10.2.1 airflow, pressures and temperature measurements;
 - 10.2.2 electrical test results; and
 - 10.2.3 details of the correct installation of the Goods.
 - 10.3 In the event that the Goods are not found to be defective at the site visit we shall be entitled to invoice you for all costs incurred by us in visiting the site and seeking to effect or effecting repairs to the Goods (including, without limitation all parts and labour)
 - 10.4 We shall also be entitled to invoice you for all parts replaced that have been damaged due to incorrect installation (including without limitation faulty wiring or faulty or inadequate power supply). For the avoidance of doubt, any repairs to the Goods carried out under warranty shall not extend the period of warranty set out in clause 9.1.1 except that where parts are supplied that are not covered by the warranty we shall provide a three (3) month warranty on those parts in similar terms only from the date of repair (and subject to the same conditions) to the warranty in clause 9.1
 - 10.6 You shall be responsible for preparing the site to enable repairs to be carried out in advance of the site visit and for providing a safe working environment for repairs to be carried out.
 - 10.7 We shall not be responsible for the costs of procuring specialist equipment in order to gain access to Goods in order to effect repairs.
- 11 Return and Refunds**
- 11.1 Notwithstanding any other Condition, you may return any of the Goods within ten (10) days of the date of delivery with our prior consent (given at our sole discretion) provided that the provisions of this clause are complied with:
 - 11.1.1 the Goods must be standard Goods supplied or manufactured by us and feature in our catalogue and which have not been modified or developed to meet your particular requirements;
 - 11.1.2 the Goods must not be belt driven AHU's, electric heater batteries or special controls panels;
 - 11.1.3 the Goods must be returned unused and still in their original packaging, must be accompanied by a completed and signed goods return document (issued by us to you at the time of receiving consent to return) and must be clearly labelled with the goods return reference number (issued by us to you at the time of receiving consent to return).
 - 11.1.4 the cost of returning the Goods (including, without limitation, carriage, loading, unloading and insurance) must be borne by you;
 - 11.1.5 the Goods must be received by us Undamaged; and
 - 11.1.6 risk of damage to or loss of the Goods shall only pass from you to us from the time of delivery of the Goods to our premises.
 - 11.2 Within fourteen (14) days of delivery of the returned Goods to us we will issue a credit note to you in a sum equal to 50% of the ex-works price of the Goods less any refurbishment costs and costs of collection (if any).
 - 11.3 The payment terms set out in clause 5 of these Conditions shall apply to the second invoice.

12 Insolvency of Customer

- 12.1 This clause applies if:
 - 12.1.1 you make any voluntary arrangement with your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of your property; or
 - 12.1.3 you cease, or threaten to cease, to carry on business; or
 - 12.1.4 we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and we notify you accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to us, we shall be entitled to:
 - 12.2.1 cancel the Contract or suspend any further deliveries under the Contract without any liability to you; and/or
 - 12.2.2 only supply further Goods on a payment before despatch basis and if any Goods have been delivered or Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

13 General

- 13.1 Any notice required or permitted to be given by either of us to the other under these Conditions shall be in writing addressed to the other at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 13.2 We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of our obligations if the delay or failure was due to any cause beyond our reasonable control.
- 13.3 These Conditions and any document expressly referred to in them represent the entire agreement between us in relation to the supply of the Goods and Services.
- 13.4 No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.6 Any dispute arising under or in connection with the Contract or the sale of Goods and/or supply of Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated by the application of either party by the President for the time being of The Royal Institution of Chartered Surveyors.
- 13.7 The Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

