

1. DEFINITIONS

- In these Conditions: -
- "CDM Regulations" means Construction (Design and Management) Regulations 2015.
 - "Client" means party to whom the Tender was provided or the employer under the Contract.
 - "Commencement" or "Commencement Date" means the date agreed in writing between the parties for mobilisation of resources to site or commencement of work, and as notified by VE to the Client. For the purposes of clause 7 and clause 8 if the mobilisation date is within a range of dates, it means the earliest date within the range and the Client shall give not less than 2 weeks written notice of being ready for VE to commence Work.
 - "Contract" means these terms and conditions which shall be the contract or subcontract for the carrying out of the Works incorporating the Tender and (if any) all documents as agreed in writing by VE and the Client.
 - "Data Protection Law" the Data Protection Act 2018, the EU Electronic Communications Data Protection Directive 2002/58/EC, the General Data Protection Regulation (EU) 2016/679) as it forms part of the law of England and Wales by virtue of the European Union (Withdrawal) Act 2018 ("GDPR") and applicable laws and regulations relating to processing of personal data and privacy, including guidance and codes of practice issued by the Information Commissioner".
 - "Group Company" means any subsidiary of or any holding company of VE or another subsidiary or holding company of such company (as defined in Section 1159 of the Companies Act 2006) but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in Section 1159(1)(a)
 - "Principal Contractor" means the person appointed as Principal Contractor by the Client pursuant to the CDM Regulations.
 - "Tender" means the document or tender proposal, or quote, or submission and all documentation attached and any other documents that are referenced or listed in any of the latter which VE provides to the Client and which incorporates these terms and conditions, which are only valid for acceptance for 60 days from date of receipt or any Contract form of documents from the Tender and others.
 - "Tender Sum" means the price to be paid to VE by the Client for the Works as referred to elsewhere in the Tender.
 - "Variation" means:
 - any change to the scope, timing, sequencing, method, character or conditions of the Works, including but not limited to, statutory, social, economic and political conditions, under which the Works are to be executed and/or any change to the site or site conditions.
 - any information, supplied by the Client or others on behalf of the Client, which is incorrect or insufficient or lacking in detail and/or late (including but not limited to the conditions of or related to the site above and below ground);
 - any impediment, prevention, or default, whether by act or omission, by the Client or any third party, except, to the extent caused by any default, whether by act or omission, of VE or any VE Related Party.
 - any other event, ground or circumstance which is expressly excluded by VE, or it is stated that it occurs and for which it has been identified within the Tender or Contract that no allowance has been made for such event, ground, or circumstance by VE; and/or
 - any other event, ground or circumstance identified as a variation in the Tender or Contract or as may be agreed with the Client.
 - "VE" means Van Elle Limited.
 - "VE Related Party" means any servants, agents, sub-contractors and/or consultants engaged by VE.
 - "Working Day" means any day that the UK banks are open for business other than a Saturday or Sunday or bank holidays or public holidays in the UK.
 - "Works" means the works VE shall carry out in accordance with the Contract.

2. CONTRACT DOCUMENTS

- 2.1. The Contract is deemed to be mutually explanatory and is to be read as a whole, save where stated otherwise.
- 2.2. Should any of the documents issued by the Client and which form part of the Contract conflict with Van Elle's Tender, the Tender and these Terms shall always take precedence.
- 2.3. In the event of any inconsistency and/or discrepancy between the other documents forming part of the Tender and these terms and conditions, the other documents forming part of the Tender shall prevail.
- 2.4. The Contract incorporates the following additional sections: -
 - Section A – Default Schedule of attendances Client responsibility
 - Section B - Technique specific terms and conditions amending and in addition to these general terms.
 - Section C – Special terms and conditions amending and in addition to these general terms.
 - Section D – VE Default Position - Tender pricing clarifications and qualifications.
- 2.5. No document or terms issued by the Client prior to VE commencing work shall be or form part of the Contract between them unless agreed otherwise in writing before proceeding with the Works.
- 2.6. VE shall carry out the works as described in the Tender and the documentation referred to therein including time for completion.

3. VARIATIONS

- 3.1. On the occurrence of a Variation: (i) VE shall be paid for all additional or different work, disruption, delays and all loss and/or cost or expense which it incurs at either the rates stated in the bill of quantities included in the Tender (where applicable), or rates stated in the Tender or where no appropriate rates are stated at rates analogous to the Tender or at VE's discretion reasonable market rates for its own resources inclusive of overheads and profit and at cost plus a minimum of 38% for all third party costs and (ii) the Client shall grant VE an appropriate extension of time for the carrying out of the Works subject to a Variation.

