

# PEGASUS SOLAR INC TERMS AND CONDITIONS

Valid as of April 1, 2020

The Buyer ("Buyer") of products, goods or services ("Goods") from Pegasus Solar Inc ("Seller") agrees to the following terms and conditions ("Agreement").

## Orders

Buyer can agree to buy Goods from Seller by submitting a signed Order ("Order"). Orders must include Seller item codes and complete descriptions of the Goods, as well as quantities, delivery dates and "ship to" locations. Only signed Orders by Seller are binding on Buyer. Seller reserves the right to refuse any Order in its sole discretion.

All Orders signed by Seller will be binding on Buyer. Seller expressly rejects all additional or different terms or conditions (i) submitted to Seller in Buyer's tender or request for proposal/quotation documents, shipping instructions or other acceptance documents, (ii) as set forth under any other contract to which Buyer is a party, and (iii) implied by trade, custom, practice, or course of dealing. Buyer acknowledges that such additional or different terms and conditions will be deemed material alterations to the Order and will not form part of the Order.

In the event that Buyer wishes to modify an Order, Buyer must submit a "Change Order" to Seller. No modifications will be made to any such Order unless the Change Order is signed by Seller. Seller reserves the right to charge a change fee of up to fifteen percent (15%) of the total fees charged to Buyer for all Change Orders after submitting the Order with Seller. All Change Orders must be submitted to Seller prior to release of the Order by Seller to the warehouse for shipping. Once Seller releases an Order to the warehouse for shipping, the Order cannot be changed or cancelled.

## Prices and Payment

Except as otherwise agreed to by the Seller in writing, and upon approved credit, the following pricing and payment terms apply:

Prices quoted by Seller to Buyer are valid for 14 days. All prices, title and risk of loss are FOB Origin. Prices do not include taxes or freight and can be changed without notice. Terms of payment are 2% 10 days, net 30 days from invoice date unless otherwise approved in writing. Payment is due in full based on the payment terms on the invoice. Acceptable forms of payment are wire transfer or ACH. Payment by company check must be approved by Seller in writing, and if the check is rejected by the bank for insufficient funds, the Buyer will be charged an insufficient funds fee of \$50. Payment by credit card is accepted if Buyer pays in full upon shipment, without a discount for early payment. A finance charge with a monthly periodic rate of 1.5% (APR 18%) is added to all late payments. The Buyer acknowledges that should a collection process be required to recover any monies owed, liability for court fees, attorney fees and all costs rests with Buyer.

## Customs, Taxes and Duties

Buyer is responsible for custom duties and tariffs. Any taxes which Seller may be required to pay or collect with respect to the manufacture, sale, purchase, delivery, use or consumption of the goods or any material relating to the goods will be the responsibility of the Buyer which shall promptly pay such to Seller upon demand.

## Excusable Delays

Seller will not be liable for loss, damage or delay in manufacture, shipment or delivery of the goods or for its inability to perform any or all of its obligations under these terms due to the failure or happening of events or conditions rendering performance commercially impractical or any causes beyond Seller's control, including but not limited to, acts of God, any acts or omissions of the Buyer, acts of civil or military authorities, fire, flood, windstorms, earthquakes, strikes or other labor disturbances, civil commotion, war delays in transportations, late deliveries by Seller's suppliers or subcontractors, fuel or other energy shortages. Acceptance of the material when shipped will institute a waiver of all claims for loss or damage due to any delay resulting from any such force majeure clause.

## Limited Warranty

Included as Appendix A.

## Indemnity

Buyer will indemnify, defend, and hold harmless Seller and its owners, parents, affiliates, subsidiaries, officers, directors, employees, representatives, and agents, from and against any and all liabilities, losses, damages, claims, costs or expenses (including reasonable attorneys' fees and costs) incurred by Seller with respect to (i) claims of misuse of proprietary information and infringements of intellectual property rights based on designs, drawings, specifications, or other information which Buyer provides to Seller or which is developed by Seller or others in conjunction with Buyer, (ii) the design, manufacture, integration or usage of any Goods which alone or as a component in an assembly, is alleged or proved to have caused injury or damage, (iii) Buyer's failure to comply with any applicable foreign, federal, state, or local law, rule, regulation, order, or ordinance, including without limitation U.S. export control laws, regulations, or orders, or Buyer's failure to provide Seller adequate information related thereto, and (iv) any breach of Buyer's obligations under this Agreement.



