

ITALIAN LUXURY SURFACES LTD
TERMS AND CONDITIONS OF SALE

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 12 (LIMITATION OF LIABILITY) AND 14 (FORCE MAJEURE)

ALL contracts for the supply of goods (including any part or parts of them) ("**Goods**") by Italian Luxury Surfaces Ltd¹ ("**ILS**") to any person, firm, company or unincorporated body ("**Customer**") shall be subject to these T&Cs (as defined below), which shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

1. DEFINITIONS AND INTERPRETATION

1.1 In addition to the defined terms referred to above, the following terms and rules of interpretation shall apply to the Contract:

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Collection Location: has the meaning given in clause 8.3.

Contract: the contract between ILS and the Customer for the sale and purchase of the Goods in accordance with these T&Cs.

Delivery Location: has the meaning given in clause 8.2.

Force Majeure Event: an event, circumstance or cause beyond ILS's reasonable control.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order Acknowledgement: an order acknowledgement document entitled or otherwise bearing the words "Order Acknowledgement" issued by ILS to the Customer, confirming details of the Customer's order including where applicable:

(a) the sales order number;

¹ Incorporated and registered in England and Wales with company number: 9477027 whose registered office is at Ground Floor, Egerton House, 68 Baker Street, Weybridge, Surrey, United Kingdom, KT13 8AL

- (b) in the case of Goods comprising Live Inventory Slabs, the item ID number;
- (c) the aggregate size (calculated in square metres) and the number of slabs comprised in the Goods;
- (c) a brief description of the Goods;
- (d) the approximate thickness of the Goods (calculated in either centimetres or millimetres);
- (e) without limiting the provisions of clauses 8.11 and/or 11.2, the price of the Goods.

Sourced Slabs: Goods sourced by or for and on behalf of ILS that are not Live Inventory Slabs.

Live Inventory Slabs: Goods, which are referred to by item ID number on ILS's website and within the Order Acknowledgement and conform to the image(s) provided by ILS (whether available to view via its website or as issued by ILS to the Customer and (without limiting the provisions of clause 7.4) are identified as exact piece(s).

Stone Italiana: the range of Goods within the Stone Italiana brand and/or Stone Italiana product range and/or any entity within the Stone Italiana group of entities.

T&Cs: the terms and conditions set out in this document as amended from time to time in accordance with clause 15.3 (*Variation*).

- 1.2 A reference to a **party** includes its personal representatives, successors and permitted assigns.
- 2. A reference to: the singular shall include the plural and vice versa; any gender shall include all genders; and a reference to a clause shall be construed as a reference to a clause of these T&Cs.
- 3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 4. Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 5. A reference to writing or written includes fax and email.

6. BASIS OF CONTRACT

- 6.1 An order for Goods received by ILS constitutes an offer by the Customer to purchase such Goods in accordance with these T&Cs.
- 6.2 The Customer is responsible for ensuring that the terms of its order are complete and accurate and that it includes full delivery details. Unless otherwise specifically provided in the Order Acknowledgement or otherwise confirmed in writing by ILS, the finish of the Goods will be polished.

- 6.3 An order shall only be deemed to be accepted when ILS issues a written Order Acknowledgement at which point the Contract shall come into existence. ILS shall not be obliged to perform its obligations to deliver the Goods (or any part or instalment thereof) under the Contract until it receives payment of the price unless ILS otherwise expressly provides in writing.
- 6.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these T&Cs.
- 6.5 Save in respect of Live Inventory Slabs, any samples, drawings, photographs, descriptive matter or advertising produced by or for and on behalf of or available via ILS and any descriptions or illustrations contained in catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force and they shall not constitute a sale by sample.
- 6.6 A quotation for the Goods given by ILS shall not constitute an offer. A quotation shall only be valid for a period of three Business Days from its date of issue.