4. METHOD OF CONSTRUCTION, COMMERCIAL MODEL, MEASUREMENT, VALUATION

- 4.1. Unless expressly agreed otherwise in writing the Works will be carried out in accordance with VE standard methods and processes.
- 4.2. The Works shall be measured as carried out and recorded on daily reports and pile logs, to be agreed and signed daily by the Client's authorised representative as work proceeds. These shall form the basis of payment. If the Client or its representatives fail to challenge, agree and validate VE records within 7 days of being presented with them, they shall stand as a true contemporaneous record and be deemed to be agreed by the Client and its representative.
- 4.3. All measurable items indicated in a bill of quantities, or quantified schedule of rates shall be measured individually and valued using rates in the Contract i.e. additional quantities will be charged at the item rate, or pro-rata or re-rate in the case of lump sums; omitted quantities will be credited at no more than 10% of the item rate or 10% of the pro-rata or re-rate in the case of lump sums.
- 4.4. Pile column and inclusion lengths shall be measured to the nearest 1.0m rounded upwards.
- 4.5. Piles / columns / inclusions shall be constructed to carry loads specified by the Client to lengths specified by the Client (or where otherwise agreed in writing in the Contract agreed by VE); VE installs, measures and is paid for the piles / columns / inclusions / fill / disposal from the platform level(s); no liability is taken by VE for and it is outside the scope of the Works for trimming piles to cut off levels and preparation of pile heads for testing unless stated otherwise in the Contract. Unless the Tender states that the Works have been priced on a lump sum basis, the work shall be ad-measured, and any piles / columns / intrusions / fill shall be measured and valued individually from working platform level to the pile/column toe although piles might not be concreted up to ground level. In the case of preformed driven piles (including precast concrete) the pile

supply length shall be measured as pitched, and the driven length shall be measured from working platform level to pile toe. Any other appropriate methods of method measurement shall be as specified in the Tender by VE. Unless stated otherwise the rates and prices in this Contract shall be subject to escalation annually on the anniversary of the 1 January each year and in between if there are material changes in market conditions leading to increases in resource prices that VE at its sole discretion ascertains it cannot absorb, which shall allow VE to increase the rates and prices accordingly.

ATTENDANCES.

5. VE requires various facilities and attendances to be provided in accordance with the schedule of attendances and facilities (Federation of Piling Specialists) and other requirements set out in the Contract Section A and in the Tender.
- 5.1. Any failure to provide such facilities and/or attendances which results in VE incurring additional costs and/or causes delay to the Works shall be a Variation.
- 5.2. Prior to commencing the Works VE will require a copy of the working platform certificate, and a permit to pile/dig procured by and signed by the Client. The consequences of any failure to provide these documents (as applicable) by the Commencement Date shall constitute a Variation.

NOISE, VIBRATION, NUISANCE

6. Unless set out elsewhere in the Tender, VE has made no provision for working within or complying with any specific noise or vibration levels or requirements, restricted working hours or restricted method of working. Should any special precautions, mitigation, monitoring or protection methods be required over and above any set out in the Tender this shall be provided by the Client or if required of VE it shall be a Variation.
- 6.1. Where the Works are near and/or adjacent to an existing building or underground works or services, or rail, roads, footpaths, etc., the Client shall ensure that it or if it has appointed another to act as Principal Contractor shall procure that the Principal Contractor ensures that these are in either good condition or are suitably protected and will in no way be affected by the Works. As such the risk of damage to any and all of these is borne solely by the Client and the Client shall indemnify VE against any claims, damages, loss, costs, or expense arising from any such damage.
- 6.2. The Principal Contractor and/or the Client shall take out and maintain any necessary insurance to cover damage or third-party liability in this respect, such insurance to include VE as joint insured and provide the corresponding waiver of subrogation rights so that insurers have no right of recourse against VE.
- 6.3. Where and to the extent that the Client does not procure a waiver of subrogation rights in respect of any recourse against VE then the Client and/or the Principal Contractor shall indemnify VE in respect of any subrogation claim by insurers brought in connection with any other claim referred to in clause 6.3.

APPROVALS

7. If the Client requires VE to submit any documentation for approval, VE must be notified in writing of this requirement and the invitation to tender, or enquiry and it should be requested a minimum of 15 Working Days prior to the Commencement Date. Within 10 Working Days (or such longer period as may be reasonably required by VE as notified by VE to the Client) of receipt of the written notification VE will submit the requested documents. In the absence of VE receiving written confirmation of approval or comment, it will commence the Works on the Commencement Date on the basis that approval has been granted, and the Client will indemnify VE in relation to the consequences of such action.

