



# Standard Terms and Conditions

Kinect Solar LLC

Revised January 15, 2024

# Standard Terms and Conditions

**1. Scope and Applicability.** All quotations, orders, contracts, agreements, purchase orders, and invoices are subject to the Standard Terms and Conditions set forth herein. ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS AND CONDITIONS ON ANY DOCUMENT ISSUED BY CUSTOMER AT ANY TIME ARE HEREBY OBJECTED TO AND REJECTED BY KINECT SOLAR LLC (“KINECT”), SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE OR SERVICE PERFORMED HEREUNDER, AND SHALL NOT BE BINDING IN ANY WAY ON KINECT. Any of the following shall constitute, but is not the sole form of, Customer’s acceptance of these Standard Terms and Conditions: (1) submission of a purchase order, (2) entry into any agreement or contract with KINECT, (3) tender or delivery of goods, or (3) commencement of services.

**2. Quotations and Orders.** A KINECT quotation may normally be accepted by Customer in writing within seven (7) days from its date or within the period of time otherwise stated in the quotation, whichever is less. If a quotation is accepted after 7 days, it is subject to reconfirmation by KINECT. Verbal quotations are only valid on the calendar day on which they are given unless confirmed with a written quotation on that calendar day. Customer’s acceptance of a KINECT quotation shall be considered an offer for the Customer to buy that shall be subject to KINECT’s confirmation and which will, upon KINECT’S confirmation, create a binding contract between the parties. Customer’s acceptance of a KINECT quotation, and all contracts, agreements, purchase orders or other business dealings between the parties are subject to these Standard Terms and Conditions. KINECT is not required to accept Customer’s orders. Any Customer purchase order shall not result in an agreement unless and until such order is accepted by KINECT and acknowledged by it or its authorized representative at KINECT’s office in AUSTIN, TX, and such order or KINECT acceptance shall be subject to these Standard Terms and Conditions. IN THE EVENT THAT THE CUSTOMER’S PURCHASE ORDER, ACCEPTANCE, OR ANY OTHER WRITTEN COMMUNICATION STATES TERMS ADDITIONAL TO OR DIFFERENT FROM THESE STANDARD TERMS AND CONDITIONS, THESE STANDARD TERMS AND CONDITIONS SHALL PREVAIL, AND THE TERMS AND CONDITIONS OF THE CUSTOMER’S PURCHASE ORDER, ACCEPTANCE, OR OTHER WRITTEN COMMUNICATION ARE SPECIFICALLY REJECTED AND SHALL BE OF NO FORCE OR EFFECT. ALL ORDERS ARE SUBJECT TO AVAILABILITY AT THE TIME OF ORDER, INVENTORY IS NOT GUARANTEED UNTIL THE BUYER RECEIVES AN ORDER CONFIRMATION FROM KINECT.

**3. Special Orders.** Special orders for items not held in inventory should be marked NCNR (non-cancellable, non-returnable) on the Quote and Sales Order. For customers using their Net 30

payment terms, a 20% non-refundable and non-transferable deposit will be required on NCNR orders unless approved by management and noted on the KINECT acceptance. For CASH Purchasers a 100% deposit will be required before KINECT will order the items unless approved in writing by management.

**4. Payment Terms.** Unless otherwise stated below or on KINECT's invoice, payment terms shall be PREPAY also known as CASH IN ADVANCE (CIA). PENDING CREDIT APPROVAL AND CREDIT LIMIT APPROVAL, NET 30 payment terms may be extended to a customer at KINECT's sole discretion. Payment for the goods and/or services must be made in U.S. Dollars. KINECT accepts cash, checks, money orders, Visa, MasterCard, and American Express. Additional fees or discounts may apply depending on the method of payment. Any Customer paying their NET 30 terms balance with a credit card will be charged a 2.5% convenience fee. Interest at the rate of 1.5% per month, but not to exceed the highest amount allowed by applicable state law, shall be made on all sums due KINECT that have not been paid within thirty (30) days from the invoice date, and Buyer agrees to promptly pay said interest charges. Customer agrees to pay all fees, costs and expenses incurred by KINECT in collecting amounts due, including but not limited to attorney's fees, collection costs and expenses. KINECT reserves the right to change credit and payment terms when, in KINECT's opinion, Customer's financial condition does not justify the making of any shipment (or the provision of services) on the terms specified herein. In such event, KINECT may elect to make a shipment prepay or on a cash in advance basis, suspend performance, or revoke its acceptance of Customer's order. If a manufacturer requires a deposit or payment in full at the time of order placement, those same requirements may be passed on to the Customer. Payments by Customer shall be applied first to KINECT's accrued but unpaid costs of collection, then to accrued but unpaid interest, and then to principal and other fees, charges and costs. Any taxes or import duties imposed by the laws of any country, dominion, state, territory, province, municipality or other authority, which KINECT may be required to pay or to reimburse to others by reason of the ownership, use or sale of any goods or services delivered hereunder, will be added to the purchase price, either as a separate item or included in the invoice price of the goods or services, as the law may require or KINECT may determine.

