

Terms of Sale

Last Revised: 08/01/2015

Terms of Sale; IconX Purchase Orders

PLEASE READ THESE TERMS OF SALE ("**SALE AGREEMENT**") VERY CAREFULLY. YOU ("**you**" or "**Customer**") AGREE TO BE BOUND BY THIS SALE AGREEMENT UNLESS YOU HAVE SIGNED A SEPARATE PURCHASE AGREEMENT WITH ICONX, LLC ("**IconX**") REGARDING YOUR PURCHASE OF ICONS, IN WHICH CASE THE SEPARATE AGREEMENT GOVERNS. YOUR ICONX PURCHASE ORDER IS A PART OF THIS SALE AGREEMENT AND IS NOT A SEPARATE PURCHASE AGREEMENT. IF THERE IS A CONFLICT BETWEEN THESE TERMS OF SALE AND THE TERMS OF THE ICONX PURCHASE ORDER, THE CONFLICT WILL BE RESOLVED IN FAVOR OF THE CONFLICTING TERMS OF THE ICONX PURCHASE ORDER UNLESS ICONX OTHERWISE AGREES IN A SEPARATE WRITING.

Important Information about this Sale Agreement

The IconX Purchase Order becomes part of this Sale Agreement when you sign the IconX Purchase Order. This Sale Agreement becomes a binding legal contract between you and IconX when the IconX Purchase Order is accepted by IconX. All IconX Purchase Orders are subject to acceptance by IconX. An IconX Purchase Order is deemed accepted by IconX only if and when IconX issues an invoice to you referencing the Purchase Order Number of such Purchase Order.

The terms of this Sale Agreement are subject to change by IconX without prior notice, except that the terms of sale posted on the IconX website (www.iconxusa.com) at the time the Customer initially submits an Order will govern the Order in question. This Sale Agreement (which includes the terms of the IconX Purchase Order as described above and the IconX invoice as described above) constitute the entire agreement between you and IconX relating to your purchase of Icons from IconX. The Sale Agreement may only be modified or terminated by a writing signed by an authorized agent of IconX.

Definitions; Interpretation

"**Icon**" means IconX's patented shear connector for insulated composite concrete wall panels. "**IconX Purchase Order**" means a purchase order for the purchase of Icons from IconX that is signed by the Customer and accepted in writing by IconX. "**Icon Wall Panel**" means IconX's patent pending (or patented, if and when such patent issues) insulated composite concrete wall panel. "**Order**" means the Customer's order of Icons as evidenced by an IconX Purchase Order. All Orders are separate and independent of each other. "**Person**" means any natural person, partnership, corporation, limited liability company, cooperative, trust, estate, custodian, nominee, governmental organization, or any other individual or entity in its own or any representative capacity. "**Specifications**" means IconX's descriptions, statements, drawings, designs, guidelines, and other written instructions relating to the construction of an Icon Wall Panel, including the IconX Design Manual, as any of the same may be modified in writing from time to time by IconX.

Pronouns used in this Sale Agreement shall include the corresponding masculine, feminine and neuter forms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "herein," "hereof," "hereto," "hereunder," and similar terms shall refer to this Sale Agreement, unless the context otherwise requires. The words "shall" or "will" are intended to be mandatory in nature and the word "may" is intended to be permissive in nature. The definition of a particular defined term in this Agreement will apply to that term and to its various tenses and derivatives.

Use of Licensed Professional Engineer

The Customer agrees to use a licensed Professional Engineer in good standing and with knowledge of concrete wall panel design to design each project for which Icons are being purchased pursuant to this Sale Agreement.

Payment Terms

All Orders must be paid to IconX in full prior to shipment, either by check, wire transfer, ACH Debit, or credit card, unless IconX in its absolute discretion grants credit terms or other terms to the Customer with respect to a particular Order as evidenced by such credit or other terms being noted on the applicable IconX Purchaser Order. All payments for Icons must be made in the currency of the United States of America. Any amount not paid when due shall bear interest from and after the date due at the lesser of 1.5% per month or the maximum rate permitted by applicable law.

Security Interest

The Customer hereby grants IconX a security interest in the Customer's entire unused inventory of Icons to secure the Customer's payment obligations to IconX under this Sale Agreement. The Customer hereby authorizes IconX to file such UCC financing statements in such jurisdictions as IconX deems appropriate to perfect the security interest granted hereby. This Section only applies if IconX has extended credit terms to the Customer or the Customer has paid by check.

Shipping; Title; Risk of Loss

Prices stated are F.O.B. origin, freight prepaid by the Customer to the destination specified in the Order. COD shipments are not permitted. Other terms and conditions may apply for other than standard ground delivery ("**Other Freight Services**"), including, expedited same day delivery, air freight, freight collect, export orders, Customer's carrier, shipments outside the contiguous U.S. or other special handling by the carrier. Any charges incurred for Other Freight Services must be paid by the Customer. Fuel surcharges may be applied. Title and risk of loss pass to the Customer upon tender of shipment to the carrier. Shipping and delivery dates are estimates only. You must notify IconX within 21 days of invoice date if you believe any part of your Order is missing or wrong. If any Icons are damaged in transit, the Customer's only recourse is to file a claim with the carrier.