DESIGN & INTELLECTUAL PROPERTY

8. To the extent that design and/or selection of materials is carried out by VE, VE will exercise the reasonable skill and care to be expected of a qualified and experienced designer experienced in undertaking works similar in scope and character to the design of the Works and selection of materials and it shall have no liability (howsoever arising) for ensuring that the Works are fit for purpose. In so far as VE are responsible for the design of the Works, selection of materials, coordination and/or integration of work, the scope of VE's obligation in relation to such design, selection of materials, coordination and/or integration of other works with the Works will be as set out elsewhere in the Tender and based solely on the information referred to in the Tender. Where this is not the case and the Client provides VE with additional information not set out in the Tender this shall be a Variation.
- 8.1. All relevant design information must be received by VE no later than 10 Working Days (or other period if agreed in writing by VE), in advance of the Commencement Date. Information received less than 10 Working Days (or other pre agreed period), prior to the Commencement Date will be a Variation. Notwithstanding VE's rights pursuant to clause 3 of these terms and conditions, VE shall be entitled as a result of any such delays to recover from the Client (i) time (to be charged at VE's standing time rate or other appropriate rates as set out elsewhere in the Tender) (ii) any additional reasonable costs incurred by VE over and above the standing time rate referred to in item (i) of this clause; and (iii) overhead and profit on all costs incurred.
- 8.2. Unless stated otherwise in the Tender, any design by VE does not allow for (including but not limited to) solution features, global / slope stability, ground heave, negative skin friction, or down drag from recently placed fill materials or remediated ground or ground affected by surcharging or removal of surcharging.
- 8.3. VE has not allowed for any costs arising from approval, variations, or independent checks of design by third parties. The need for such approval, variations or checks may extend the notice requirement prior to Commencement on site. Lack of or delay to Building Regulations, NHBC (or equivalent) or other third-party approvals shall be no cause to delay or reduce payment for the Works and any delay or extra cost incurred by VE because of the need for or any delay to such approvals, variations and/or independent checks by third parties shall be treated as a Variation.
- 8.4. Where the design is carried out by anyone other than VE or any VE Related Party, that third party carrying out the design shall be solely responsible for the design and all performance aspects of the Works to the exclusion of any liability or duty of care owed by VE to the Client. VE shall construct the Works to the specification as referred to elsewhere in the Tender, provided always that the design and/or specification: (i) does not require piles/columns to be bored or driven beyond practical refusal; and/or (ii) is compatible with VE's equipment and methods and/or (iii) is compatible with the ground conditions made known to VE prior to VE submitting the Tender; and/or (iv) does not cause damage to the VE plant and/or equipment.
- 8.5. The cost of any soil sampling, undisturbed samples or testing of the same required, unless provided for elsewhere in the Tender, will be deemed to be a Variation.
- 8.6. Any pre-existing intellectual property and technique brought to the Contract by VE, and any intellectual property or technique developed by VE during or because of the Contract shall remain the exclusive property of VE (the "IPR") unless the parties expressly agree otherwise, in which case VE may consent, such consent not being unreasonably withheld or denied, to permit licensed use of such IPR subject to agreement of terms.
- 8.7. If VE grants the use of its IPR, it shall be indemnified by the Client and or any other beneficiary of any use of it save for the purpose for which VE prepared it or introduced it under this Contract.

VE has not allowed for any costs arising from approval, variations, or independent checks of design by third parties. The need for such approval, variations or checks may extend the notice requirement prior to Commencement on site. Lack of or delay to Building Regulations, NHBC (or equivalent) or other third-party approvals shall be no cause to delay or reduce payment for the Works and any delay or extra cost incurred by VE because of the need for or any delay to such approvals, variations and/or independent checks by third parties shall be treated as a Variation.

Where the design is carried out by anyone other than VE or any VE Related Party, that third party carrying out the design shall be solely responsible for the design and all performance aspects of the Works to the exclusion of any liability or duty of care owed by VE to the Client. VE shall construct the Works to the specification as referred to elsewhere in the Tender, provided always that the design and/or specification: (i) does not require piles/columns to be bored or driven beyond practical refusal; and/or (ii) is compatible with VE's equipment and methods and/or (iii) is compatible with the ground conditions made known to VE prior to VE submitting the Tender; and/or (iv) does not cause damage to the VE plant and/or equipment.

- 8.7. The cost of any soil sampling, undisturbed samples or testing of the same required, unless provided for elsewhere in the Tender, will be deemed to be a Variation.
- 8.8. Any pre-existing intellectual property and technique brought to the Contract by VE, and any intellectual property or technique developed by VE during or because of the Contract shall remain the exclusive property of VE (the "IPR") unless the parties expressly agree otherwise, in which case VE may consent, such consent not being unreasonably withheld or denied, to permit licensed use of such IPR subject to agreement of terms.
- 8.9. If VE grants the use of its IPR, it shall be indemnified by the Client and or any other beneficiary of any use of it save for the purpose for which VE prepared it or introduced it under this Contract.

SITE VISITS

9. Unless agreed otherwise in writing, the minimum value of work, per visit, will be as stated in the Tender (if any) plus a mobilisation charge as set out elsewhere in the Tender, and the work will be carried out in one continuous uninterrupted visit per the agreed contract programme / duration; the Client being responsible for coordinating the works or VE and others to ensure this is feasible.

