

GENERAL TERMS AND CONDITIONS - PHYSEE

1. DEFINITIONS

- 1.1. In these General Terms capitalized terms shall have the following meaning:
- (a) Buyer: the Party requesting, ordering, buying and/or receiving any Product(s) sold by the Seller.
 - (b) Contract: any agreement pursuant to which and/or orders upon which the Seller sells Product(s) to the Buyer.
 - (c) EU Dispute: any dispute with a Buyer who is resident and/or registered within the European Union arising in connection with these General Terms or with any Contract or subsequent contracts resulting therefrom, including disputes relating to the existence, validity and/or termination thereof.
 - (d) General Terms: these general terms and conditions of the Seller.
 - (e) Non-EU Dispute: any dispute with a Buyer who is resident and/or registered outside the European Union arising in connection with these General Terms or with any Contract or subsequent contracts resulting therefrom, including disputes relating to the existence, validity and/or termination thereof.
 - (f) Parties: means the Seller and the Buyer collectively.
 - (g) Party: means the Seller or the Buyer as the case may be.
 - (h) Product(s): any and all transparent double-paned windows which convert light into electricity and/or any other products of, or sold by, the Seller.
 - (i) Purchase Price: means the price for the relevant Product(s) which is determined in the Contract.
 - (j) Seller: PowerWindow B.V. registered with the trade register of the chamber of commerce under number 61486183 or any other entity within the group of companies of PowerWindow B.V. selling the Product(s) as specified in the Contract.

2. APPLICABILITY OF THE TERMS AND CONDITIONS

- 2.1. These General Terms apply to all Contracts, as well as to all requests, quotations, offers, instructions, orders, order confirmations and other transactions among the Parties in relation to the sale of one or more Products.
- 2.2. The Contract and the General Terms constitute the whole and only agreement and understanding between the Parties in relation to its subject matter. Any reference to applicability of general terms and conditions of the Buyer is explicitly waived by the Buyer and renounced by the Seller.
- 2.3. Any deviations from these General Terms can only be agreed upon by the Parties in writing.
- 2.4. In the event that the terms of the Contract deviate from the General Terms, the terms of the Contract shall prevail.

3. OFFERS AND MODELS

- 3.1. All offers and proposals made by the Seller are non-binding and can be revoked at any time. All prices in offers and proposals made by the Seller shall be in EUR.

- 3.2. All models and samples of or relating Products shown or provided by the Seller to the Buyer are shown or provided by way of illustration only.

4. PAYMENT

- 4.1. The Purchase Price is exclusive of taxes, international transportation costs, custom duties, levies and other charges whatsoever which, if applicable, shall be payable by the Buyer in addition to the Purchase Price.
- 4.2. The Purchase Price, and the additional charges set forth in Clause 4.1 of these General Terms if applicable, shall be paid by the Buyer to the Seller within 30 (thirty) days after the date of the invoice. All payments made by the Buyer to the Seller shall be made in EUR.
- 4.3. The Buyer is not entitled to withhold or deduct or to set-off any payment from or against any amounts due to the Seller.

5. INTEREST AND COLLECTION

- 5.1. If the Buyer fails to pay any amount within the 30 (thirty)-day payment term referred to in Clause 4.2, the Seller shall be entitled to send a default notice to the Buyer and if no payment has been received from the Buyer within 7 (seven) days after the date of the aforementioned default notice, all claims for payment of the relevant outstanding amount shall be immediately due and payable in full by the Seller. In addition, the Buyer shall be obliged to pay to the Seller interest of 1% (one per cent) per month with respect to the outstanding amount until the date of payment in full, notwithstanding any other rights the Seller may have under the Contract, these General Terms or the applicable laws.
- 5.2. Any (extrajudicial or other) costs incurred by the Seller in relation to the collection of any amount (including but not limited to legal expenses, damages and/or penalties) shall be borne by the Buyer.

6. OWNERSHIP AND RISK

- 6.1. The Product(s) sold by the Seller to the Buyer shall be for the risk of the Buyer as of delivery thereof.
- 6.2. The ownership of a Product sold and/or delivered by the Seller to the Buyer remains with the Seller until all payment obligations of the Buyer vis-à-vis the Seller have been settled in full.
- 6.3. As long as the Seller is the owner of a Product sold by the Seller to the Buyer, the Buyer shall not sell, lease, pledge, create any lien upon, exercise any right of retention (*retentierecht*) or otherwise dispose of, or encumber any such Product(s).
- 6.4. If a third party seizes any Product which is subject to retention of title or wishes to establish or assert any right to such Product while the Seller has ownership of such Product the Buyer shall (i) immediately inform the Seller thereof in writing, (ii) provide the Seller with a copy of the available documents concerning such seizure or other enforcement of any third party right and (iii) inform such third

party in writing that the Seller has ownership of such Product(s).

7. DELIVERY AND INSTALLATION

- 7.1. Any dates specified by the Seller for delivery of the Product are indicative and non-binding.
- 7.2. In the Netherlands delivery shall be to the Buyer's warehouse or other location as agreed among the Parties in writing. All other deliveries shall be EXW the Seller's premises at Molengraaffsingel 10, Delft, the Netherlands.
- 7.3. Failure to meet the specified delivery time shall not entitle the Buyer to compensation or to terminate or dissolve the Contract.
- 7.4. If the Buyer refuses to accept the Product upon delivery by the Seller, all costs and expenses resulting therefrom, such as transportation costs, customs duties and handling and storage costs) will be reimbursed and paid by the Buyer to the Seller.
- 7.5. To facilitate a proper installation of a Product at delivery thereof at the Buyer's request the Seller shall provide the Buyer with a list of contractors who are experienced with the installation of the Products of the Seller. Installation of the Product(s) is for the account and risk of the Buyer.