7. THE GOODS

- 7.1 Without limiting the provisions of clause 7.3, Goods comprising Sourced Slabs are sold according to the number of Sourced Slabs of a particular kind as specified in the Order Acknowledgement. Such Sourced Slabs are priced according to their aggregate size (calculated in square metres) of all Sourced Slabs within a particular product range as specified in the Order Acknowledgement.
- 7.2 Goods comprising Live Inventory Slabs are sold according to the number of Live Inventory Slabs within a particular product range available for purchase either as specified on ILS's website or as otherwise confirmed by ILS.
- 7.3 In the case of an Order Acknowledgement for any Sourced Slab(s), due to the composition of such Goods:
- (a) there may be variances in thickness, size and shape between individual Sourced Slabs within a particular Order Acknowledgement notwithstanding that the total amount of such Sourced Slabs equates to the amount in square metres specified in such Order Acknowledgement;
 - (b) no assurance or warranty can be nor is provided that any particular Sourced Slab will be of any specific thickness, size or shape.

Accordingly, such Goods may not be rejected by reason of such variations.

- 7.4 Any indication provided by ILS (whether in an Order Acknowledgement or otherwise) of the thickness of any Goods is approximate only and is not a warranty or representation that such

Goods will conform to any particular thickness. Thicknesses may vary by up to 10% (ten per cent) from any such indication provided by ILS.

8. DELIVERY

- 8.1 The Order shall specify a delivery address to which the Goods are to be delivered. Unless otherwise provided in the Order Acknowledgement, Goods shall not be available for collection at ILS's premises.
- 8.2 ILS shall deliver (or it shall procure the delivery of) the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready/have been despatched.
- 8.3 In the case of any Goods available for collection from ILS's premises (as confirmed in the Order Acknowledgement or as otherwise agreed in writing by ILS), the Customer shall collect the Goods from ILS's premises at Staceys Yard, Station Road, Langley, Berkshire SL3 6DB or such other location as may be advised by ILS prior to delivery (**Collection Location**) within 3 (three) Business Days of ILS notifying the Customer that the Goods are ready.
- 8.4 Without limiting the provisions of clauses 8.11 and 8.12, delivery is completed on the completion of unloading of the Goods at the Delivery Location or making them available for collection at the Collection Location (as applicable).
- 8.5 The Customer shall ensure that ILS and its suppliers shall have full and free access to the Delivery Location for the purposes of performing ILS's obligations under the Contract and shall provide them with adequate and safe space to ensure that the Goods can be delivered properly and safely. Accordingly, the Customer shall take all such steps as may be necessary to ensure the safety of any of ILS's representatives and suppliers when attending the Delivery Location.
- 8.6 The Customer shall permit only trained and competent personnel to handle the Goods upon their delivery to the Delivery Location or upon their collection at the Collection Location. The Customer shall observe all applicable health and safety legislation, regulations and guidelines relating to the Goods, including without limitation those applicable to the storage, fabrication, installation, handling, processing, maintenance and care of the Goods and all guidance and care instructions relating to the Goods provided by ILS.
- 8.7 The Customer shall inspect the Goods immediately on delivery for any defects or damage, but prior to acceptance of such Goods.
- 8.8 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. ILS shall not be liable for any delay in delivery of the Goods for any delay that is caused by a Force Majeure Event or delay due to the Customer's failure to provide ILS and/or ILS's

suppliers (including their respective transportation carrier in respect of the Goods) safe access to the Delivery Location and/or with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 8.9 Without limiting the provisions of clauses 6.3, 8.11, 13 (*Termination*) or 14 (*Force Majeure*), if ILS fails to deliver the Goods, its liability for such non-delivery shall be limited (at the option of ILS) to either replacing such Goods within a reasonable time or issuing a credit note at the pro-rata contract price against any invoice issued for such Goods. ILS shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide ILS and its suppliers (including their respective transportation carrier in respect of the Goods) safe access to the Delivery Location and/or ILS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 8.10 Without limiting the provisions of clause 8.7, if the Customer fails to accept/take delivery of the Goods after completion of their delivery in accordance with clause 8.4 or within 3 (three) Business Days of ILS notifying the Customer that the Goods are ready for collection at the Collection Location, then, except where such failure or delay is caused by a Force Majeure Event or ILS's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed:
 - (i) at the time ILS attends the Delivery Location; or
 - (ii) at 9.00 am on the third Business Day after the day on which ILS notified the Customer that the Goods were ready for collection at the Collection Location (as the case may be); and
 - (b) ILS may (at its absolute discretion and without any obligation) arrange to store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 8.11 In the case of Sourced Slabs made exclusively of natural materials only, if ILS delivers up to and including 5% (five per cent) more or less than the size (calculated in square metres) of such Goods specified in an Order Acknowledgement, the Customer may not reject them, but a pro-rata adjustment shall be made to the order invoice and, if such adjustment results in a sum owed to the Customer, a credit note shall be issued against such invoice in respect of such sum. If the price paid for such Goods is less than the adjusted price under this clause 8.11, the Customer shall pay to ILS any outstanding balance promptly on request by ILS and prior to delivery of such Goods. ILS shall not be obliged to deliver such Goods (or in the case of their delivery by instalments, deliver such instalment) until it has received payment of the amount of the adjusted price.
- 8.12 ILS may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel that or any