### **Returns/Non-Delivery**

Shipping damage must be noted by Buyer at time of delivery. Buyer will inspect shipments for freight damage at time of receipt, immediately notify the carrier and Seller of any freight damage, and file its claim directly with the carrier. Seller is not liable for damage or losses incurred by Buyer as the result of freight damage or delays. No returns will be accepted without prior written authorization from Seller. Any unauthorized returns will be sent back at sender's expense. All approved returns will be subject to a restocking fee of 15% plus shipping charges. Only full quantity boxes will be accepted. No returns will be accepted after 90 days from invoice date. No returns will be accepted on made to order products. Seller will not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods, in the ordinary course of events, would have been delivered. Buyer's sole and exclusive remedy for non-delivery of the Goods will be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

### **Inspection**

Buyer will inspect the shipment within 7 days of delivery to determine correct product and quantity was shipped and received in good condition. Buyer must notify Seller in writing within 7 days of receipt of shipment of any obvious damage or mis-shipment. If no such notice is received by Seller, Buyer will be deemed to have accepted the Goods and will not be entitled to object to or reject the Goods or any portion of them. Buyer's sole and exclusive remedies for any defect, damage, or shortage with respect to the Goods are set forth in the Limited Warranty below.

### **Security Interest**

Buyer grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in and to the Goods, and in their accessories, replacements, accessions, proceeds and products, including all proceeds of the foregoing (including accounts receivable and insurance proceeds) (collectively, the "Collateral"), wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto to secure payment of all amounts due under this agreement. The security interest granted under this section constitutes a purchase money security interest under the Uniform Commercial Code in the state where Buyer is located. Buyer agrees that Seller may file a UCC-1 financing covering the Collateral. If Buyer fails to pay any amount when due, Seller shall have the right to repossess and remove Collateral in the possession of Buyer, and Buyer shall provide access to the Collateral at the request of Seller. Any repossession of Collateral shall be without prejudice to any other remedy of Seller, at law or in equity.

### **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.

### **Governing Law**

The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of California, without giving effect to principles of conflicts of law. The federal and state courts in the State of California will have exclusive jurisdiction over all disputes and controversies arising out of this Agreement. Venue will be proper in San Francisco, California. If an arbitrator or court determines that terms and conditions in addition to this Agreement should be included in interpreting the agreement between the parties, then notwithstanding any contrary California law, the parties agree that any different terms and conditions will be interpreted under Article 2 of the Uniform Commercial Code, section 2-207(2). The parties elect not to be bound by the United Nations Convention on Contracts for the International Sale of Goods. By ordering the Goods, Buyer acknowledges that it is transacting business at Seller's principal place of business in Richmond, California.

### **Non-Waiver/Severability**

Seller's waiver of any right under this Agreement will not constitute a waiver of such right or any other right on any other occasion. In the event any provision of this Agreement is determined to be invalid, such invalidity will not affect the validity of remaining portions of this Agreement, and the parties will substitute for the invalid provision a provision that most closely approximates the intent and economic effect of the invalid provision.

### **Subcontract and Assignment**

Seller expressly reserves the right to subcontract all or part of this Agreement without the consent of Buyer. Seller reserves the right to assign any of its rights or obligations under this Agreement without the consent of Buyer. Buyer will not assign any of its rights or obligations under this Agreement without the prior written consent of Seller. Any assignment without Seller's consent will be null and void.



**Survival**

The provisions of this Agreement that, by their sense and context, are intended to survive performance by either or both parties will also survive the completion, expiration, termination, or cancellation of this Agreement.