GROUND CONDITIONS, OBSTRUCTIONS, CONTAMINATION

10. If the actual ground conditions encountered are different to those indicated in the site investigation report(s) listed in the Contract, it shall be a Variation, notwithstanding whether it has been undertaken or provided by the Client or VE.
- 10.1. Unless specifically agreed in writing, VE have not allowed for overcoming man-made or naturally occurring obstructions (whether they are below ground, surface or overhead) which impede, or disrupt the Works, or result in VE failing to achieve the design and/or specification requirements set out in the Tender. The discovery of any man-made or naturally occurring obstruction (whether they are below ground, surface or overhead) shall be a Variation.
- 10.2. VE accept no responsibility for additional costs, delays or consequential costs or loss because of re-design and/or construction of substructure works including pile caps and beams because of the Works being displaced, obstructed, or damaged.
- 10.3. Save where the Tender is for drilling and grouting to the same and the scope character and condition of such is expressly set out in the invitation to Tender and Tender, the Tender and any design makes no allowance for the influence of underground conditions (including but not limited to) voids or mine workings and/or contamination and, should they be present, the Client is responsible for ensuring they have been filled or treated in an appropriate manner prior to commencement of the Works.
- 10.4. VE are not liable or responsible for the release of or creation of pathways for pollutants or contaminants on or beneath the ground.
- 10.5. Regarding any site contamination VE have only allowed for normal personal protective equipment and good housekeeping in the Tender. If additional measures are required, this shall be a Variation.
- 10.6. Where the site investigation report(s) indicate the presence of asbestos or contaminants, VE will require certification that all asbestos or contaminants have been removed by a properly certified contractor before VE commence the Works. If the certification is not timely and does not enable VE to commence the Works on the Commencement Date, VE shall be entitled to treat the failure to provide timely certification as either a Variation, or as a breach of the Contract by the Client entitling VE to immediately terminate the Contract.
- 10.7. If asbestos or contamination is discovered on site after the commencement of the Works, VE may leave site and then may either terminate the Contract or treat the discovery and all consequences as a Variation and return to site (subject to resource availability) after removal of all asbestos is certified.
- 10.8. The Client shall indemnify VE in full in relation to the discovery of asbestos or contamination and all consequences which arise, including but not limited to consequential and economic loss, damages, additional costs, and claims included but not limited to third party and personal injury claims.
- 10.9. The Client shall be responsible for identifying the correct position and depths of services and structures above and below ground or water, and notwithstanding whether such information has been provided to VE or not, or whether VE carry insurance for damage to third party property, VE shall not be liable for any loss, damage or interruption to any existing services or structures above or under ground or water.
- 10.10. The Client shall be responsible for identifying the correct position and depths of services and structures above and below ground or water, and notwithstanding whether such information has been provided to VE or not, or whether VE carry insurance for damage to third party property, VE shall not be liable for any loss, damage or interruption to any existing services or structures above or under ground or water.

TIME FOR COMPLETION, AND DELAY

11. The duration and date for completion shall be as stated in the Tender.
- 11.1. Notwithstanding VE's rights pursuant to clause 3 of these terms and conditions, where the Commencement Date is deferred or cancelled due to factors beyond VE's control, VE will use reasonable endeavors to reallocate the programmed resources, and upon receiving written notice to proceed again VE will mobilise at the earliest available date consistent with VE's resource availability and obligations to third parties. Unless given more than 20 Working Days notice to defer or cancel the Works visits or revisits, charges will apply and will be valued as a Variation. In the rail environment the minimum cancellation period may be less, in which case this will be as stipulated elsewhere in the Tender.
- 11.2. Standing time or delays caused by reasons beyond VE's control shall be a Variation. VE will only have sufficient labour on site to operate VE's plant, so the employment of any of VE's men on dayworks shall be treated as standing time outside its control.
- 11.3. If delays beyond VE's control occur, and any such delay exceeds or is likely to exceed two consecutive Working Days, VE shall be entitled at its sole discretion to discontinue the Works, leave site, and return at the earliest available date consistent with its resource availability and obligations to third parties and to charge a remobilisation charge. VE shall not be liable in such circumstances for any charges from the Client because of its actions.
- 11.4. Unless expressly agreed otherwise in writing by VE, the programme period, Sectional Completion, Completion or Key Dates, as referred to elsewhere in the Tender, is exclusively for installation of the Works and does not include associated work including amongst other things testing, provision of data for operation and maintenance manuals, and provision of warranties.

OPENING UP AND TESTING

12. Where any opening up for inspection, testing and reinstatement is instructed and the Works, the subject of any such instruction, are found to be in accordance with the Contract, then this instruction shall be a Variation.