**5. Security Interest.** Customer hereby grants to KINECT a first priority purchase money security interest and/or chattel mortgage in the products and any accounts receivable or cash from resale thereof until full payment is made to KINECT. Customer agrees to file, and it permits and authorizes KINECT to file, any financing statements or other appropriate documents with its

governmental authorities to perfect the validity, priority, and enforceability of KINECT's lien or security interest.

**6. Shipping, Title, Risk of Loss, and Delivery.** Risk of loss or damages of the goods shall pass to the Buyer upon Shipment no matter who bears the transportation costs. On request of the Buyer, the deliveries can be insured against common transport risk at the expense of the Buyer. If the Buyer delays in taking delivery or wrongfully rejects acceptance, the risk of loss or damages of the goods shall pass to the Buyer at the time the Buyer delays delivery, KINECT tenders or offers delivery even if wrongfully rejected, goods are scheduled to be picked up by Buyer, or goods are received by Buyer, whichever event shall first occur. In the absence of shipping directions from Customer and without KINECT incurring any liability, products will be shipped by the method and via carrier that KINECT believes dependable. The carrier shall not be an agent of KINECT. KINECT will not be liable for any damage to goods while such goods are in transit. KINECT shall have no responsibility or liability for goods shipped directly from the manufacturer.

**7. Acceptance.** The Buyer shall inspect and satisfy itself that the goods delivered are in conformity with the specifications stated in the KINECT's sales confirmation and all other contractual requirements within fourteen (14) days after receiving the goods. If Buyer does not have enough time to visually inspect shipments for damages or shortages before signing the delivery receipt or BOL then the delivery receipt or BOL must be noted by Buyer with either "pending further inspection" or "concealed damaged" notation. Complaints about the goods shall be made in writing and must reach KINECT no later than seven (7) days from the date of discovery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, but in no event later than one (1) month from the date of receiving the goods. Use or processing of the goods shall be deemed to be an unconditional acceptance of the goods and a waiver of all claims in respect of the quantity or apparent defects of goods. Reasonable deviations in measurement, weight, or quality shall not constitute nonconformity of goods nor breach of contract by the KINECT. The Buyer carries full burden of proof for the complete prerequisites of the claims, particularly for the defects themselves, for the determination of the existence of the defects, the exact time of the appearance of the defects, and for the timeliness of the report of the defects.

**8. Delivery Dates.** Stated estimated delivery schedules or dates are good faith estimates only and not a commitment as to delivery on specific dates. Such delivery schedules or dates are

approximate and are contingent on product availability, manufacturers' estimated factory schedules, and certain other conditions prevailing at the time of placement of a quotation, receipt of an order or fulfillment of an order. KINECT will attempt to ship the products or provide the services within the estimated times reflected on the quotes and tracking reports but will not be liable for any failure to do so. KINECT SHALL NOT IN ANY EVENT BE LIABLE IN DAMAGES, WHETHER CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR OTHERWISE, FOR ANY DELAY IN SHIPMENT, DELIVERY OR PERFORMANCE. Delay in delivery of any shipment or performance of any services shall not relieve Customer of its obligations to accept such shipment or any other shipment or any services. If KINECT learns that KINECT cannot ship within the estimated times, Customer will be advised of the changes as soon as possible. KINECT reserves the right to make delivery in installments. Each such installment shall be separately invoiced and paid for when due, without regard to subsequent deliveries. For items on backorder, KINECT may ship whenever the products become available without notice to the Customer. If Buyer delays delivery of any specially ordered products, payment shall become due on the date when KINECT is prepared to make shipment. In the event of any such delay, products shall be held by KINECT at Buyer's risk and expense.