**Taxes**

Prices do not include, and Buyer is responsible for the payment of all, taxes associated with the Goods and Services provided hereunder, including without limitation sales, use, excise, rental, personal property, and any other taxes or assessments levied by any foreign, federal, state, municipal, or other governmental authority.

**Compliance with Laws**

Each party must comply with all applicable standards, provisions, and stipulations of all foreign, federal, state, and local laws, rules, regulations, ordinances, and Executive Orders. In addition, each party will, at all times, act in a lawful manner and will not use monies associated with this Agreement to bribe government officials.

**Export Compliance**

Seller is subject to U.S. export and import laws and regulations, including without limitation the Office of Foreign Assets Control (OFAC), 31 CFR Parts 500-599; the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130; the Export Administration Regulations (EAR), 15 CFR Parts 730-774; and the Foreign Trade Regulations (FTR), 15 CFR Part 30. Buyer agrees that it will not export, re-export, release or otherwise transfer, directly or indirectly, Goods, technical data, and/or Services provided by Seller in violation of U.S. law. Buyer is responsible for obtaining any necessary U.S. government authorization required to ensure compliance of Buyer with U.S. law. Buyer represents and warrants that any export controlled Goods or information that are subject to U.S. export controls will be appropriately marked or otherwise labeled in accordance with U.S. law. Orders requiring Seller to obtain export licenses may be subject to additional fees and/or minimum order requirements. Unless otherwise notified in writing prior to any shipment of Goods, Buyer who is a Foreign Principle Party in Interest authorizes Seller, the U.S. Principal Party in Interest, to prepare, transmit, or otherwise direct the filing of Electronic Export Information in AES as required by U.S. law in connection with the exportation of any Goods supplied by Seller. Buyer may contact the Seller Trade Compliance Department by e-mail at [tradecompliance@coorstek.com](mailto:tradecompliance@coorstek.com) with questions regarding export requirements.

**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: (i) fails to pay any amount when due under this Agreement and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.



## **APPENDIX A – LIMITED WARRANTY**

### **Scope of Warranty:**

Pegasus Solar Inc, a Delaware corporation (“Pegasus Solar”), with its principal place of business located at 506 W Ohio Avenue, Richmond, CA 94804 warrants to the original retail Buyer (called “Buyer”) of Pegasus Solar’s solar panel mounting products (called “Mounting Products”) and roof flashings, (called “Flashing Products”), manufactured by Pegasus Solar, (collectively called “Products”) that the structural components of the Products will be free from substantial defects in material and workmanship that materially affect the functionality of the Product, and that Product finish will be free from visible peeling, cracking or chalking under normal atmospheric conditions while the Products are installed at their original installation site provided that the Products were installed in accordance with Pegasus Solar’s written installation instructions (the “Warranty”).

### **Warranty Period:**

The Warranty shall consist of (i) a Warranty covering the structural components of the Mounting Products (the “Mechanical Warranty”), (ii) a Warranty covering the structural integrity and anti-corrosive coating of all Flashing Products (the “Structural Integrity Warranty”), and (iii) a Warranty covering the painted, powder coated, and anodized finish of the Products (the “Product Finish Warranty”). The Mechanical Warranty is made for ten (10) years, the Structural Integrity Warranty is made for twenty five (25) years, and the Product Finish Warranty is made for five (5) years, in each case from the earlier of 1) the date of installation of the Products is completed, or 2) sixty (60) days after the purchase of the Products by the original Buyer (the “Warranty Period”).

### **Warranty Remedies:**

Pegasus Solar will, at its sole option, either repair or replace any Products or components of the Products that, within the Warranty Period, and proven at Pegasus Solar’s sole discretion, fail to meet the performance standards set forth in this Warranty on an exchange basis without charge. If Pegasus Solar is unable to repair or replace a defective Product or component within a reasonable time, Pegasus Solar will, at its sole and exclusive option, either replace the defective Product or component with a functionally equivalent Product or component without charge or refund the original price paid for the defective Product or component.

