

TERMS AND CONDITIONS OF SALE

In these Terms and Conditions of Sales (the "Conditions") "the Company" means Vobster Cast Stone Company Limited registered in England and Wales with company number 00843928 and whose registered office is Taylor Maxwell House, The Promenade, Clifton, Bristol, BS8 3NW, "Goods" means the goods (including any instalment of the goods) which the Company is to supply in accordance with these Conditions; "the Buyer" means any person, firm, or company purchasing Goods from the Company. "Contract" means the contract between the Company and the Buyer for the supply of Goods in accordance with these clauses 1 to 20 and the Quotations, Acknowledgment of Order and any updated Acknowledgment of Order. The Buyer's dealings with the Company concerning the purchase of Goods shall be governed by these Conditions.

1. FORMATION OF CONTRACT

- (a) The Contract shall come into existence and take effect if and when the Company issues the Acknowledgment of Order to the Buyer by post or email and shall remain in full force and effect until either:
 - (i) the parties have discharged all their obligations under it (at which point it shall expire); or
 - (ii) it is terminated in accordance with these Conditions.
- (b) For the avoidance of doubt, even if the Buyer makes payment (or part payment) on account, the Contract is not formed until the Company issues the Acknowledgment of Order to the Buyer.
- (c) A quotation given by the Company shall not constitute an offer. The Company reserves the right to withdraw or amend a quotation at any time.
- (d) These Conditions apply to all dealings between the parties to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing unless agreed in writing by a director of the Company.
- (e) In these Conditions (i) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (ii) a reference to writing or written includes faxes and emails.

2. DELIVERIES

- (a) Unless, the parties have agreed that the Buyer will collect the Goods in accordance with clause 2(f), the Company shall deliver the Goods to the location set out in the Acknowledgment of Order or such other location as the parties may agree at any time after the Company notifies the Buyer that the Goods are ready. Time of delivery shall not be of the essence to any Contract to which these Conditions apply and shall not be made so by the service of any notice. Stated delivery times are estimates only. Delayed delivery shall not make the Company liable nor entitle the Buyer to cancel any order except in accordance with Condition 2(g)
- (b) The Buyer shall be responsible for unloading the Goods expeditiously at his expense and with his labour. If the Buyer refuses delivery at the agreed time, or is not present to take delivery, the Company may at its option (i) unload the Goods itself at the Buyer's cost and leave them outside the address agreed for delivery (in which case delivery shall be deemed to have taken place), or (ii) treat the order as cancelled and claim indemnification under Condition 2(g), or (iii) rearrange delivery at a mutually agreed date, subject to the Company's prior receipt of its costs in making any abortive delivery and storage of the Goods until they are successfully delivered (notwithstanding any previous agreement that delivery costs were included within the price).
- (c) Delivery is completed on arrival of the Goods at the agreed location for delivery. The Company's liability to deliver on site shall be limited to delivery to a position on a good hard surface nearest the site completely accessible by a good hard road. The Company shall have no obligation to deliver if it believes that it would be unsafe, unlawful or unreasonably difficult to do so (for example if access to the premises is unsuitable for the delivery vehicle). The Company reserves the right to deliver on a crane off-load vehicle without prior notification and to charge for this service at the Company's normal rates.
- (d) The Goods shall be at the Buyer's risk from the time of delivery notwithstanding that the property in the Goods remains with the Company as provided by Condition 13.
- (e) Where delivery instructions covering the supply of any Goods have not been received at least five working days prior to the agreed delivery date the Company may treat the Contract as cancelled and claim indemnification under Condition 2 (g).
- (f) If the parties have agreed that the Buyer will collect the Goods, once the Company has informed the Buyer that the Goods are available for collection the Buyer may collect the Goods at any time during the usual business hours of the collection site (as set out in the Acknowledgment of Order and as may be amended from time to time) so long as it gives at least 24 hours prior notice to the Company. The Buyer must collect the Goods within 14 days of being advised that the Goods are available for collection, failing which the Company may, at its option (i) treat the order as cancelled and claim indemnification under Condition 2(g), or (ii) rearrange collection at a mutually agreed

date, subject to the Company's prior receipt of its costs in storage of the Goods until they are successfully collected.

