

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Applicability.

a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (the “**Goods**”) by Krannich Solar West, LLC, a Delaware limited liability company (“the “**Seller**”) to any buyer of such Goods (as defined below) (the “**Buyer**”). Notwithstanding anything herein to the contrary, if there is a written contract signed by both Parties governing 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. Seller and Buyer together are hereinafter sometimes referred to as “**Parties**”, and each individually as a “**Party**”.

b) Seller’s quotation, confirmation of sale, invoice, or Seller’s Notice (as defined below) (collectively, the “**Sales Confirmation**”) and these Terms (collectively with the Sales Confirmation, 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 with respect to the subject matter hereof. 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, all of which are hereby rejected. 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. Seller’s Right to Accept or Reject Buyer Order. Seller has the right, in its sole discretion and for any reason or no reason, to accept or

reject any order by Buyer (“**Buyer Order**”). Seller may accept any Buyer Order by confirming the order (whether by written confirmation, including via email, issuance of an invoice or otherwise) or by delivering such Goods, whichever occurs first; provided, that, Seller’s mere confirmation of receipt of any Buyer Order shall not constitute Seller’s acceptance of the same. No Buyer Order is binding on Seller unless accepted by Seller as provided in this Agreement. Any Buyer Order not so accepted by Seller within 30 days of its receipt shall be deemed rejected by Seller.

3. Delivery of Goods.

a) Unless otherwise agreed to in writing between the Parties, the Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. To the extent Seller provides shipping and delivery dates, such dates are estimates only and shall not be deemed guaranteed delivery dates and shall not be binding on Seller.

b) Unless otherwise agreed in writing by the Parties, Seller shall deliver, or make the Goods available to the carrier at Seller’s facility in Oceanside, California (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. For purposes of clarity, in addition to all shipping costs, Buyer shall assume the risk of loss of the Goods, and Seller shall not be liable for any delays, loss, or damage of the Goods in transit.

c) Unless otherwise agreed to in writing by the Parties, Seller shall select the method and route of shipment of, and the carrier for, the Goods.

d) Delivery is deemed to have occurred upon Seller delivering or making available to the carrier the Goods at the Delivery Point. If for any reason carrier fails to pick-up, or the Goods cannot be shipped to Buyer because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) the Goods shall be deemed

to have been delivered; and (ii) Seller, at its option, may store the Goods until Buyer picks them up or until Seller sells the Goods to a third party, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance, and any shortfall between the selling price and the price as originally agreed between the Parties).

e) 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.

f) If Seller delivers to Buyer a quantity of Goods of up to 5% 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 at the price set forth in the Sales Confirmation.

g) Unless otherwise agreed to in writing by the Parties in case Buyer has its own freight insurance policy, a freight insurance policy shall be procured by Seller at Buyer's sole cost and expense. Such freight insurance policy shall cover damage or loss of all or any of the Goods during shipment and, as the sole remedy, shall provide, at Seller's option, for (i) delivery of replacement Goods, including the cost of non-express delivery costs to the Buyer shipping address on the Buyer Order, or (ii) credit with Seller for the value of the damaged or lost Goods. As a condition to coverage under the Seller-procured freight insurance policy, Buyer shall document any defects of the Goods upon receipt of the Goods and promptly notify Seller of such defects in writing and submit any supporting information or documents required by Seller or the insurance provider.

4. Shipping Terms. Unless otherwise agreed to in writing by the Parties, delivery shall be made EXW Incoterms 2020 Delivery

Point. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

5. Security Interest. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods and performance in full of all the obligations of the Buyer under this Agreement, the Buyer hereby pledges and grants to the Seller, a lien on and security interest in and to all of the right, title, and interest of the Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase-money security interest under the California Uniform Commercial Code, and Buyer grants to Seller power of attorney to file and cause all documents and actions to file and perfect any security interest, including but not limited to any UCC-1 filing.

6. Inspection and Rejection of Nonconforming Goods.

a) Buyer shall inspect the Goods within 5 days of pick-up from the Delivery Point (the "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 the Delivery Point. 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 to the Delivery Point.

c) Buyer acknowledges and agrees that the remedies set forth in Section b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 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 price (the "**Prices**") set forth in the Sales Confirmation. Prices provided by Seller in Seller's quotations or on the Site are for reference only, and are subject to change in Seller's sole discretion. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted in the Sales Confirmation, and Buyer shall be billed by Seller on the basis of such increased prices.

b) 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. 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.

c) All prices, discounts, and promotions posted on the Site are subject to change without notice.