8. WARRANTY AND INSPECTION

- 8.1. Products are delivered with a 12 (twelve)-month warranty in respect of the glass used in the Product (if relevant), provided that and only if such relevant defect is covered by the warranty of the manufacturer of the glass used for the relevant Product.
- 8.2. The warranty of Clause 8.1 does not apply to any defects which are not covered by the warranty of the manufacturer of the glass used for the relevant Product, or which result from any incorrect operation, installation, storage, maintenance or transport or any other event that must be attributed to the Buyer. The Seller does not give any warranty in relation to the energy and power production of a Product. Any and all used, or second-hand, Product(s) sold to the Buyer are sold 'as is', without any form of warranty.
- 8.3. Each Product must be checked by the Buyer upon delivery with respect to visible defects and which (if any) must be reported to the Seller in writing within 24 (twenty-four) hours after delivery.
- 8.4. The Buyer will not be entitled to any damages (i) if the defect is reported after 24 (twenty-four) hours have lapsed since delivery, and/or (ii) which result from any incorrect operation, installation, storage, maintenance, transport or any other event that can be attributed to the Buyer.
- 8.5. If the Buyer fails to inform the Seller of any defects in accordance with this Clause 8, any warranty claim of the Buyer shall lapse.

9. LIABILITY

- 9.1. The liability of the Seller is limited to compliance with the warranty set forth in

Clause 8 of these General Terms. The Seller shall not be liable to the Buyer or any third parties at any time for incidental, indirect or consequential damages or damages resulting from product liability, unless in case of gross negligence or wilful misconduct of the Seller.

- 9.2. If the Seller is liable for damages to the Buyer, such liability shall be limited to the amount paid out to the Seller under the manufacturer's warranty in respect of the glass used in the relevant Product.

10. TERMINATION

- 10.1. A Contract may be terminated by the Seller for a breach of Contract by the Buyer, provided that due notice has been given of the alleged breach and such breach has not been cured within 14 (fourteen) days thereof.
- 10.2. Upon the termination of a Contract, all rights and obligations of the Parties hereunder shall cease, except for (i) the obligation of the Buyer to pay any amounts due, or becoming due, as of, or after the date of, termination, (ii) any other obligation set forth in these General Terms or in a Contract which is to take effect after the date of termination and (iii) the provisions of Clause 12 (*Governing Law and Jurisdiction*) of these General Terms.

11. MISCELLANEOUS

- 11.1. Variations to these General Terms or to a Contract shall only be of effect if they are agreed in writing and signed by or on behalf of each Party.
- 11.2. Each of the provisions of these General Terms and/or a Contract is severable. If any such provision is or becomes illegal, invalid or unenforceable (whether in whole or in part) in any respect under the law of any jurisdiction:
- (a) that shall not affect or impair the legality, validity or enforceability in that jurisdiction of the other provisions of these General Terms and/or a Contract (if these other provisions are not inextricably related to the illegal, invalid or unenforceable provision), or of that or any provisions of these General Terms and/or a Contract in any other jurisdiction; and
- (b) the Parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with one or more provisions which are not illegal, invalid or unenforceable and which differ from the replaced provision as little as possible, always taking into account the substance and purpose of these General Terms and/or the Contract as applicable.
- 11.3. The Seller may, with written notice to the Buyer, assign, transfer or otherwise dispose of any of its rights or obligations under any Contract to any of its affiliates, to which assignment the Buyer hereby consents.

12. GOVERNING LAW AND JURISDICTION

- 12.1. These General Terms and any Contract will be governed exclusively by and construed in accordance with the laws of the Netherlands. Applicability of the Convention on the International Sale of Goods is excluded.
- 12.2. All EU Disputes will be referred exclusively to and shall be finally settled by the competent courts of Amsterdam,

the Netherlands. This Clause 12.2 is for the benefit of the Seller only, such that the Seller shall never be prevented from taking proceedings relating to an EU Dispute in any other courts with jurisdiction.

- 12.3. All Non-EU Disputes will be settled exclusively by arbitration under the Arbitration Rules of the Netherlands Arbitration Institute (the "NAI"). Any arbitration shall be held in Amsterdam, the Netherlands, and all proceedings shall be conducted in English. There shall be 3 (three) arbitrators. One arbitrator shall be appointed by the Party against whom arbitration is sought and a second arbitrator shall be appointed by the Party initiating the arbitration, in each case within 15 (fifteen) days of any Party's request in writing for arbitration under this Clause 12.3. If pursuant to the preceding sentence an arbitrator is not timely appointed, the president of the NAI shall at the request of any Party appoint an arbitrator on behalf of such failing Party. The third arbitrator shall act as the chairman of the arbitral tribunal, and shall be an independent arbitrator appointed by the two arbitrators appointed by the Parties (or the President of the NAI as applicable). The arbitrators shall decide according to the rules of law (*naar de regelen des rechts*). Consolidation of arbitral proceedings with other arbitral proceedings, as provided in Section 1046 of the Netherlands Code of Civil Procedure, is excluded. This Clause 12.3 is for the benefit of the Seller only, such that the Seller shall never be prevented from taking legal proceedings relating to a Non-EU Dispute in court which has jurisdiction.