

# VELSTONE LIMITED

## TERMS AND CONDITIONS OF SALE

### 1. Interpretation

1.1 In these terms and conditions the following words shall have the following meanings:-

“Supplier” Velstone Limited

“Customer” The person(s) or company whose order for the Products is accepted by the Supplier.

“Delivery” The place where delivery of the Products is to take place under condition 4 hereof.

“Products” Any goods which the Supplier is to supply to the Customer (including any of them or any part of them).

“Contract” Any contract agreement or arrangement between the Supplier and the Customer for the sale and purchase of Products.

“Warranty” The warranty issued by the Supplier in respect of the Products.

1.2 The headings in these terms and conditions are for convenience only and shall not effect their interpretation.

### 2. Formation and Incorporation

2.1 Subject to any variation under condition 2.4 the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports will apply under any purchase order, confirmation of order or a similar document).

2.2 Each order for goods by the Customer from the Supplier shall be deemed to be an offer by the Customer to purchase Products subject to these Terms and Conditions.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Customer’s purchase order, specification or similar document will form part of this Contract simply as a result of a reference to such document being referred to in this Contract.

2.4 Any variation to these terms and conditions and any representations about the Products shall have no effect unless expressly agreed in writing between parties.

2.5 The Customer must ensure that the terms of its order and any applicable specifications are complete and accurate.

2.6 Any quotation/price is given on the basis that no contract will come into existence until the Supplier despatches an acknowledgment of order to the Customer. Any quotation is valid for a period of 30 days only from its date provided the Supplier has not previously withdrawn it.

2.7 Subject to condition 4.4 no order which the Supplier has accepted may be cancelled by the Customer except with the written agreement of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all losses (including loss of profit) costs, damages, charges and expenses suffered or incurred by the Supplier as a result of such cancellation.

### 3. Description

3.1 The description of the Products shall be set out in the Supplier’s quotation/price list.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They will not form part of the Contract.

3.3 The Supplier may make any changes to the specification, design materials or finishes of the Products which are required to conform with any applicable safety or other statutory requirements.

### 4. Delivery

4.1 Delivery will be at the cost and expense of the Customer unless the Supplier states otherwise. The Products shall be delivered ex-works or by such means as the Supplier thinks fit unless the Customer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Products and the other circumstances of the case.

4.2 Any dates specified by the Supplier for delivery of the Products are approximate only and may not be made of the essence by notice. If no dates are so specified delivery will be within a reasonable time.

4.3 Subject to the other provisions of these terms and conditions the Supplier will not be liable for any loss (including loss of profits) costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Supplier’s negligence) nor will any delay entitle the Customer to terminate or rescind the Contract.

4.4 In those cases where the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licences or authorizations required to enable the Products to be delivered (except because of the Supplier’s fault) risk in Products will pass to the Customer and the Products will be deemed to have been delivered and (without prejudice to its other rights) the Supplier may:

4.4.1 Store or arrange for the storage of the Products until actual delivery or sale and charge the Customer for all related costs and expenses (including without limitation storage and insurance); and/or

4.4.2 Following written notice to the Customer, sell any of the Products for the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Contract. The Customer will indemnify the Supplier against any liability and expense caused by the Customer’s failure to provide appropriate equipment and manual labour for off-loading.

### 5. Non-Delivery

5.1 The quantity of any consignment of Products is recorded by the Supplier from despatch from the Supplier’s place of business and shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Supplier shall not be liable for any non-delivery of Products unless written notice is given to the Supplier within 1 day of the date when the Products would in the ordinary course of events have been received.

5.3 Any liability of the supplier for the Products shall be limited to replace the Products within a reasonable time.

### 6. Force Majeure

6.1 The Supplier shall not be liable to the Customer in any manner or deemed to be in breach of this Contract because of delay in performing or any failure to perform any of the Supplier’s obligations under this Contract if the delay or failure was due to any cause beyond the Supplier’s reasonable control.

### 7. Risk/Ownership

7.1 Risk of damage to or loss of Products shall pass to the Customer when the Products have left the factory premises of the Supplier.

7.2 Ownership of the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 The Products and;

7.2.2 All other sums which are or which become due to the Supplier from the Customer on any account.7.3 The Customer may re-sell the Products before ownership has passed to it solely on the following conditions:-7.3.1 Any sale shall be effected in the ordinary course of the Customer’s business at full market value and the Customer shall account to the Company accordingly and;

7.3.2 Any such sale shall be a sale of the Supplier’s property on the Customer’s own behalf and the Customer shall deal as principal when making such a sale.7.4 The Supplier shall be entitled to recover payments for the Products notwithstanding that ownership of any of the Products have not passed from the Supplier.

