

1. Applicability.

- (a) These terms and conditions of sale (these “Terms”) govern the sale of the goods (“Goods”) by mSolar (“Seller”) to you (“Buyer”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- (b) The accompanying [quotation/confirmation of sale/invoice] (the “Sales Confirmation”) and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Delivery of Goods.

- (a) The Goods will be made available for pick up or delivery to the common carrier transportation company selected by Seller for shipment to Buyer within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.
- (b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.
- (c) Unless the Sales Confirmation provides that delivery of the Goods shall be made DDP, if for any reason Buyer fails to pick up or have the Goods picked up by a common carrier transportation company on the date fixed pursuant to Seller’s notice that the Goods are ready for pick up to Buyer: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- (d) Seller shall use reasonable efforts to meet the dates to make available the Goods specified in the Sales Confirmation, and any such dates shall be estimates only.
- (e) With respect to the Goods’ delivery, Buyer shall (i) cooperate with Seller in all matters relating to the Goods and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of the delivery and storing of the Goods; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Seller to deliver the Goods in accordance with the requirements of this Agreement; (iii) provide such customer’s information as Seller may request to manufacture the panels; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Distribution and /or Sale of the Goods before the date on which the purchase order is placed.
- (f) With respect to the Goods’ delivery, if shipping date is changed 5 days or less prior to the scheduled delivery, Buyer shall be responsible for a \$500.00 back charge for costs associated with transportation rearrangement.
- (g) Buyer shall be responsible for offloading delivered Goods. If Buyer takes longer than 2 hours to offload the Goods, Buyer shall be responsible for a detention fee of \$100.00/hour for each hour, or portion thereof, in excess of 2 hours.

3. Non-delivery.

- (a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- (b) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity.

If Seller delivers to Buyer a quantity of Goods of up to 1% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Buyer’s Acts or Omissions.

If Seller’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods upon receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

7. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "Prices") set forth in Seller's published price list in force as of the date that Seller accepts Buyer's purchase order.

(b) Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the delivery of the Goods.

(c) Unless the Sales Confirmation provides delivery of the Goods shall be made DDP, all Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Further, Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

8. Returned Goods.

Seller may accept returned Goods from Buyer, provided that Seller reserves its right to reject warranty claims on such Goods. For such returned Goods, Buyer shall maintain and comply with adequate written procedures to ensure that any returned Goods are stored appropriately and shall not be cleaned or otherwise refurbished and re-sold or re-used by Buyer or others, without Seller's prior written consent, which may be granted or withheld in Seller's sole and absolute discretion.

9. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller on receipt of Seller's invoice. Buyer shall make all payments hereunder by wire transfer and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due here under and such failure continues for 30 days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. Limited Warranty.

(a) Seller warrants to Buyer that such Goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will repair or replace such Goods per Seller's published Limited Warranty.

11. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR PRODUCTION OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

12. Indemnification.

Each Party agrees to indemnify, defend and hold harmless the other Party and its affiliates, officers, shareholders, members, employees, consultants and advisors (collectively, the “Indemnified Parties”) from and against any and all claims, losses or damages incurred or suffered by any Indemnified Party for (a) any violation of any applicable law or permit to be complied with by such Party; or (b) injury to or death of persons and any loss of or physical damage to the property of any Indemnified Party or any third parties to the extent arising out of or resulting from the gross negligence or willful misconduct of such Party.

13. Insurance.

During the term of this Agreement and for a period of two years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$3,000,000 with financially sound and reputable insurers. Upon Seller’s request, Buyer shall provide Seller with a certificate of insurance from Buyer’s insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 10 days’ advance written notice in the event of a cancellation or material change in Buyer’s insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller’s insurers and Seller.

14. Change in Law.

If a Change in Law occurs that increases Seller’s costs in connection with the performance of its obligations under this Agreement, then Seller shall, upon request and in good faith, negotiate with Buyer in order to reach agreement on amendments to the pricing terms of this Agreement necessary to account for such Change in Law. In the event that the Parties are unable to agree on such amendments to the pricing terms of this Agreement within 15 days following the respective request, then either party may at any time thereafter immediately terminate this Agreement upon notice to the non-terminating party. Seller shall be entitled to payment for Goods delivered and not rejected as of the time of such termination. Change in Law shall mean the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any law, including, without limitation, the imposition of any tariff, quota or price with respect to crystalline silicone photovoltaic cells; (b) any change in any law or in the administration, interpretation or application thereof by any governmental authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. For the avoidance of doubt, if a Change in Law occurs after a Sales Confirmation is entered into between the Parties but before the Delivery of Goods, the Parties agree to renegotiate the pricing terms for that specific Sales Confirmation as set forth in this Section 14.

15. Compliance with Laws.

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. Termination.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for 30 days after Buyer’s receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

17. Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. Confidential Information.

All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or

otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. Force Majeure.

The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

20. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

21. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Governing Law.

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.

24. Submission to Jurisdiction.

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the City of San Antonio and County of Bexar, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. Notices.

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth below or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

26. Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Survival.

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Indemnification, Limitation of Liability, Insurance,



Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.

28. Amendment and Modification.

These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

29. Order of Precedence.

The express terms and conditions contained in these Terms and Conditions exclusively govern and control each of the Parties' respective rights and obligations regarding the purchase and sale of the Goods, and the Parties' agreement is expressly limited to such terms and conditions. Notwithstanding the foregoing, if any terms and conditions contained in a Sales Confirmation conflict with any terms and conditions contained in these Terms, the order of precedence is these Terms, and the relevant Sales Confirmation. Except for such contrary terms, each Sales Confirmation incorporates by reference this Terms for all applicable purposes hereunder.