other instalment. ILS shall not be obliged to deliver any particular instalment until ILS has received payment in respect thereof.

9. QUALITY

9.1 Without limiting the provisions of clause 7.4, Live Inventory Slabs are sold on an as seen basis. ILS warrants that on delivery Goods comprising Live Inventory Slabs shall conform to the description (save as to thickness) and image provided by ILS.

9.2 Without limiting the provisions of clauses 7.4, 9.3, 9.4 and 9.7, ILS warrants that on delivery Goods comprising Sourced Slabs shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) without limiting the provisions of clause 9.5, if a statutory director of ILS confirms in writing (for and on behalf of ILS) that such Goods are fit for a particular purpose, that such Goods will be fit for such purpose.

9.3 Due to the nature and composition of Sourced Slabs, no one Sourced Slab of a particular kind or within a particular product range will be identical to another of that kind or within such product range nor will it necessarily comprise a consistent or identical pattern or design throughout the slab. The beauty of a Sourced Slab is its uniqueness both visually and in composition. Variations are likely to appear. Such variations reflect the unique nature and beauty of the product. Accordingly, ILS makes no warranty, representation or assurance that a Sourced Slab:

- (a) will conform to any particular pattern, design or other visual display;
- (b) will not contain any inclusions, variations in colour or shape; and
- (c) (in the case of an Order Acknowledgement specifying multiple Sourced Slabs of a particular kind or within a particular product range), will be identical or otherwise similar to another Sourced Slab of such kind or within such product range.

9.4 The warranty referred to in clause 9.2(b) shall not apply to Goods, which ILS confirms to the Customer are sold as impaired and hence at a discounted price.

9.5 The Customer must rely on its own skill and judgement when deciding whether to purchase the Goods. The Customer must ensure the suitability of the Goods in question for their intended purpose.

9.6 Without limiting the provisions of clauses 7.4, 9.3, 9.4, 9.7 and/or 9.9, if some or all of the Goods do not comply with any of the warranties set out in clauses 9.1 (in the case of Live Inventory Slabs) or 9.2 (in respect of Sourced Slabs) (together and individually the **Defective Goods**), the Customer shall give notice in writing to ILS (specifying in reasonable detail the nature and extent

of the defect/non-compliance and supporting photographs):

- (a) in the case of a defect that is apparent on normal visual inspection, within 2 (two) Business Days after delivery of the Goods; and
- (b) (in the case of a latent defect), within 2 (two) Business Days after such latent defect becoming apparent,

but in each case, prior to fabrication, installation or other use of the Defective Goods by the Customer.

9.7 In the case of a visually apparent issue with the Goods, such Goods shall not be defective for the purposes of clause 9.6 if the issue in question is not visually apparent within a distance of 1 (one) metre.

9.8 Subject to clause 9.9, following ILS's receipt of the written notification pursuant to clause 9.6 and provided the Customer:

- (a) affords ILS a reasonable opportunity of examining the Defective Goods; and
- (b) (if asked to do so by ILS) return such Defective Goods to ILS's place of business (or to such other place as ILS shall notify in writing) via such delivery service as ILS shall arrange at ILS's cost **PROVIDED THAT**, if such Defective Goods are subsequently found to comply with the terms of the relevant warranty referred to in clause 9.6, the Customer shall promptly reimburse ILS all such costs incurred by ILS under this clause 9.7(b),

ILS shall, at its option, repair or replace the Defective Goods, or refund the price of the Defective Goods in full.