PAYMENT

13. Unless agreed otherwise in writing, applications for payments will be measured and valued up to the last Working Day of each month, or upon completion, whichever comes first and will be given as a notice under the section 110A(1)(b) of the Housing Grants Construction and Regeneration Act 1996 (as amended). Payment shall be due 21 days after submission of the payment application to the Client by VE and the final date for payment will be 7 days after the due date. If VE do not receive a written notice (in accordance with the Construction Act s111 (3)) advising it of an intention to pay less than the amount applied for at least 15 days before the final date for payment in respect of any application for payment, then VE shall be paid the value of the payment application on the final date for payment and any unpaid value of the application shall be immediately due and recoverable as a debt.
- 13.1. If the Client fails to make any payment on the final date for payment, then without prejudice to any other right or remedy available to VE it shall be entitled to cancel the Contract or suspend any further deliveries to the Client in which case VE shall be entitled to an extension of the time available for performance of the works equal to the period of suspension plus a reasonable period for remobilisation and dealing with any other effects of the suspension which shall be deemed a Variation;
- 13.2. VE governance requires each Client to be credit checked and exposure and credit worthiness assessed. At VE's sole discretion no contract shall be concluded and mobilised until appropriate credit and payment terms have been agreed. Time for payment shall be of the essence.
- 13.3. No money shall be deducted by way of retention.
- 13.4. No discount shall be deducted unless agreed by VE in writing.
- 13.5. No set-off or abatement of any kind shall be made from any payment due to VE unless it is directly related to and arises from the Contract under which payment is due and is either agreed by VE in writing or is required to comply with an enforceable adjudication or court decision.
- 13.6. If payments are late, interest shall accrue from the final date for payment until full payment is received and be paid to VE in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.7. All prices are exclusive of any applicable VAT which the Client will be additionally liable to pay to VE.
- 13.8. Any goods or deliverables provided by VE pursuant to the Contract remain vested in VE until paid for in full.
- 13.9. Regarding insolvency or potential insolvency of the Client: -
- 13.10. If the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the

Van Elle Standard Terms and Conditions (Business to Business)



- purposes of solvent amalgamation or reconstruction); or
- b) If an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Client; or the Client ceases or threatens to cease to carry on business; or
- c) the Client 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- d) VE reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly; or
- e) any event or arrangement occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 13;
- f) then without prejudice to any other right or remedy available to VE it shall be entitled to determine its employment under the Contract or cease any Work under the Contract without any liability to the Client and if the Works have been undertaken or the Materials supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 14. INSURANCE**
- 14.1. Where the Contract requires VE to take out and maintain insurance cover, such insurance shall be in accordance with the amounts set out as follows (such amounts to be reviewed by VE annually) unless the parties agree and record otherwise in writing before commencement of the Contract.
- 14.2. Employers Liability
- 14.3. £10,000,000 any one incident
- 14.4. Public/Products Liability
- 14.5. £5,000,000 in the aggregate in the period of insurance
- 14.6. Contractors All Risks
- 14.7. £5,000,000 any one contract.
- 14.8. Professional Indemnity
- 14.9. £1,000,000 in the aggregate with round the clock reinstatements
- 14.10. Upon written request by the Client or the Client's employer, VE will provide a broker's letter confirming VE's then current insurances.
- 14.11. Where the Contract requires the Client or the Client's employer to arrange insurance cover, such insurance must be confirmed to VE in a suitable format and must include VE as joint insured and provide the corresponding waiver of subrogation rights so that insurers have no right of recourse against VE.
- 14.12. Where and to the extent that the Client does not procure a waiver of subrogation rights in respect of any recourse against VE then the Client and/or the Client's employer shall indemnify VE in respect of any subrogation claim by insurers brought in connection with any other claim referred to in clause 14.11. VE does not provide non-negligent insurance cover and such insurance cover is to be taken out by either the Client or the Client's employer, whilst including VE as joint insured.
