



Terms of purchase

1 General

1.1 These General Terms for Purchase of Products and Tools (“General Terms”) are part of the Supply Agreement that has been made by and between Icen Windows and Seller (the “Agreement”). The purpose of these General Terms is to set forth the terms and conditions according to which Seller shall deliver Products to Icen Windows and shall apply to any and all purchase of Products made by Icen Windows. In case of conflict between Seller’s own general terms and conditions of sale and these General Terms, these General Terms shall prevail.

1.2 For the avoidance of doubt, these General Terms do not include or imply any obligation whatsoever for Icen Windows to order or purchase any Products from Seller.

1.3 Any Affiliate (as defined in Clause 2.1) to Icen Windows shall have the right to purchase Products from Seller on the terms and conditions as set forth in these General Terms. For the avoidance of doubt, an Affiliate shall have the same rights under these General Terms as Icen Windows has.

1.4 Any exemptions or variations agreed upon regarding these General Terms shall be in writing and be signed by a duly authorised representative of Icen Windows and Seller in order to be valid.

2 Definitions

2.1 In this Agreement:

“Affiliate” means, in relation to a Party, a company or other entity which (a) is controlled, directly or indirectly, by such Party, (b) controls, directly or indirectly, such Party (c) is under common control with such Party, or (d) is specified by Icen Windows as partner in writing, where the expressions “is controlled”, “controls” and “is under common control with” shall be interpreted as referring to control of more than 50% of the voting power by virtue of ownership.

“Documentation” means drawings, technical descriptions, software and other similar documents, including any Specification, that are furnished by Icen Windows to Seller or created by Seller under this Agreement.

“Intellectual Property Rights” means any and all intellectual property rights existing worldwide, including any and all patents of inventions, registered industrial designs, trade secrets, utility models, know-how, mask work rights, and other protected information, including applications for patent or registration, and copyrights, but specifically excluding trademark rights.

“Order” shall have the meaning set forth in Clause 3.1.1.

“Order Confirmation” shall have the meaning set forth in Clause 3.1.1.

“Products” means any product or tool (including equipment) ordered by Icen Windows from Seller set forth in terms of required Specification.

“Purchase Order” shall have the meaning set forth in Clause 3.1.1.

2.2 Other capitalised words and expressions shall have the respective meaning ascribed to them elsewhere in these General Terms.

3 Order and delivery

3.1 Purchase Order

3.1.1 Icen Windows may order Products by providing Seller a written Purchase Order by fax, e-mail or by other communication as agreed by the Parties. The Purchase Order may specify the ordered Products (including product number for each article), delivery terms, order number, name of the Parties, date, information regarding point of contact, requested quantity, and applicable price and discount (the “Purchase Order”). Seller shall confirm and accept the Purchase Order upon the receipt of the Purchase Order within three (3) business day (the “Order Confirmation”). The Purchase Order and Order Confirmation constitute a binding order (the “Order”).

3.1.2 For the avoidance of doubt, if Icen Windows has not received an Order Confirmation from Seller by the end of the previous mentioned time period of three (3) business days, the Purchase Order shall be deemed accepted by Seller. Furthermore, except for Purchase Orders issued as specified above, Icen Windows accepts no responsibility for any materials or products. Seller shall be solely responsible for materials and products purchased, ordered, or manufactured by Seller.

3.1.3 Seller shall deliver the complete Products ordered by Icen Windows in accordance with the specifications, terms and conditions stated in each Purchase Order issued by Icen Windows.

3.2 Delivery terms and consequences of delay in delivery

3.2.1 Unless otherwise stated in the Purchase Order, the delivery time shall not exceed one (1) day for Products in stock as requested by Icen Windows in writing and three (3) days for other Products. Delivery shall include the quantity of Products as specified in Purchase Order. Deliveries under the specified quantities shall be considered as delay in delivery. Deliveries over the specified quantities shall be considered as defect, unless otherwise expressly agreed by the Parties.

3.2.2 When delivering Products in stock (as requested by Icen Windows), Seller shall apply the principle of first-in-first-out, meaning that Seller shall include the oldest Products of such stock in the delivery before delivering new Products to Icen Windows.



3.2.3 Unless otherwise specified in the Purchase Order, Products shall be delivered DAP IcenI Windows' place of business. Delivery terms shall be interpreted in accordance with the latest version of ICC Incoterms (at present Incoterms 2010).