7.5 The Customer grants the Supplier its agents and employees an irrevocable licence at any time to enter any premises where the Products are or maybe stored in order to inspect them or where the Customer’s right to possession has terminated to recover them.

### 8. Price

8.1 The price for the Goods shall be as determined by the Supplier in accordance with the Supplier’s quotation/price list.

8.2 The price for the Goods is exclusive of any Value Added Tax or any other applicable tax, which the Customer shall pay in addition when it is due to pay for the Products.

8.3 The price for the Products is given on an ex-works basis unless otherwise agreed. Where the delivery point is other than at the Supplier’s premises the Customer shall pay the Supplier’s charges for transport, packaging, loading, unloading and insurance in addition when it is due to pay for the Products.

### 9. Payment

9.1 The Supplier may invoice the Customer for the Products at any time after despatch.

9.2 Time for payment shall be of the essence.

9.3 Payment of the price for the Products is 30 days nett.

9.4 No payment shall be deemed to have been received until the Supplier has received cleared funds.

9.5 All payments payable to the Supplier under this Contract shall become due immediately upon termination of the Contract.

9.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Customer has a valid Court Order requiring an amount equal to such deduction to be paid by the Company to the Supplier.

9.7 The Supplier may appropriate any payment made by the Customer to the Supplier to such of the Products as the Supplier thinks fit, despite any purported appropriation by the Customer.

9.8 If the Customer fails to make any payment under this contract on the due date then (without prejudice to its other rights and remedies) the Supplier may charge the Customer interest on the amount unpaid at the annual rate of 2% above Ulster Bank’s base rate from time to time until payment is met in full plus the costs of recovering any such payment.

### 10. Warranty

10.1 The Supplier warrants the Products subject to the terms and conditions of the Warranty issued by the Supplier, and the following provisions:

10.2 Material Defects to Product(s):

10.2.1 All of the Product(s) should be inspected for both manufacturing defects and possible shade variation prior to any fabrication.

10.2.2 The fabricator must inform the Supplier in writing of the number and nature of any Product(s) to be returned together with the reason for their return and complete the Warranty Claim Form attached, whereupon the Supplier will decide in its absolute discretion whether the claim will be accepted.

10.2.3 If the claim is approved it will be confirmed in writing to the fabricator and replacement material will be ordered from the factory where this appears to the Supplier to be the most expeditious course of action having regard to their obligations under the terms of its Warranty.

10.2.4 The Supplier will issue a collection note to the relevant haulage company copied into the fabricator.

10.2.5 When the Product(s) are received back at the factory premises of the Supplier a credit note will be issued for those Product(s) unless it is agreed that they should be replaced PROVIDED ALWAYS that the Supplier has declared its satisfaction that such returned Product(s) have a manufacturing defect which is covered by its Warranty.

10.2.6 Under no circumstances can the amount of the goods be deducted from previous outstanding accounts nor can they be deducted until the credit note has been issued.

10.2.7 The identification of any Product suffering from visible defects after the process of fabrication will remain the responsibility of the fabricator and the Supplier will repair or replace any defective material at cost where this is due to a manufacturing defect but will not be responsible for any liability, damages, costs, claims, expenses or other losses arising out of process of