9.9 ILS shall not be liable for the Goods' failure to comply with the relevant warranty referred to in clause 9.6 in any of the following events or circumstances:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 9.6;
- (b) the defect arises because the Customer failed to follow ILS's oral or written instructions as to the storage, commissioning, fabrication, installation, use, care and/or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of ILS following any requests or directions of the Customer;
- (d) the defect arises from failures due to inadequate support for the installation of the Goods;
- (e) the defect arises as a result of altering any factory applied finishes to the Goods;
- (f) the defect is as a result of temporary marks that are common to Goods of the nature

supplied such as fingerprints or other signs of daily living;

- (g) the defect in or damage to the Goods results from their not being cleaned or maintained strictly in accordance with the instructions provided by ILS;
- (h) the defect arises as a result of as a result of any fabrication and/or installation process applied after completion of their delivery in accordance with the provisions of clause 8.4;
- (i) cracks, chips in or fracturing of the Goods resulting from any installation of the Goods;
- (j) any defect in, or damage to the Goods that results from mishandling or misuse of the Goods;
- (k) (in the case of Sourced Slabs), naturally occurring variations to the shading, quartz distribution and reflectivity of the Goods from any marketing information and/or samples provided;
- (l) the Customer alters or repairs such Goods without the written consent of ILS;
- (m) the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal storage or working conditions; or
- (n) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.10 Except as provided in this clause 9, ILS shall have no liability to the Customer in respect of the Goods' failure to comply with the relevant warranty referred to in clause 9.6.

9.11 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.12 These T&Cs shall apply to any repaired or replacement Goods supplied by ILS.

10. TITLE AND RISK

10.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with the provisions of clause 8.4. If the Goods are delivered in instalments, the risk in the Goods within each instalment shall pass to the Customer on completion of the delivery of such instalment and not on completion of the delivery of all instalments under a particular Order Acknowledgement.

10.2 Title to the Goods shall not pass to the Customer until ILS receives payment in full (in cash or cleared funds) for the Goods and any other goods that ILS has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

- 10.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as ILS's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from and including the date of delivery;
 - (d) notify ILS immediately if it becomes subject to any of the events listed in clause 13.1(c) to clause 13.1(j);
 - (e) allow ILS access to the Goods immediately upon request from ILS; and
 - (f) give ILS such information relating to the Goods as ILS may require from time to time.
- 10.4 If at any time before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.1(c) to clause 13.1(j), then, without limiting any other right or remedy ILS may have, ILS may at any time:
- (a) require the Customer to deliver up all Goods in its possession; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 10.5 All Intellectual Property Rights owned, licensed to or otherwise used by ILS and/or Stone Italiana and their respective suppliers are expressly reserved and no rights in respect of them (or any of them) are granted to the Customer or to be implied from the Contract. No provision of the Contract shall confer a right on the Customer to utilise any such Intellectual Property Rights nor entitle the Customer to hold itself out or otherwise represent itself as a stockist or authorised distributor of any such persons or entities.

11. PRICE AND PAYMENT

- 11.1 Without limiting the provisions of clause 11.2, the price of the Goods shall be the price set out in the Order Acknowledgement, or, if no price is quoted, the price set out in ILS's published price list in force as at the date of delivery.
- 11.2 ILS may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond ILS's control (including, but not limited to: foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing or sourcing/international procurement costs);
 - (b) any request by the Customer to change the delivery date(s), quantities (including but not limited to shipment quantities), types, colour or finishes of Goods ordered

provided that nothing in this clause shall require ILS to accept such instructions; or

- (c) any delay caused by any instructions of the Customer or failure of the Customer to give ILS adequate or accurate information or instructions.

11.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to ILS at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

11.4 Payment for the Goods must be made in advance of delivery to the bank account nominated in writing by ILS. Time for payment shall be of the essence of the Contract.