8. Payment Terms.

a) Unless otherwise agreed to in writing by the Parties, prior to delivery or shipment of the Goods, Buyer shall pay all invoiced amounts due to Seller on receipt of Seller's invoice. Buyer shall make all payments hereunder in US dollars by wire transfer or as otherwise specified in Seller's invoice sent to Buyer.

b) Buyer shall pay interest on all late payments at the higher 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, Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following Notice thereof. Seller does not waive any other remedies available under these Terms by Seller's exercise of any rights hereunder.

c) Except as explicitly consented to in writing by an authorized Seller representative, Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or Dispute (as defined below) with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

9. 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.

10. No Warranty.

a) **THE GOODS ARE SOLD "AS IS" AND "WITH ALL FAULTS," AND WITHOUT ANY**

WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM, OR ON BEHALF OF, SELLER, INCLUDING, WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

b) To the extent assignable, Seller shall assign to Buyer any warranties received by Seller with respect to the Goods. Buyer shall be solely responsible for processing and pursuing, at Buyer's sole cost, any applicable warranty claims against manufacturers and vendors of any such Goods. Any such enforcement by Buyer shall in no way render Seller responsible to Buyer for the performance of any of such warranties.

c) **BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 10 OF THIS AGREEMENT.**

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 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.

c) The limitation of liability set forth in Section b) shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

12. Use Restrictions. Buyer shall not use the Goods, directly or indirectly, for the following purposes or applications: (i) supporting or life-sustaining equipment and systems, (ii) nuclear facilities, (iii) military facilities or purposes, (iv) aerospace, or (v) any other purpose where failure of the Good could reasonably be expected to endanger life or limb, or cause material property damage. Buyer shall indemnify, defend and hold harmless the Seller, including its officers, directors, employees and agents from and against all damages, liabilities, losses, costs, expenses and fees (including reasonable attorneys' fees and court costs) that may arise, directly or indirectly, pursuant to or in connection with Buyer's failure to comply or breach of its obligations under this Section.

13. Compliance with Law. 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. Buyer further represents and warrants that all Goods are intended for final delivery to locations within the United States of America.

14. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement and any Buyer Order with immediate effect upon Notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement or any Buyer Order; (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.

15. Unsatisfactory Credit Status. If Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other rights, Seller may without liability or penalty take any of the following actions: (a) accelerate all amounts owed by Buyer to Seller under this Agreement and any Buyer Order; (b) modify the payment terms specified in Section 8 for any Buyer Orders, including requiring Buyer to pay cash in advance; (c) cancel any previously accepted Buyer Orders; (d) delay any further shipment of Goods to Buyer; (e) on written Notice, terminate this Agreement; or (f) any combination of the foregoing. No actions taken by Seller under this Section 15 (nor any failure of Seller to act under this Section) constitute a waiver by Seller of any of its rights to enforce Buyer's obligations under this Agreement including, but not limited to, the obligation of Buyer to make payments as required under this Agreement.

16. 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.

17. 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. Buyer's obligations of confidentiality hereunder with respect to each item of confidential information shall extend for a period of three (3) years from the last Sales Confirmation provided to Buyer from Seller pursuant to this Agreement; provided, however that Buyer's obligations of confidentiality hereunder with respect to any such items of information that rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law. The parties acknowledge that the rights of Seller hereunder are in addition to those rights Seller may have under common law or applicable statutes for the protection of trade secrets. Upon demand by Seller, Purchaser shall immediately return all information subject to this Section to the Seller. 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. For the avoidance of doubt, no

electroluminescence (EL) images of any Goods will be provided by Seller to Buyer.

18. 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, pandemic (including, without limitation, the COVID-19 pandemic), 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, raw materials or telecommunication breakdown or power outage (all such circumstances collectively, the "**Force Majeure Events**"). Seller may terminate this Agreement with immediate effect in case of any Force Majeure Event, which continues for 5 days or more.

19. 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.

20. 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.

21. 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.

22. 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 California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

23. 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 California in each case located in the City of Vista and County of San Diego, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. 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 on the face of the Sales Confirmation 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), or facsimile or email (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.

25. 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.

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

27. Amendment and Modification. The Agreement 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.

07/2022