- (g) The Buyer may not cancel any order where a Contract has been formed by the Company issuing an Acknowledgement of Order, other than with the Company's written agreement and on terms that the Buyer indemnifies in accordance with clause 8(g) the Company against all loss (including loss of profit) and costs incurred by the Company in connection with the order and/or as a result of cancellation. The Company's estimate of any such loss and costs shall be accepted as final.

3. PRICES

- (a) The price of the Goods shall be the price stated in the Acknowledgement of Order for the project or the updated Acknowledgment of Order if the price is subsequently amended after approval of drawings. If no such price for the Goods is fixed the price shall be that listed in the Company's published price list at the date the corresponding invoice(s) is raised.
- (b) Prices stated do not include VAT and any other tax or duties payable by the Company (which will be added to invoice wherever applicable), nor cost of delivery which will be specified separately in the Quotation(s). Unless otherwise agreed in writing by the Company, all prices quoted as including delivery are premised on the assumption of delivery in full loads on hard roads to the address agreed with the Buyer (but do not include any costs of unloading). Adjustments to the price may be made to cover the Company's additional delivery costs where this assumption is not fulfilled and the Buyer will be responsible for such costs in accordance with clause 8(g).
- (c) The Company may by giving notice to the Buyer up to 5 working days before delivery reduce or increase prices to the Buyer, for any Goods yet to be delivered, at any time in the event of any change to the Company's manufacturing, delivery or other costs associated with the order (for example increases in taxes and duties and increases in labour. If necessary the Company may issue a supplementary invoice (which the Buyer shall pay within 10 working days of its issue) or a credit note, reflecting such increase or reduction.

4. USE

- (a) The Company does not guarantee that the Goods will be suitable or fit for use under any specific condition or for any particular purpose although such condition or purpose may be known to the Company.
- (b) Samples are only submitted as indications of the Goods quoted for and not as any guarantee of the colour or quality of the bulk. Sale is by description not by sample. The Company will use reasonable endeavours to ensure consistency but the Goods shall not be deemed to be defective if there are inconsistencies in colour and/or texture.
- (c) The Company shall not be liable for any damage to or defects in the Goods, or failure to comply with agreed specifications, through causes beyond its control (other than the defaults of its own suppliers, or any circumstance prior to the passing of risk in the Goods whose effect could have been avoided by the Company taking reasonable care).
- (d) The Company may pass on any Manufacturer's guarantee to the Buyer but shall not be obliged to do so and shall not incur any liability under such guarantee.
- (e) The Buyer agrees to conform in full with the Installation Instructions supplied to the Buyer by the Company. The Company shall not be liable for any losses resulting from the Buyer's failure to comply with any instructions provided by the Company, including the Installation Instructions.

5. QUANTITIES ORDERED

Estimates given by the Company of quantities required for a job are intended as guidelines only and the Buyer shall not rely on such estimates. The Buyer is solely responsible for ascertaining the proper quantities.

6. NO ASSIGNMENT

The Buyer shall not assign this Contract without the Company's written consent.

7. LIABILITY

- (a) Subject always to Condition 7 (e), the Company's aggregate liability, if any, to the Buyer whether for tort including negligence (including without limitation during delivery), breach of contract, breach of

statutory duty, misrepresentation or otherwise (including its liability in respect of any indemnities in this Contract) shall in no circumstances exceed the invoice value of the Goods. Where Goods supplied by the company are defective the Company may at its option repair or replace them in accordance with Condition 8 (b), or refund the relevant portion of the purchase price paid by the Buyer.

- (b) All conditions and representations implied by statute, common law or otherwise in relation to the Goods are hereby excluded to the fullest extent permissible at law.
- (c) The Company shall have no liability for any indirect or consequential losses or expenses suffered by the Buyer, howsoever caused, including without limitation loss of anticipated profits or opportunities, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.
- (d) The Company shall be under no liability for any damage or loss to third parties caused directly or indirectly by the Goods and the Buyer shall indemnify the Company against any such loss or damage, and any claims, demands, actions or proceedings of any third parties which relate to the same.
- (e) Nothing in these Conditions shall limit the Company's liability for death or personal injury caused by its negligence, its fraud (including fraudulent misrepresentation) or any other liability which it is not possible to limit at law.