VES ANDOVER LIMITED
TERMS AND CONDITIONS – SITE SERVICES

1. **Interpretation**
In these Conditions:
"Business Days" means a day other than a Saturday, Sunday or bank holiday when banks in London are open for business;
"Conditions" means these terms and conditions and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between us;
"Contract" means the contract between us for the supply of the Services on these Conditions;
"Services" means the services which are set out in our order acceptance (as defined below), to be supplied by VES to you. The Services shall include electrical, plumbing or building work, controls and commissioning only if such work is specifically stated as being included in our order acceptance;
"we", "our" or "VES" means VES Andover Limited (02303719); and
"your" or "You" means the person or firm to whom we will supply Services pursuant to a Contract.
2. **Basis of the Sale**
2.1 We will perform the Services in accordance with our written acceptance ("order acceptance") of your order or quote acceptance. All order acceptances are subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions whatsoever (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document or those implied by trade, custom, practice or course of dealing).
2.2 Unless otherwise stated in the quotation, a quotation given by VES shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
2.3 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of VES which is not set out in the Contract.
2.4 No variation to these Conditions shall be binding unless agreed in writing by our authorised representatives.
2.5 Any advice or recommendation given by VES (or our employees, agents, consultants or subcontractors) to you (or your employees, agents, consultants or subcontractors) as to the services which you require which is not confirmed in writing by VES is followed or acted upon entirely at your own risk and accordingly we shall not be liable for any advice or recommendation which is not so confirmed.
2.6 Any drawings, designs, descriptive matter or advertising issued by VES, and any descriptions or illustrations contained in our catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them and shall not form part of the Contract or have any contractual force.
3. **Supply of Services**
3.1 VES shall supply the Services to you in all material respects in accordance with the order acceptance.
3.2 You may cancel any order for Services at any time prior to commencement of the Services provided that you shall indemnify VES in full against all direct losses, damages, charges and expenses incurred by VES as a result of such cancellation.
3.3 VES shall use all reasonable endeavours to meet any commencement or performance dates specified in the order acceptance, but any such dates shall be estimates only and time shall not be of the essence.
3.4 VES shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, which are necessary for VES to correctly perform the Services or which do not materially affect the nature or quality of the Services, and we shall notify you in the event of such change and any effect this will have on the Price.
3.5 The Services shall be performed at the location set out in the order acceptance (the "Premises").
3.6 You shall:
(a) ensure that the order or quote (as appropriate) is complete and accurate;
(b) co-operate with VES in all matters relating to the Services;
(c) ensure that the Premises and any equipment or machinery upon which the Services are to be performed are adequate and suitable for the Services and any equipment or machinery to be installed as part of the Services (including adequate power supply);
(d) provide VES, its employees, agents, consultants and subcontractors, with adequate and safe access to the Premises, as is reasonably required by VES, and ensure the Premises are safe and ready for the performance of the Services and the carrying out of repairs and maintenance (as necessary);
(e) provide VES with a copy of the asbestos registers relating to the Premises;
(f) provide VES with such accurate information and materials as VES may reasonably require in order to perform the Services; and
(g) obtain and maintain all necessary licences, permissions and consents which may be required in relation to the Services before the date on which the Services are to start.
- 3.7 Where continuous operation of a system on which the Services are to be carried out is a critical requirement of your business, you must ensure that adequate stand-by or back-up facilities are in place, adequate essential spare parts are held at the Premises and that there is adequate access to the system for repairs to be carried out if necessary.
3.8 If VES' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation (a "Customer Default"):
(a) VES shall without limiting its other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays VES' performance of any of its obligations;
(b) VES shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from VES' failure or delay to perform any of its obligations as set out in this clause 3; and
(c) you shall reimburse VES on written demand for any costs or losses sustained or incurred by VES arising directly or indirectly from the Customer Default.
4. **Price**
4.1 The price for the Services shall be the price set out in the order acceptance (the "Price"). Any additional services carried out by VES shall be charged in addition to the Price.
4.2 We reserve the right, at any time, to increase the price of the Services to reflect any change in the Services, any additional work which is required (and was not envisaged on the date of the order acceptance) in order for VES to properly perform the Services, any additional work which is requested by you or any delay caused by your instructions or your failure to give VES adequate information or instructions.
4.3 The Price is exclusive of any applicable value added tax, which you will be liable to pay to VES in addition to the Price.
5. **Payment Provision**
5.1 Unless otherwise agreed, we shall be entitled to invoice you on completion of the Services unless you wrongfully refuse to allow VES to perform the Services, the Contract is terminated in accordance with clause 12 or the Services cease or are suspended in which case we shall be entitled to invoice you for the Price in full at any time.
5.2 Subject to any special terms agreed in writing between us, you shall pay each invoice submitted by VES within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by VES. Receipts for payment will be issued only upon request.
5.3 We reserve the right to vary the payment terms set out in this clause in the event that we deem it reasonably appropriate following receipt by VES of a report from a credit reference agency.
5.4 You shall not be entitled to make any deduction or withholding, whether by way of any credit, retention, set-off, counterclaim, discount, abatement or otherwise (unless you have a valid court order requiring an amount equal to such deduction to be paid by VES to you before the end of the month after the month in which the invoice is rendered) notwithstanding that performance of the Services may not have taken place.
5.5 VES may, without limiting its other rights or remedies, set off any amount owing to it by you against any amount payable by VES to you.
5.6 Time for payment of an invoice shall be of the essence of the Contract.