3.2.4 Seller shall deliver the Products and related materials and information that may be necessary for IcenI Windows's intended use of the Products, such as manuals and warnings texts. Seller shall further attach a list which completely identifies the materials and information delivered. Seller shall perform all necessary actions to deliver within the agreed delivery time.

3.2.5 Seller shall arrange for delivery to the destination with care, using proper means of transport and under customary terms and conditions. Seller shall ensure that Products are covered by insurance under reasonable terms and conditions during the transport and storage of Products.

3.2.6 Immediately when Seller becomes aware that a delivery cannot be made within the agreed times, Seller shall notify IcenI Windows of the delay immediately, specifying when the delivery can be executed, and which actions have been taken to ensure the delay has been mitigated. Upon receipt of such notification, or upon actual delay, IcenI Windows shall have the right to; (i) cancel Purchase Orders for Products that have not been delivered, (ii) procure Products from another source and be entitled to compensation from Seller for any costs and price additions, and (iii) make use of other remedies that may be available under this Agreement or applicable law.

3.2.7 In addition to what is stated in Clause 3.2.5, and in case of delay in delivery, Seller shall pay liquidated damages with three percent (3%) of the total value of the ordered Products for each business day until delivery, even if the delay is partial. The total amount of liquidated damages shall not exceed twenty five percent (25%) of the total value of the ordered Products.

3.2.8 In case of defects in the Products, Seller shall pay liquidated damages with three percent (3%) of the total value of the ordered Products for each business day/hour, even if the delay is partial until Seller delivers to IcenI Windows Products conforming to the Specification, provided that IcenI Windows has notified Seller of such defects in writing. The total amount of liquidated damages shall not exceed twenty five percent (25%) of the total value of the ordered Products.

3.2.9 In addition to Clause 3.2.7 and Clause 3.2.8 above, IcenI Windows shall have the right to claim compensation for costs, damages or losses that exceed the amount Seller has paid as liquidated damages. IcenI Windows shall also have the right to additional remedies in accordance with this Agreement and applicable law.

3.3 Inspection and acceptance

3.3.1 Seller shall control that Products comply with the Specification and the quality requirements set forth in this Agreement. Each delivery shall be accompanied by a signed delivery slip as a confirmation that the Products have been inspected. The delivery slip shall specify the date for the control and name of the person who performed the control.

3.3.2 IcenI Windows shall have no obligation to inspect Products upon arrival. Notwithstanding the foregoing, some shipments of Products to IcenI Windows will nevertheless be roughly inspected upon receipt with a view to determine whether the Products shipped to IcenI Windows conform to the Order (including quantities, styles, packing, or labelling). IcenI Windows shall have the right to reject shipments of Products from Seller, which do not conform to Order.

3.3.3 Where and when discrepancies are found or suspected either as a result of inspection conducted in the stores or as a result of rough inspection upon arrival, a complete inspection of the shipment may be made by IcenI Windows. IcenI Windows shall charge back Seller and Seller agrees to pay all costs incurred by IcenI Windows due to such inspections.

3.3.4 Seller shall always comply with IcenI Windows's Code of Conduct. IcenI Windows, or any third party appointed by IcenI Windows (e.g. an IcenI Windows representative), shall at all times be entitled to inspect Seller's production plants and the production plants of any subcontractor with respect to production, control of quality systems, quality control of Products and to carry out random sampling and conduct other necessary investigations of quality and delivery performance, labour conditions. Seller shall fully cooperate with IcenI Windows in such inspections. IcenI Windows's right to a third-party inspection is subject to that IcenI Windows has notified Seller at least three (3) days before such inspection.

3.3.5 IcenI Windows may return any claimed defective and non-conforming Products with a written rejection statement specifying the alleged failure or non-conformity. Seller shall then furnish IcenI Windows with conforming Products without delay until IcenI Windows can accept the Products. IcenI Windows's accept shall not affect Seller's responsibility for defects under this Agreement or applicable law.

4 Support and service

Seller shall provide IcenI Windows with support and services in a manner as agreed by the Parties and to the extent necessary to enable IcenI Windows to make use of the Products and exercise its rights in accordance with this Agreement.