- 15. WARRANTIES, AND SURETIES**
- 15.1. Unless stated to the contrary, in the Tender VE has not allowed for the provision of Sureties and Collateral Warranties. Provision of Sureties and Collateral Warranties is subject to the agreement of wording and fee. No deduction or delay in release of payment for failure to provide Sureties and Collateral Warranties will be permitted unless the wording of the documents has been agreed in writing and the documents have been provided in a format ready for execution (including relevant information such as the beneficiary's name and address) not less than 15 Working Days before they are required to be returned.
- 16. LIMITATION OF LIABILITY**
- 16.1. Nothing in the Contract shall limit or exclude the liability of VE for anything which cannot be excluded in law.
- 16.2. VE's sole liability in the case of delay to completion of its Works or part thereof will be limited to liquidated damages of 0.5% of the Tender Sum per week of delay, or pro-rata part thereof (or such other weekly amount as is offered in its tender), subject to a maximum aggregate liability of 5% of the Tender Sum. Where VE delay coincides with delays for which the Client is responsible or are the Client's risk, the Client shall grant VE relief from performance and this liability shall not accrue.
- 16.3. Subject to 16.1 above, neither party to this Contract shall under no circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract or the Works.
- 16.4. Subject to 16.1 above, VE shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit arising under or in connection with the Contract or the Works
- 16.5. Subject to clause 16.1 above and the other provisions of clause 16, VE's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the performance or contemplated performance of the Contract shall be limited to the sum specified elsewhere in the Contract as being VE's cap on liability, or, where no such sum is specified, it shall be as follows:-
- 16.6. Contracts less than £1,000,000 in value no greater than 100% of Tender Sum.
- 16.7. Contracts greater than £1,000,000 and less than £5,000,000 in value £1,000,000 or 50% of Tender Sum whichever is the greater
- 16.8. Contracts greater than £5,000,000 and less than £20,000,000 in value £2,500,000 or 25% of Tender Sum whichever is the greater up to a maximum liability of £5,000,000.
- 16.9. The cap on liability shall include the sub-cap for liquidated damages set out in clause 16.2, insured matters that can be capped in law (subject to amounts recoverable from insurers) and any excesses on insurances, railway costs, consequences of not achieving key dates (if any) and all other costs associated with VE's liability under the Contract (howsoever arising).
- 16.10. Subject to clause 16.1 above: VE shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with the Contract or Works for matters outside VE's control including inter alia (i) any matters VE were unaware of at the time of entering into the Contract; (ii) any works carried out by third parties including but not limited to statutory undertakers or those acting in their capacity; (iii) settlement or movement due to underpinning, mine workings, quarry workings, underground voids, use of explosives, springs, artesian water or to the presence of acids or other deleterious matter or contamination; (iv) loss of support due to subsequent workings or other causes outside the Works and beyond VE's control; (v) heave, lateral loads, moments, negative skin friction or ground movement due to the Works unless otherwise stated in the Tender; and/or (vi) for any damage or loss to any services or surfaces, adjacent structures or properties unless such loss or damage is caused by the negligence of VE or any VE Related Party (vi) for the consequences of piles displaced out of position or depth or construction due to unforeseen ground conditions and or obstructions or due to removing obstructions.
- 16.11. Except as referred to elsewhere in these terms and 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.
- 16.12. If any defects are found in the Works, the Client shall (i) inform VE within a reasonable period of becoming aware of the defect; (ii) take all reasonable steps to mitigate any consequential effect which the defect has; and (iii) give VE reasonable opportunity to investigate any defect and then, if appropriate, carry out remedial works. Failing these VE shall not be liable for the correction of any defects.
- 16.13. The Client may not commence any legal action against VE under the Contract and/or the Tender after 6 years from the date VE completed the construction