- fabrication.
- 10.2.8 Late Delivery:  
10.2.8.1 All deliveries requested outside of the normal production schedule will be made as soon as possible and the Supplier will be responsible for any liability, damages, costs, claims, expenses or other losses arising from late delivery howsoever arising.
- 10.2.8.2 The Supplier will not be responsible for any liability, damages, costs, claims expenses or other losses arising out of deliveries of material once those material have left their factory premises howsoever arising.
- 10.3 Sinks and Basins:  
10.3.1 In respect of any warranty claim regarding sinks and basins the Supplier will take into account the following to determine to the validity of any such claims:-  
10.3.1.1 The way in which the top containing the unit has been fabricated.  
10.3.1.2 Installation having regard to the hot water temperature specified in both the VELSTONE International Technical Bulletin and the Fabrication Section of the Manual.  
10.3.1.3 Moulded products produced from the moulds of the other companies.  
10.3.1.4 Any claim found to be due to a fault in the tooling with the responsibility of the mould owner if after being informed of an inherent fault he fails to rectify the situation.  
10.3.1.5 It is the fabricators responsibility to remove the mould releasing agent by the normal sanding methods.
- 10.4 Process of Warranty Claims:  
10.4.1 The Customer must notify the Supplier of projects and installations of which the Products compromise whole or part for the purposes of allowing the Supplier to maintain data on computer and for the Supplier's records.  
10.4.2 The Customer shall inform the Supplier of all claims for defects made against the Products whether or not it shall lead to be a successful claim under the terms of the Warranty.
- 10.5 Other Costs:  
10.5.1 The Supplier may in its absolute discretion agree to meet other costs in connection with the warranty claim where it confirms these in writing and also approves the amount of the invoice together with the particulars and any reference numbers on the said invoice.  
10.5.2 The Supplier may issue a credit note against any such invoice.  
10.5.3 No invoice raised against the supplier can under any circumstances be deducted from any previous outstanding account.
- 11. Limitation of Liability**  
11.1 The following provisions and the provisions of the Supplier's Warranty set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:  
11.1.1 Any breach of these terms and conditions;  
11.1.2 Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.  
11.2 All warranties, conditions and terms implied by statute or common law.  
11.3 Nothing in the terms and conditions exclude or limits the liability of the company or death or personal injury caused by the Company's negligence or fraudulent misrepresentation.  
**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISION OF CONDITIONS 11.4 AND 11.5**  
11.4 Subject to conditions 11.2 and 11.3:-  
11.4.1 The Supplier's total liability in contract tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price or that contained in the Warranty and;  
11.4.2 The Supplier shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term or any duty of law or under the expressed terms of this Contract for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the company, ex-employees, agents or sub-contractors) which arise out of or in connection with the Contract.  
11.5 The Customer shall indemnify the Supplier against all liability, action proceedings, costs, claims, damages or demands in any way connected with this Contract brought or threatened to be brought against the Supplier by any third party except of the extent the Supplier is liable to the Customer in accordance with these terms and conditions.
- 12. Termination**  
12.1 The Contract will terminate immediately upon the happening of any one or more of the following events:-  
12.1.1 The Customer has a bankruptcy order made against him or makes an arrangement or composition with its creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntarily or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court of the winding up of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.  
12.2 The Contract will terminate immediately upon service of written notice of termination by the Supplier on the Customer on the happening of any one or more of the following:-  
12.2.1 The Customer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Company and the Customer or is unable to pay its debts within the meaning of Insolvency Act or the Customer ceases to trade.  
12.3 The Supplier's rights contained in condition 7 (but not the Customer's rights) shall continue beyond the discharge of the Customer's and the Supplier's primary obligations under the Contract consequent upon its termination.  
12.4 The termination of the Contract howsoever arising shall be without prejudice to the rights or duties that either the Customer or the Supplier accrued prior to termination.
- 13. General**  
13.1 Time for performance of all obligations of the Customer is of the essence.  
13.2 Each right or remedy of the Supplier under this Contract is without prejudice to any other right or remedy of the Supplier whether under this Contract or not.  
13.3 Any provision of this Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the provisions of this Contract and the remainder of such provision shall not be effected.  
13.4 Failure by the supplier to enforce or partially enforce any provisions of this Contract will not be construed to the waiver of any of its rights under this Contract.  
13.5 The Supplier may assign license or sub-contract all or any part of its rights or obligations under this Contract without the Customer's consent.  
13.6 This Contract is personal to the Customer who may not assign license or sub-contract all or any of its rights or obligations under this Contract without the Supplier's prior written consent.
- 14. Communication**  
14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid post or sent by facsimile transmission:-  
14.1.1 (in the case of the communications to the Supplier) to its registered office or such changed address as shall be notified to the Customer by the Supplier; or  
14.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any documents which forms part of this Contract or such other address should be notified to the Supplier by the Customer.  
14.2 Communication shall be deemed to have been received:-  
14.2.1 If sent by pre-paid post two days (excluding Saturdays, Sundays and Public Holidays) after posting (exclusive of the day of posting);  
14.2.2 If delivered by hand on the day of delivery;  
14.2.3 If sent by facsimile transmission on a working day prior to 4:00 p.m. as the time of transmission and otherwise of the next working day.  
15. The formation, construction, performance, validity and all aspect of this Contract are governed by Irish law and the parties submit to the exclusive jurisdiction of the Irish courts.