11.5 If ILS (at its absolute discretion) agrees in writing to extend the time for payment referred to in clause 11.4, the Customer shall pay each invoice submitted by ILS:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by ILS and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by ILS, and

time for payment shall be of the essence of the Contract.

11.6 If the Customer fails to make a payment due to ILS under the Contract by the due date, then, without limiting ILS's remedies under clause 13 (*Termination*), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12. LIMITATION OF LIABILITY

12.1 Without limiting the provisions of clause 8.9, the restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Nothing in in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees,

- agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (d) any other liability that cannot be limited or excluded by law.
- 12.3 Subject to clause 12.2 and without limiting the provisions of clause 8.9, ILS's total liability to the Customer shall not exceed the price of the Goods under the Contract.
- 12.4 Nothing in this clause 12 shall limit the Customer's payment obligations under the Contract.
- 12.5 Subject to clause 12.2, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill; and
 - (f) indirect or consequential loss.
- 12.6 **No liability for claims not notified within 1 (one) month:** Unless the Customer notifies ILS that it intends to make a claim in respect of an event within the notice period, ILS shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire 1 (one) month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail. This clause 12.6 is without limitation to the provisions of clauses 8.9 and 8.11.
- 12.7 This clause 12 shall survive termination of the Contract.

13. TERMINATION

- 13.1 Without limiting its other rights or remedies, ILS may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) The Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer commits a material breach of any term of the Contract;
 - (c) the Customer takes any step or action in connection with its entering administration,

provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring previously approved in writing by ILS), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring previously approved in writing by ILS), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (d) a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability partnership or partnership);
- (e) the Customer (being an individual) is the subject of a bankruptcy petition, application or order;
- (f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 (fourteen) days;
- (g) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010);
- (h) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (i) the Customer suspects 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 (being an individual) is deemed either unable to pay his debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (j) the Customer's financial position deteriorates to such an extent that in ILS's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights or remedies, ILS may suspend provision of the Goods under the Contract or any other contract between the Customer and ILS if the Customer becomes subject to any of the events listed in clause 13.1(c) to clause 13.1(j), or ILS reasonably believes that the Customer is about to become subject to any of them, or the Customer fails to pay any amount due under the Contract on the due date for payment.

13.3 On termination of the Contract for any reason the Customer shall immediately pay to ILS all of ILS's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no

invoice has been submitted, ILS shall submit an invoice, which shall be payable by the Customer immediately on receipt.

13.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

14. FORCE MAJEURE

14.1 ILS will not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.

14.2 If a Force Majeure Event takes place that affects the performance of ILS's obligations under the Contract:

- (a) ILS will contact the Customer as soon as reasonably practicable to notify the Customer;
- (b) without limiting the provisions of clause 14.2(c) below, ILS's obligations under the Contract will be suspended and the time for performance of its obligations will be extended for the duration of the Force Majeure Event. Where the Force Majeure Event affects ILS's delivery of the Goods to the Customer, ILS will arrange a new delivery date with the Customer after the Force Majeure Event is over;
- (c) if the period of delay or non-performance continues for 30 days, ILS may (at its discretion) terminate the Contract by giving 14 days written notice to the Customer.

15. GENERAL

15.1 **Assignment and other dealings.**

- (a) ILS may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

15.2 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties,

representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 15.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.6 **Notices**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or to such other address specified in the Order Acknowledgement; or
- (ii) sent by fax to its main fax number or sent by email to the address specified in the Order Acknowledgement or to such other fax number or email address as may be confirmed in writing from time to time by one party to the other.

- (b) Any notice or communication shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or, if delivered by a commercial courier, at the time recorded by the delivery service; and

- (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume **PROVIDED THAT** and without limiting the provisions of clause 14 (*Force Majeure*), in the case of notices or other communications to ILS, the Customer does not receive an electronic automated out of office or delivery failure notification after sending such notice or other communication.

In this clause 15.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.7 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.8 **Governing law and Jurisdiction.** 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. 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.