

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
- 5.8 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. **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.
8.5 This clause 8 shall survive termination of the Contract.
9. **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:
(c) 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;
(d) 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;
(e) 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;
(f) 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);
(g) the other party (being an individual) is the subject of a bankruptcy petition or order;
(h) 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 used against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
(i) 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);
(j) 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;
(k) 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;
(l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
(m) 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.
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:
(n) 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;
(o) 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
(p) 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 be 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.