5 Changes to Products

5.1 IcenI Windows may request changes and/or modifications to Products and/or to the Specification. Upon receipt of such request and without delay, Seller shall inform IcenI Windows of the consequences associated with such modifications. Agreed upon modifications shall be documented in the Specification or in a revised Purchase Order, signed by duly authorised representatives of both Parties. Seller agrees to implement the agreed upon modifications.

5.2 Seller shall inform, without undue delay, IcenI Windows of any material changes to the Products, such as changes in the material used for the Products, the production process or equipment, manufacturing technology (including tools, methods and tests), quality assurance systems, packaging or packaging methods, production plants or if another sub-contractor is used by Seller. Any material changes are subject to IcenI Windows's prior written consent.



6 Quality, defects, and warranties

6.1 Quality requirements

Seller shall, continuously during production of a Product and prior to any delivery or control, ensure that the production methods and Products comply with these General Terms (including but not limited to compliance with the Purchase Order, Specification, relevant laws or regulations, standards (including any applicable ISO standard, industry standards, and/or any other standard referred to by Icen Windows), directions, instructions and other regulations issued by authorities and control organisations.

6.2 Warranties

6.2.1 Seller warrants that the Products:

- a) are delivered, manufactured and will function in accordance with the Specification and other materials provided by Seller (including any provided quality certifications),
- b) are new when delivered,
- c) have the properties as specified by Seller,
- d) comply with the samples, descriptions, drawings and other materials provided by or referenced to by Seller,
- e) are delivered together with any related material and information in accordance with Clause 3.2.4 (if applicable),
- f) do not constitute danger to person or property due to materials or manufacturing when used in accordance with the Agreement, and
- g) otherwise shall (i) be free from any defects in design, materials, manufacturing and construction, (ii) be merchantable, (iii) be of good material and workmanship, (iv) be reliable and fit for their intended purpose, and (v) perform in such a manner as to ensure the safe and proper operation of the Products.

6.2.2 Any deviation from any of the warranties and representations set forth above in Clause 6.2.1 above shall be regarded as a defect. However, Seller shall only be liable for defects that have been notified by Icen Windows within six (6) months from the date that such defect became known to Icen Windows.

6.2.3 Except for subsections b) and e) in Clause 6.2.1, which will apply at the time of the delivery, the warranty period, under which Seller shall be liable for defective Products shall be ten (10) years from delivery to Icen Windows.

6.2.4 Seller shall, upon Icen Windows's request, issue a delivery certificate, which guarantees that the Products fully comply with the Specification.

6.3 Consequences of defects

6.3.1 In the event of breach of the warranties and/or quality requirements as defined herein, Seller shall, at its own cost and expense, without delay and at Icen Windows's sole option, repair or replace the defective Products or reimburse Icen Windows the payments for the defective Products.

6.3.2 Furthermore, Seller shall indemnify and hold Icen Windows harmless from any costs, damages or losses (including any special, indirect, incidental or consequential costs, damages or losses of any kind, such as loss of profit, loss of production, loss of business or business opportunities, loss of revenue or anticipated savings or losses due to third party claims) that Icen Windows incurs due to Seller's breach of warranties and/or quality requirements as defined herein.

6.3.3 In case of defective Products, Icen Windows reserves the right to:

- a) repair or replace any defective Products, at Seller's cost and expense, if such defect requires the immediate (e.g. due to Icen Windows's production or Icen Windows's obligations towards a third party) repair or replacement of Products; and/or
- b) carry out quality controls, at Seller's cost and expense, of Products in order to avoid production interruption and/or systematic defects in the product.

7 Price and payment

7.1 Price and payment terms

7.1.1 For Products accepted by Icen Windows, Icen Windows shall pay to Seller the price as specified in the agreed Pricelist for each Product. Seller shall send an invoice to Icen Windows for the Products upon delivery provided that such delivery has been accepted by Icen Windows, unless otherwise expressly agreed by the Parties. Payment shall be made within sixty (60) days from receipt of the invoice.

7.1.2 The prices set forth in the price list shall include packaging and materials. Seller shall be responsible for costs and expenses for return of packaging materials, if any.

7.1.3 Unless otherwise expressly agreed, during the term of this Agreement, Seller shall have the right to change the prices only if such changes have been subject to Icen Windows's prior approval.