8. IRREGULARITIES/BUYER'S COMPLIANCE WITH LAWS/BUYER'S INDEMNITY

- (a) Any claim by the Buyer for alleged defects, failures to comply with agreed specifications, shortages, excessive breakages, failure to deliver or late deliveries or other irregularities must be notified in writing to the office of the Company where the order was placed within five working days of delivery (or for latent defects, within five working days of the defect becoming apparent); or in the case of non delivery or late delivery within five working days of the despatch of the advice note or invoice whichever is the earlier. Failure on the Buyer's part to notify the Company in accordance with this Condition 8 (a) shall constitute a waiver of the claim in question. For the purposes of these Conditions, a "working day" means a day on which UK banks are open for business (excluding Saturdays).
- (b) Defective Goods will be accepted for replacement or repair at the Company's option only with prior authorisation from a Director of the Company. Goods returned are not to exceed quantity so authorised.
- (c) Following notification of damaged or defective Goods, the Buyer shall ensure that the Company's representatives have the opportunity to examine the applicable Goods and delivery documentation at the Buyer's premises or other location where the Goods are held.
- (d) Goods which the Company has agreed to repair or replace shall be returned by the Buyer within ten working days of request by the Company.
- (e) All returns must have freight prepaid and no C.O.D.'s will be accepted. ("C.O.D." means cash on delivery, here referring to a carrier or other person seeking payment from the Company for delivery of a return). The Company reserves the right to charge the Buyer for all reasonable repackaging costs of replacement Goods.
- (f) The Buyer warrants that he has complied with all laws, regulations and official requirements applicable in the UK and in Europe, and has lawfully obtained all necessary licences, permits and consents necessary for the supply to him and use by him of the Goods comprised in any Contract.
- (g) The Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with: (i) the Buyer's breach or negligent performance or non-performance of the Contract; (ii) the Company agreeing to cancel the Buyer's order for Goods in accordance with clause 2(g); (iii) the Buyer refusing to take delivery or not being present for delivery in accordance with clauses 2 and 3(b); and (iv) to the extent that any Goods are produced in accordance with a specification supplied by the Buyer, in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the specification. This clause 8(g) shall survive termination of the Contract.

9. DESIGN

- (a) The Company may, at its discretion and without obligation or warranty, forward as necessary from its suppliers or sub-contractors workshop drawings required by the Buyer for the Buyer's comment/approval. This implies no structural or design liability on the Company's behalf and the Company's limit of responsibility is product only.
- (b) The Buyer is responsible for the final approval of drawings, specifications, quantities and colour as well as the design and supply

of supports and restraints unless otherwise stated. The Buyer warrants that it has the skills and expertise to ensure that the Goods will meet its needs and will be fit for the purpose which the Buyer intends to use them.

10. FORCE MAJEURE

Should despatch or delivery of the Goods or any part thereof be delayed, prevented or prohibited for any cause whatsoever beyond the Company's control then at the Company's option either the Contract or any unfulfilled part thereof shall be cancelled (subject to reasonable reimbursement of payment already made by the Buyer for any Goods the subject of such cancellation) or alternatively the time for delivery shall be extended for a reasonable time after the operation of any such cause shall have ceased.

11. PAYMENT

- (a) The Buyer shall pay for the Goods in accordance with clause 3 and this clause 11. Payment shall be in cash at the time the order is acknowledged, except where otherwise agreed in writing by the Company. Postponement of delivery shall not affect the agreed payment date. Time of payment shall be of the essence for all Contracts between the Company and the Buyer to which these Conditions apply. The Company shall not be under any obligation in relation to the Goods until payment has been received from the Buyer.
- (b) Without prejudice to any other remedy available to it under these Conditions, the Company shall be entitled to charge the Buyer interest on any unpaid amount due to it, at a rate equivalent to that payable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from time to time, on a daily basis, before as well as after any judgment, from the date the relevant amount fell due until it is paid in full as cleared funds in the Company's bank account.
- (c) Where Goods have been manufactured in accordance with an order but the Company has been unable to effect delivery as a result of the actions of the Buyer then the Company reserves the right to invoice and claim payment as clause 11(a). Alternatively the Company will set a date by when the Goods must be collected and an invoice raised on that basis.
- (d) Any agreed credit limit given to the Buyer is conditional upon the Company's credit insurance. If the credit limit granted to the Company is reduced then the agreed credit limit given to the Buyer will automatically reflect this change. The Company shall notify the Buyer of any such change as soon as reasonably practicable. The Company reserves the right to refuse to accept orders, manufacture or make deliveries where the Buyer exceeds its credit limit.