Export Controls and Related Regulations

The Customer represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including the U.S. Commerce Department Bureau of Industry and Security ("**BIS**") Denied Persons List; Entity List or Unverified List; or the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") Specially Designated Nationals and Blocked Persons List. Customer shall comply with all applicable U.S. economic sanctions and export control laws and regulations, including the regulations administered by OFAC and the Export Administration Regulations administered by BIS.

Permits, Export, and Import Licenses

The Customer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations or other applicable laws or regulations.

Anti-Corruption

The Customer is aware that IconX's business practices prohibit bribery and corrupt behavior in any form. The Customer shall remain in compliance with all applicable laws that relate to money laundering, terrorism, commercial or official bribery or dealing with government officials (including the U.S. Foreign Corrupt Practices Act) and laws implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Customer shall not offer or provide anything of value (cash or cash equivalents, gifts, loans, travel, entertainment, or any other similar benefit) either directly or indirectly to any public sector or government official for the purpose of influencing any act or decision in connection with the purchase, transportation, customs clearance and/or resale of Icons ordered from IconX. The Customer shall not pay a gratuity, bribe or inducement to any public sector or government official, even if it appears customary or consistent with prevailing business practices.

IconX Warranty

All Icons sold by IconX to the Customer will be free from defects in material and workmanship for a period of one year after delivery if properly used in the manufacture of an Icon Wall Panel in accordance with the Specifications. The provisions of this warranty shall not apply, and no warranty of whatever kind shall exist, with respect to any Icon that has been subject to improper use, misuse, improper installation, improper storage, misapplication, negligence or accident, or which has been altered by any Person other than IconX.

The Icons are designed to be used without any alteration (cutting, sanding, melting, etc.). If for any reason it is necessary to modify an Icon, the Customer must immediately notify IconX and follow whatever written instructions are provided by IconX. Any unauthorized alteration of an Icon will automatically void the warranty with respect to all Icons used in the project in which the unauthorized altered Icon was used. Provided that IconX accepts the Icons for return during the limited warranty period, IconX may, at its option: (i) repair; (ii) replace; or (iii) refund the amount paid by the Customer. The Customer must return to the appropriate IconX office, as designated by IconX, shipping costs prepaid, all unused Icons for which a warranty claim has been submitted by Customer and accepted by IconX. IconX's repair, replacement, or refund of amounts paid by the Customer for such Icons shall be the Customer's sole and exclusive remedy.

EXCEPT AS SET FORTH HEREIN AND WHERE APPLICABLE, NO WARRANTY OR AFFIRMATION OF FACT OR DESCRIPTION, EXPRESS OR IMPLIED, IS MADE OR AUTHORIZED BY ICONX. ICONX DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ICONX ALSO DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF IMPROPER USE, MISUSE, IMPROPER INSTALLATION, IMPROPER STORAGE, MISAPPLICATION, NEGLIGENCE, ACCIDENT OR UNAUTHORIZED PRODUCT MODIFICATION. ICONX EXPRESSLY DISCLAIMS ANY LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER BASED ON CONTRACT OR TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, CLAIMS, OR OTHERWISE. ICONX'S LIABILITY IN ALL EVENTS IS LIMITED TO THE PURCHASE PRICE PAID FOR THE PRODUCT THAT GIVES RISE TO THE LIABILITY.

Before returning any Icon, the Customer shall email IconX at Joel@iconXusa.com and provide the date, the original invoice number, the stock number, and a description of the defect. Proof of purchase is required in all cases.

Indemnity

The Customer shall defend, indemnify and hold harmless IconX and its officers, directors, managers, employees, subcontractors and agents (each individually, an “**Indemnified Party**”) from and against any and all any claims, suits, liabilities, damages, settlements, charges, taxes and any other losses or expenses (including reasonable attorneys' fees) (collectively “**Liabilities**”) for physical injury to, illness or death of, any third party regardless of status and damage to or destruction of any tangible property that the third party may sustain or incur, to the extent such Liabilities relate to or arise from the use of Icons; except for such Liabilities arising out of a final judgment of gross negligence or willful misconduct of the Indemnified Party. In any action, suit or proceeding brought against an Indemnified Party by reason of any such claim as specified above, the Customer shall resist and defend such action, suit or proceeding by counsel of the Customer’s choice, at the sole expense of the Customer, provided that (i) the Indemnified Party notifies the Customer promptly in writing of the claim; (ii) the Customer's counsel does not give rise to a conflict of interest with respect to the Indemnified Party; (iii) the Customer has the sole control of the defense and all related settlement negotiations but shall keep the Indemnified Party reasonably informed of status; and (iv) the Indemnified Party provides the Customer with all reasonably necessary assistance, information, and authority to perform the foregoing at the Customer's expense. The omission by an Indemnified Party to give notice of the existence of any claim as provided herein shall not relieve the Customer of its indemnification obligations under this Sale Agreement except to the extent that such omission results in a failure of actual notice to the Customer and the Customer is materially damaged as a result of such failure to give notice. Except with the prior written consent of the Indemnified Party, the Customer shall not consent to entry of any judgment or enter into any settlement that provides for injunctive or other nonmonetary relief affecting the Indemnified Party and that does not include as an unconditional term thereof the giving by each claimant or plaintiff to that Indemnified Party of a release from all liability with respect to such claim.