These are the sole and exclusive remedies for any breach of Warranty.

### **Restrictions on Warranty Scope:**

This Warranty covers only the Product, and not PV modules, electrical components and/or wiring used in conjunction with the Product or any other materials not provided by Pegasus Solar. Goods which may be sold by Pegasus Solar, but which are not designed or manufactured by Pegasus Solar are not warranted by Pegasus Solar, and are sold only with the warranties, if any, of the original manufacturers thereof. The use of any solar PV module mounting products that are not produced or approved by Pegasus Solar will void Pegasus Solar’s Warranty.

Pegasus Solar does not warrant that the Products will meet any specifications, needs, or requirements that are not expressly set forth in Pegasus Solar’s technical product documentation. In and out charges for removal and reinstallation of the Products are explicitly excluded.

The Product Finish Warranty does not apply to any foreign residue deposited on the finish. All installations in corrosive atmospheric conditions are excluded. The Product Finish Warranty is void if, when cleaning or maintaining the Product, the practices specified by AAMA 609 & 610-02 – “Cleaning and Maintenance for Architecturally Finished Aluminum” ([www.aamanet.org](http://www.aamanet.org)) are not followed by Buyer.

This Warranty does not cover damage to the Products that occurs during shipment, storage, or installation, or from force majeure acts including fire, flood, earthquake, storm, hurricane or other natural disaster, war, terrorist activities, acts of foreign enemies and criminal acts. This Warranty shall be void if the Product is not installed in accordance with Pegasus Solar’s written installation instructions, if the Products are installed in an environment for which they were not designed, or if the Products have been modified, repaired, or reworked in a manner not previously authorized by Pegasus Solar in writing.

Pegasus Solar’s Warranty covers only the Products and components provided by Pegasus Solar. Pegasus Solar makes no warranties or representations regarding any items or material provided by third parties.

PEGASUS SOLAR MAKES NO EXPRESS WARRANTIES BEYOND THOSE STATED HERE. PEGASUS SOLAR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PEGASUS SOLAR SHALL NOT IN ANY CASE BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR OTHER SIMILAR DAMAGES ARISING FROM ANY BREACH OF THESE WARRANTIES EVEN IF PEGASUS SOLAR OR ITS AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

In no case shall Pegasus Solar’s liability exceed the purchase price paid for the defective Product or defective component.

### **Warranty Transference:**

Buyer may transfer this Warranty to subsequent owners of the original installation site, or if original Buyer is a contractor or distributor, to the Site owner, as long as the transferee agrees to the terms of this Limited Warranty as if it were the Buyer. Proof of purchase and date of installation is required for any warranty claim, as set forth in more detail below.



**Making a Warranty Claim:**

If Buyer believes that it has a claim for repair or replacement under this Warranty, Buyer must contact Pegasus Solar's Warranty Service Department in writing within thirty (30) days of the end of the applicable Warranty Period to initiate the warranty claim process. Address all warranty claims to: Pegasus Solar Inc, Warranty Service Department, 100 W Ohio Avenue, Richmond, CA 94804. Any claim under the above Warranty must include proof of the date the Product installation was completed or the date of original Product delivery such as a copy of Buyer's receipt or invoice.

**Other Conditions:**

This Warranty allocates risks of product failure between Buyer and Pegasus Solar. This Warranty is in lieu of all other express warranties, whether oral or written. The agents, employees, distributors and dealers of Pegasus Solar are not authorized to modify this Warranty nor to make additional warranties binding on Pegasus Solar. Accordingly, additional statements such as dealer advertising or presentations, whether oral or written, do not constitute warranties by Pegasus Solar and should not be relied upon as a Warranty of Pegasus Solar. Pegasus Solar's product pricing reflects this allocation of risk and the limitations of liability in this Warranty.

No action for any breach of this Warranty may be commenced more than one (1) year following the expiration date of the above warranties.