- Works on site.
- 16.14. VE will insofar as be reasonable possible attend to all defects identified before completion in the first 12 months following completion of its installation works.
- 16.15. Responsibility for pile testing other testing shall be limited to that specified by the Client unless stated otherwise in the Tender, and VE's attendance on site to carry out or complete testing shall be solely reliant on the Client adequately preparing piles and prior works undertaken by VE or others per VE's requirements for testing, and shall give VE at least 10 working days notice of work areas being ready for testing [or such period as the parties may agree from time to time]. Failure by the Client to do this timely and adequately may prejudice VE's ability to complete testing within a reasonable time or at all depending on the circumstances.
- 16.16. VE shall not be required to find and correct errors, ambiguities or discrepancies in the documents, specifications, designs provided by the Client, and should any be found and notified by VE, the Client shall instruct its requirements and the same shall be deemed to be a Variation.
- 16.17. Unless stated otherwise in the Tender the Client obtains all development controls, party wall agreements, oversailing agreements, accesses, licences, permissions, consents and pays all, costs, fees and sums necessary to facilitate VE's works VE shall not be liable for any of these or similar.
- 16.18. VE shall not be liable for any charges or time loss because of piles being out of position or alignment on account of ground displacement or due to setting out by others, and it shall install to a tolerance on plan of 75mm and platform level and to 1 in 75 vertically and to 1 in 25 when installing raking piles or anchors.
- 16.19. VE shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in commencement of the Contract or in performance or any failure to perform any of VE's obligations in relation to the works if the delay or failure was due to any cause beyond VE's reasonable control including but without limitation:
- 16.19.1. Act of God, explosion, flood, tempest, fire, or accident; pandemic or consequences of the same
- 16.19.2. War or threat of war, terrorism, sabotage, insurrection, civil disturbance, or requisition.
- 16.19.3. Acts, restrictions, regulations, byelaws, prohibitions, or measures of any kind on the part of any governmental, parliamentary, or local authority.
- 16.19.4. import or export regulations or embargoes.
- 16.19.5. Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or of a third party).
- 16.19.6. difficulties in obtaining raw materials, labour, fuel, parts, or machinery.
- 16.19.7. Power failure or breakdown in machinery.
- 16.19.8. Delays on previous contracts beyond the Company's control.
- 16.19.9. Delays caused by third parties who are associated with the general progress of the Company's works
- 16.20. along with any other events as specified in this Contract.
- 16.20. This clause 16 shall survive any termination of the Contract.
- 17. DISPUTES**
- 17.1. Regardless of whether the agreement is deemed to be a contract pursuant to the Housing Grants, Construction and Regeneration Act 1996 (as amended), the parties agree that either may at any time refer any dispute or difference arising under the Contract to adjudication in accordance with the provision of Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be selected from one of the following:
- 17.1.1. Royal Institution of British Architects
- 17.1.2. The Royal Institution of Chartered Surveyors
- 17.1.3. Constructionadjudicators.com; or
- 17.1.4. Chartered Institute of Arbitrators
- 17.2. or any other appropriate nominating body as the parties shall agree in writing.
- 17.3. Each party shall be responsible for their own fees and costs, with the adjudicator's costs and fees settled in accordance with his decision.
- 18. TITLE IN PLANT & MATERIALS**
- 18.1. All plant which is VE's property shall remain in the ownership of VE, but for the purposes of the Works shall be deemed to be hired plant. The plant and materials shall not be operated, used, or taken possession of by others, nor shall title in the materials pass or be deemed to pass to others until VE's account has been paid in full.
- 18.2. The Tender is based on suitable concrete batching facilities near the site to meet the necessary delivery requirements, should this fail and there be no alternatives this shall be deemed a Variation.
- 19. LEGISLATION**
- 19.1. No allowance has been made for any Act of Parliament, or any regulation or bylaw of any local or other statutory authority, EU directives or other legislation or measures having legal effect that could not be reasonably foreseen at time of Tender. Any additional loss and expense which VE incur because of such laws or measures shall be a Variation.
- 20. RIGHTS OF THIRD PARTIES ACT**
- 20.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply, and no one other than a party to any contract with VE in relation to the Works shall have any right to enforce any of its terms.
- 21. DATA PROTECTION**
- 21.1. The following terms: "controller", "processor", "data protection impact assessment", "data subject", "personal data", "personal data breach" and "processing" shall have the meanings ascribed to them in the GDPR ("process" and "processed" shall be construed accordingly).
- 21.2. The Parties warrant compliance with their respective obligations under Data Protection Laws under the Contract. To the extent VE processes personal data provided by the Client ("Client Data"), the Client shall be controller and VE the processor. The Client shall obtain necessary consents and ensure required notices in relation to Client Data are complied with under Data Protection Laws. VE shall not be liable for any breaches or failure to comply with Data Protection Laws which arises due to any Client instructions.
- 21.3. Unless otherwise agreed in writing, the information at 21.6 – 21.9, (Data Protection Particulars) of the Contract, accurately describes the nature and extent of personal data processing anticipated.
- 21.4. VE shall: (i) only process Client Data on the Client's written instructions as necessary for provision of the Works provided the Client shall ensure such instructions comply with and will not cause VE to breach Data Protection Laws; (ii) unless prohibited by law, use reasonable endeavours to notify the Client within a reasonable time of becoming aware, if it considers (acting reasonably) that it is required by law to act other than in accordance with such instructions; (iii) implement appropriate technical and organisational measures to protect Client Data against unauthorised or unlawful processing, accidental loss or damage of data to the extent required under Article 32(1) and 32(2) of the GDPR; (iv) only appoint a sub-processor in accordance with VE's obligations hereunder and with the Client's prior written consent and VE shall inform the Client of intended changes concerning addition or replacement of sub-processors, giving the Client the opportunity to reasonably object; the Client consents to VE's nominated subcontractor or sub-processors as notified by VE to the Client at commencement; (v) take reasonable steps to ensure VE's personnel authorised to access to Client Data are subject to appropriate confidentiality obligations; (vi) not transfer Client Data outside the European Economic Area without Client consent or ensuring that a data processing transfer agreement or EC Model clauses are entered into with any processor or sub-processor in compliance with Data Protection Laws; (vii) promptly, at the Client's cost, and within 5 days, refer to the Client any requests, notices or other communication from data subjects or the Information Commissioner, in relation to Client Data; (viii) provide, at the Client's cost information and assistance to the Client as it reasonably requires, to allow the Client to: comply with rights of data subjects, comply with notices