7.2 Consequence of delayed payment

Icen Windows shall pay monthly interest on late payments in accordance with applicable law, provided however that Seller has requested payment and notified Icen Windows of such claim within reasonable time after commencement of the delayed payment. The total liability of Icen Windows with respect to late payments will be limited exclusively to payment of interest in accordance with this Clause 7.2 and no other remedies shall be available.



8 Product liability

Should a Product cause damage to persons or to property, Seller shall, in addition to Seller's other liability set forth in this Agreement or by way of law and without any limitation in time, indemnify and hold IcenI Windows harmless for any third-party claims related to such damage.

9 Insurance

Seller shall maintain a proper liability insurance (including product liability) with a first-class insurance company (financially sound and internationally reputed) covering its liability pursuant to these General Terms and shall, upon IcenI Windows's request, provide evidence thereof.

10 Intellectual Property Rights

10.1 Ownership

10.1.1 Unless otherwise agreed by the Parties, each Party or such Party's licensor shall be the exclusive owner of all right, title and interest in and to any existing technology and Intellectual Property Rights (including associated Intellectual Property Rights). Furthermore, any Intellectual Property Rights provided by a Party to the other Party may not without the prior written approval of the Party providing the Intellectual Property Rights be copied, reproduced, transferred or otherwise distributed to third parties. However, this shall not apply to any express rights set forth in this Agreement or for such rights that are necessary for IcenI Windows in order to acquire ownership to the Products and to use and further distribute the Products without limitations.

10.1.2 Seller warrants that to the best of its knowledge, the Products or any improvements of the Products (unless based on specifications and instructions provided by IcenI Windows) as well as Seller's existing Intellectual Property Rights, do not use or infringe any property or Intellectual Property Rights of a third party. Unless IcenI Windows has approved in writing, Seller agrees not to introduce elements or property in the Products that requires licenses and agreements for IcenI Windows's use of the Product.

10.1.3 Seller shall store IcenI Windows's Documentation and Products separate from its own property and clearly identify Documentation and Products as property of IcenI Windows. Seller shall not use any Documentation or Products for any purposes other than for purposes of performing its obligations under this Agreement. Seller shall ensure at all times that Documentation and Products can be returned to IcenI Windows in fully functional condition upon IcenI Window's request.

10.2 Infringement

10.2.1 Seller agrees to indemnify and hold IcenI Windows harmless against any liabilities, losses, damages, costs and expenses (including legal expenses) arising out of any claim or suit that Seller's Intellectual Property Rights infringes any Intellectual Property Right of a third party.

10.2.2 Seller's indemnification obligations are subject to that (i) IcenI Windows will provide Seller with a written notice of any claimed infringement; (ii) IcenI Windows will permit Seller to assume and control the defense and settlement of any claimed infringements; and (iii) IcenI Windows will provide Seller with such assistance, documents, authority and information as it may reasonably require in relation to any claimed infringements and defense or settlement thereof.

10.2.3 In the event of an infringement claim regarding the Intellectual Property Rights of a third party, or in the event that a risk for such infringement is considered to exist by Seller, Seller shall at its own cost and option:

- a) create an opportunity for IcenI Windows to continue to use the Product in accordance with this Agreement;
- b) modify and adjust the Product to become non-infringing without its capacity or functionality being decreased; or
- c) deliver to IcenI Windows another non-infringing solution, provided that such solution substantially corresponds to the capacity and functionality of the Product.

11 Consequences of termination

Any outstanding Orders not yet fulfilled upon termination or expiration of the Agreement shall continue to be binding on the Parties and the Parties shall fulfil such Orders in accordance with these General Terms.

11.2.2 In the event of cancellation or termination of the Agreement for any reason whatsoever, Seller shall immediately discontinue all use of IcenI Windows's Documentation.

11.2.3 Seller shall within ten (10) days from termination of the Agreement return to IcenI Windows any and all Confidential Information, Documentation, and all other information, descriptions, drawings, designs and other material in whatever form or format provided by IcenI Windows to Seller under this Agreement and certify its return of such Confidential Information.

12 Survival

Upon termination of this Agreement, regardless of the reason for such termination, the following Clauses shall survive and continue in full force and effect; Clause 6 (Quality, defects and warranties), Clause 8 (Product liability), Clause 10 (Intellectual Property Rights), Clause 11 (Consequences of termination).