General Terms

Intellectual Property

The Customer shall have no right, title, or interest in the trade names, trademarks, trade dress, copyrights, patents, domain names, product names, catalogs or any other intellectual property rights (“**IP**”) of IconX, or any IP owned by manufacturers and/or suppliers to IconX. All materials contained in IconX catalogs, manuals or on its websites are subject to the ownership rights of IconX and its manufacturers and/or suppliers. The Customer shall have no right to copy or use any IP of IconX or its manufacturers and/or suppliers without IconX’s written permission.

Force Majeure

The obligations of IconX under this Sale Agreement shall be suspended while and to the extent IconX is prevented from complying therewith in whole or in part by consequences of an event of Force Majeure. If an event of Force Majeure results in a permitted suspension of performance of IconX’s obligations hereunder, IconX will promptly give the Customer written notice of such suspension and the nature of the Force Majeure event causing the same. IconX will resume performance of its obligations under this Sale Agreement as soon as reasonably possible after the circumstances preventing such performance shall have terminated, and will give reasonable prior notice of such resumption of performance to the Customer in writing. “**Force Majeure**” means fire, flood, hurricane, tsunami, tornado, volcano, typhoon, utility failure or interruption, riot, war, rebellion, explosion, terrorist action, disease, labor strike, lockout or stoppage, natural or man-made catastrophe, hostilities, vandalism, act of God, business failure of material suppliers, or other material cause for nonperformance beyond the nonperforming party’s reasonable control and mitigation.

Relationship

IconX and the Customer are independent contractors and not principal and agent. Nothing contained in this Sale Agreement shall be construed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. The Customer does not have the right to bind or otherwise obligate IconX in any manner, nor may the Customer represent to anyone that it has the right to do so.

No Third Party Beneficiaries

Nothing expressed or referred to in this Sale Agreement confers any rights or remedies upon any Person that is not a party or permitted assign of a party to this Sale Agreement.

Assignment; Binding Agreement

Except as otherwise expressly provided by this Sale Agreement, the rights, duties and obligations of the Customer under this Sale Agreement may not be assigned, subcontracted, sublicensed, or otherwise delegated to any other Person (whether by operation of law or otherwise) without the prior written consent of IconX, and any attempted assignment, subcontract, sublicense, or other delegation by the Customer that is not in conformity herewith will be void unless IconX agrees otherwise in writing. This Sale Agreement is binding upon, and inures to the benefit of, and is enforceable by, the parties hereto and their respective successors and permitted assigns.

Severability

Whenever possible, each provision of this Sale Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Sale Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Sale Agreement.

Notices

Notice to IconX under this Sale Agreement must be in writing and sent by registered or certified mail (postage prepaid first-class mail and return receipt requested), by overnight delivery service, or by electronic mail to the address below, and will be effective upon receipt.

IconX, LLC
5525 Kaw Drive
Kansas City, KS 66102
Attn: Joel Foderberg, CEO
Email: Joel@iconXusa.com

Governing Law; Forum; Limitations

The rights and obligations of the parties under this Sale Agreement shall not be governed by the provisions of the 1980 United Nations Convention of Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods. Rather, this Sale Agreement shall be governed and construed in accordance with the laws of Kansas without regard to its choice of law rules.

The exclusive jurisdiction for any action arising out of or relating to this Sale Agreement shall be in a State or Federal court located in or having jurisdiction over Johnson County or Wyandotte County,

Kansas. Each party waives any objection to the jurisdiction of or venue in any such court and to the service of process issued by such court and agrees that each may be served by any method of process described in the Kansas or Federal Rules of Civil Procedure. Each party waives any right to claim that any such court is an inconvenient forum or any similar defense.

Unless otherwise prohibited by law, any legal action by the Customer relating to or arising out of this Sale Agreement or any transaction contemplated hereby must be commenced within one (1) year after the cause of action has arisen.

Contact Information

You can contact IconX with any questions or concerns by phone at **844-274-icon (4366)** or by email at Joel@iconXusa.com, or by fax at 913-287-8452. Customer service hours are Monday through Friday, from 9 AM to 5 PM Central Time. Our mailing address is: IconX, LLC, 5525 Kaw Drive, Kansas City, KS 66102