5.7 If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to VES, we shall be entitled at our option to:
5.7.1 terminate the Contract and recover from you any and all costs and losses incurred by VES in connection with the preparation for, or performance of, the Services to the date of cancellation;
5.7.2 suspend the Services and recover from you any and all costs and losses incurred by VES as a result of suspension; and/or
5.7.3 charge you interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above the base lending rate from time to time of Lloyds TSB Bank plc accruing on a daily basis until payment is made, whether before or after any judgement.
6. **Change Request**
6.1 If you identify a requirement for a change to the Services, a change request must be sent to VES detailing the change required ("Request"). On receipt, such Request shall be considered by VES and VES will respond to you in writing confirming what the effect of the change will be ("Revised Order"). Following receipt you shall have 5 Business Days to consider whether to accept the Revised Order.
6.2 If the Request relates to a matter which is material to the Services and VES (in its absolute discretion) feels that the Services should be suspended pending a final decision in relation to a Request all costs and losses incurred by VES as a result of a suspension shall be recoverable from you by VES.
7. **Warranty**
7.1 Subject to the conditions set out below we warrant to you that the Services will be performed with a reasonable degree of skill and care.
7.2 If you feel that the Services have not been carried out in accordance with clause 7.1 you must notify VES in writing within seven (7) days of completion of the Services.
7.3 We shall not be liable for a breach of clause 7.1 and you shall not be entitled to withhold payment of any invoice unless you have notified VES in accordance with clause 7.2 of an alleged breach of clause 7.1 in which case you shall only be entitled to retain 2.5% of the total invoice value (excluding VAT) ("Retention") relating to the Services which are the subject of the notification pending the conclusion of
- the investigation into such matter and the correction of any fault(s) to ensure the Services meet the criteria set out in clause 7.1.
- 7.4 All claims for breach of warranty require a visit to the Premises by VES in order for VES to consider whether the Services have been carried out in accordance with clause 7.1.
- 7.5 In the event that the Services were found to comply with clause 7.1 we shall be entitled to invoice you for all costs and expenses incurred by VES in visiting the Premises and you shall be liable to immediately pay any Retention.
- 7.6 If we considered that the Services were not performed in compliance with clause 7.1 then our only liability to you shall be to reperform the Services or to refund you an amount which represents the element of the Services which are in breach of clause 7.1.
- 7.7 Any dispute arising in relation to clause 7.1 shall be dealt with in accordance with clause 11.9 in the event that the parties are unable to reach a mutual agreement.
8. **Liability**
8.1 Nothing in these Conditions shall limit or exclude VES' liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
(b) fraud or fraudulent misrepresentation.
- 8.2 Subject to clause 8.1:
(a) VES shall 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 the Contract; and
(b) VES' total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the Price.
- 8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 VES shall not be liable for the acts or omissions of any person or firm present or working at the Premises other than its own employees, agents, consultants or sub-contractors and VES' liability shall be limited so as to be in proportion to its relative contribution to the overall fault of VES, you and any other person in respect of any loss which occurs and our liability shall not be increased by reason of any other person or firm imposing limits of their liability.
This clause 8 shall survive termination of the Contract.
- 8.5 **Termination**
9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
(a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
(e) the other party (being an individual) is the subject of a bankruptcy petition or order;
(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
(h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
(j) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
(k) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting its other rights or remedies, VES shall have the right to suspend provision of the Services under the Contract or any other contract between you and VES if you become subject to any of the events listed in clause 9.1(b) to clause 9.1(k), or VES reasonably believes that you are about to become subject to any of them.
10. **Consequences of Termination**
On termination of the Contract for any reason:
(a) you shall immediately pay to VES all of VES' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, VES shall submit an invoice, which shall be payable by you immediately on receipt;
(b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
11. **General**
11.1 Any notice required or permitted to be given by either of us to the other under these Conditions shall be in writing addressed to the other at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery. Any notice shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting.
11.2 In these Conditions a reference to a party includes its successors or permitted assigns.
11.3 VES shall not be liable to you as a result of any delay or failure to perform its obligations under this Contract as a result of an event beyond its reasonable control including but not limited to strikes, act of God, act of terrorism, war, compliance with any law, fire or flood etc. If such event prevents VES from providing any of the Services for more than 4 weeks, VES shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.
11.4 Each party shall keep in strict confidence all technical or commercial know-how, specifications, designs, processes or initiatives which are of a confidential nature and have been disclosed to it by the other (its employees, agents or subcontractors) and any other confidential information concerning the other party's business or its products or its services
11.5 A person who is not a party to the Contract shall not have any rights under or in connection with it.
11.6 A waiver of any right under the Contract 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 a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
11.7 VES may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. You shall not, without the prior written consent of VES, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
11.8 If any provision of these Conditions is held by any competent authority to be invalid, illegal or unenforceable in whole or in that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
11.9 Any dispute arising under or in connection with the Contract and/or supply of Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated by the application of either party by the President for the time being of The Royal Institution of Chartered Surveyors.
11.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the laws of England and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.