served by the Information Commissioner and demonstrate its compliance with the Data Protection Laws; (ix) within a reasonable period of time and without undue delay, and at the Client's cost, notify the Client about any actual personal data breach in relation to Client Data and implement any measures necessary to restore security of compromised Client Data.

On termination of the Contract, howsoever caused, VE shall as soon as reasonably practical cease processing the Client Data, and at the Client's direction, shall, unless otherwise required by applicable laws arrange for prompt and safe return and/or destruction of all the Client Data, together with all copies in its possession or control.

Data Protection Particulars

- The subject matter and duration of processing is delivering and instructing the Works and processing of associated invoicing and purchase orders for the duration as necessary for performance of the Works.
- 21.7. The nature and purpose of the processing is: processing for the purposes of delivering and instructing the Works and processing of associated invoicing and purchase orders.
- 21.8. The type of personal data being processed is, names, contact details, telephone numbers, email addresses, work location, qualifications, drug and alcohol test results on site, experience.
- 21.9. The categories of data subjects are employees, contractor's personnel of the Client.

ACCEPTANCE AND AGREEMENT

22. The Tender is subject to VE receiving satisfactory credit insurance/references from the Client prior to the Commencement Date, which may require the cooperation of the Client to provide (in confidence) financial information to assist VE's credit reference and assurance agents.
- 22.2. Upon VE mobilising to site at the Client's request, unless and until a different Contract is executed, the Tender shall be deemed to constitute a binding contract between VE and the Client. An instruction for VE to mobilise and/or VE preparing and commencing performance for and of the Works on instruction or invitation from the Client is deemed to be acceptance of the Tender.

SEVERABILITY

- 23.1. If any provision or part-provision of these terms and conditions 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 and conditions.

LAW

- 24.1. The Tender and the Contract shall be governed by and interpreted in accordance with the laws of England and, subject to clause 17, the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

ASSIGNMENT

- 25.1. The Client shall not assign its interest in the Contract or any part of the Contract nor any right arising under the Contract to any person without the prior written consent of VE (such consent not being unreasonably withheld or delayed).
- 25.2. Subject to clause 25.3 below, VE shall not assign its interest in the Contract or any part of the Contract nor any right arising under the Contract to any person without the prior written consent of the Client (such consent not being unreasonably withheld or delayed).
- 25.3. VE may freely assign its entire rights and benefits under the Contract or any part of the Contract between and amongst, VE and its Group Companies subject to the consent of the Client, (such consent not being unreasonably withheld or delayed).

BREXIT

- 26.1. No Allowance is made in the Tender for risk of labour shortages, trade embargoes, imposition of overseas or UK tariffs, changes in law or any other consequence of Article 50 of the Treaty of Lisbon (2007/C306/01) being triggered. Any programme risk or price escalations arising out of trading due to Brexit or are a consequence thereof, are excluded. Any direct or indirect consequences shall be treated as a Variation.

Section A Default Schedule of attendances Client responsibility

- 27.1. All attendances as specified in the FPS schedule of attendances at the time of this agreement, including providing, maintaining, and repairing an adequate piling and or working platform.
- 27.2. Hard access to the works (and protection of the same) suitable for the Company's reasonable requirements, taking account of the size of the plant and equipment used and transport required for it, must always be maintained.
- 27.3. Adequate storage areas level and dry prepared and maintained as access routes.
- 27.4. All setting out for lines and levels clearly marked and maintained and check immediately after installation.
- 27.5. Disposal of spoil from the Company's operations in sufficient time to prevent spoil heaps from impeding the progress.
- 27.6. Adequate supply of water and electricity to the Company's working positions.
- 27.7. Breaking down pile heads to cut off level and disposal thereof.
- 27.8. Watching lighting and hoarding as necessary
- 27.9. All welfare facilities as required by Construction Regulations
- 27.10. Provision of test cube moulds curing and storage facilities for the cubes
- 27.11. Cleaning and maintenance of approach roads to site
- 27.12. Any pumping and drainage necessary to keep site free from surface or drainage water and disposal of the same.
- 27.13. Unless otherwise stated VE will not reinstate floors (floor supports), floor finishes, footpaths, gardens, driveways, drains, services etc. nor be responsible for such repairs after the completion of the Work.
- 27.14. On-site parking facilities for all operatives and holding and lay down areas for all plant and equipment, permanent and temporary materials.
- 27.15. Working over or near water
- 27.16. Protection of existing Watercourses and Waterways
- 27.17. Coordination of the works to ensure the Contract programme is achievable pre contract and to ensure other trade contractors are coordinated with the Work under this Contract.
- 27.18. Should the Client not provide these, the impact on VE shall be deemed to be a Variation.

Section B - Technique specific terms and conditions amending and in addition to these general terms.

- 28.1. Unless stated otherwise herein these are as specified in VE Tender.

Section C – Special terms and conditions amending and in addition to these general terms.

- 29.1. Unless stated otherwise herein these are as specified in VE Tender.

Section D – VE Default Position - Tender pricing clarifications and qualifications.

30. Should any of the matters, events, conditions, circumstances arise or the matters, events, conditions, circumstances differ during the contract these shall be deemed to be Variations.