12. DEFAULT

If the Buyer commits any material breach of its obligations hereunder, which includes non-payment of any amount after the date it falls due, or shall (and if a firm, if any of its partners shall) be subject to any bankruptcy order, composition or scheme of arrangement, sequestration, or be unable to pay any debts as they fall due, or (if a corporation) shall go in to liquidation other than for the purpose of reconstruction or amalgamation, or be the subject of an administration order, or shall suffer the appointment of a receiver of any of its property or make any deed or arrangement with or composition for the benefit of any of its creditors, or shall be unable to pay its debts as they fall due within the meaning of Insolvency Act 1986 section 123; or if in the reasonable opinion of the Company the Buyer's credit becomes impaired; then in any of the foregoing circumstances the company shall have the following rights and remedies in addition to any other rights and remedies provided by applicable law and under these Conditions;

- (a) The Company shall have the right forthwith to terminate the Contract or any part of it.
- (b) All sums shall become immediately due and payable, notwithstanding any credit terms previously in effect.
- (c) The Company may cancel any accepted orders or delay delivery of any order.
- (d) If credit previously has been extended by the Company to the Buyer, and the Company elects to make further sales to the Buyer, the Company may require payment on a cash on delivery or cash-in-advance basis.
- (e) In the event collection of sums due from the Buyer to the Company is referred to Lawyers or Debt Recovery Agents or if proceedings are brought to collect such sums or to enforce the rights of the Company, the Buyer agrees to pay all costs, commissions, administration charges and fees incurred by the Company as a result of collection, including such costs and fees incurred in any Appeal or Proceedings and in executing on any judgement.

13. PROPERTY IN THE GOODS

- (a) Notwithstanding that possession of the Goods passes to the Buyer, legal ownership in the Goods shall remain with the Company until the

price of those Goods and any other sums due or to become due by the Buyer to the Company under any purchase order or otherwise have been received by the Company.

- (b) The Buyer agrees that if so required he shall store the Goods in such a way as to be readily identifiable and hereby authorises the Company to enter upon any premises in which the Goods are placed and repossess those in which it retains property.
- (c) The Buyer shall be entitled to resell the Goods at the best available market rate in the ordinary course of its business, but shall hold the proceeds of sale attributable to the Goods on trust for the Company and shall keep all such proceeds separate from any monies or property of the Buyer and any third party, and shall account to the Company for such proceeds on request.

14. PROPER LAW OF CONTRACT

- (a) The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- (b) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

15. LIEN/CHARGING

- (a) The Company shall be entitled to a general lien on all Goods and property owned by the Buyer in the Company's possession (although the Buyer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any Goods sold and delivered to Buyer under any Contract. The Company shall be entitled to deduct any sum owing to it by the Buyer under these Conditions or otherwise from any sum payable by it to the Buyer.
- (b) The Buyer shall not be entitled to pledge or in any way charge by way of security any of the Goods which remain the property of the Company.

16. SET OFF

No part of any payment due to the Company may be withheld nor may any counterclaims of the Buyer be set off against any payment due from the Buyer.

17. SEVERABILITY

If any of these Conditions is held to be invalid, illegal or unenforceable in any respect, whether in whole or in part, such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the rest of the Conditions or the remainder of any part of a Condition affected.

18. WAIVER

No waiver by the Company of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

19. VARIATION

These Conditions may not be varied other than by the written agreement of a Director of the Company.

20. HEADINGS

Headings are for convenience only and shall not affect the construction of these Conditions.