**9. Return Policy.** All claims for damages, shortages or errors must be made before Acceptance as defined above, must be in writing with pictures when applicable, and must specify with particularity the nonconformity. Returns require prior written authorization from KINECT and are subject to the then effective Return Material Policy of KINECT (including without limitation a 15% restocking fees) and no credit will be allowed for goods returned without prior written authorization from KINECT. Special orders and custom products are non-returnable and nonrefundable. Goods that have been used and/or modified are non-returnable and non-refundable.

**10. Force Majeure.** KINECT shall not be liable for any delay in, or impairment of, performance resulting in whole or in part from any force majeure event, including but not limited to acts of God, labor disruptions, acts of war, actions by public enemies, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, public health emergencies, shortages, communication or power failures, fires, accidents, explosions, earthquakes, strikes, lockouts, work slowdowns, inability to procure or ship product or obtain permits and licenses, inability to procure supplies or raw materials, severe weather conditions, catastrophic events, unexpected legislation, acts by public enemies, or any other circumstance or cause beyond the reasonable control of KINECT in the conduct of its business. KINECT's

contractual obligations may be modified by KINECT as necessary to sustain business at a commercially practicable level, including but not limited to KINECT's cancellation or modification of existing orders. KINECT may impose surcharges due to sudden increases in KINECT's costs for obtaining transportation, fuel or materials. Such surcharges will be added to the purchase price to be paid by Customer.

**11. Warranty Disclaimer and Limitations of Liability to All Customers.** KINECT (A) DOES NOT MANUFACTURE THE GOODS IT SELLS AND MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES THEREON OR WITH RESPECT THERETO AND SELLS THE GOODS AS-IS, WHERE-IS AND (B) MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES REGARDING ITS SERVICES OR THOSE OF ANY SUBCONTRACTOR AND PROVIDES ALL SUCH SERVICES AS-IS, WHERE-IS. KINECT DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR CONDITION, AND HEREBY DISCLAIMS ANY AND ALL SUCH EXPRESS OR IMPLIED WARRANTIES THAT MAY ARISE BY OPERATION OF LAW OR OTHERWISE. If there is a manufacturer's warranty with respect to goods acquired by Customer from KINECT, KINECT is not a party to such warranty and such warranty is between the manufacturer and the Customer.

**12. Limitation of Damages and Remedies.** UNDER NO CIRCUMSTANCES WILL KINECT BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, REVENUE, BUSINESS OR OPPORTUNITY, OR ANY LOSS OCCASIONED BY DELAY IN DELIVERY) BASED ON BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED AS TO THE POSSIBILITY OF SAME. KINECT ALSO DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION. Customer's sole remedies from KINECT with respect to goods or services purchased and assembled hereunder shall be, to the extent applicable and qualifying (a) replacement of the goods purchased hereunder in compliance with, and subject to, the terms of the paragraph entitled "Return Policy" above, or (b) if allowed in KINECT's sole discretion upon return of the goods from Customer to KINECT, return of so much of the purchase price as has been paid for the goods or a credit (not to exceed the purchase price paid) against the unpaid purchase price of other goods delivered or to be delivered to Customer. FURTHERMORE AND WITHOUT LIMITING ANY OF THE FOREGOING, IN NO EVENT SHALL KINECT'S LIABILITY EXCEED THE AMOUNT ACTUALLY PAID TO KINECT BY THE CUSTOMER FOR THE GOODS AND SERVICES. Customer agrees that they are responsible for ensuring the kitting, assembly, labeling, and wiring meet the Customer's drawings and specification, and will be fit for the purpose intended. The foregoing is intended as a complete allocation of the risks

between KINECT and Customer, and Customer hereby agrees that this limitation upon remedies will not have failed of its essential purpose. The Customer's remedies set out herein are exclusive.

**13. Governing Law; Jurisdiction; No Jury Trial.** All orders and these Standard Terms and Conditions shall be governed by, and construed in accordance with, the laws of the State of TEXAS without regard to its conflict of law provisions. Customer (1) agrees that any suit, action or other legal proceeding arising out of or related to the sale of goods or other performance by KINECT to Customer shall be brought exclusively in Travis County Texas in the state courts located therein or in the U.S. District Court for Western District of Texas in Austin, Texas; (2) consents to the jurisdiction of each such court in any such suit, action or other legal proceeding; and (3) waives any objection which Customer may have to the venue of any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to any agreement or contract between the parties. CUSTOMER WAIVES THE RIGHT TO A JURY TRIAL.

**14. Time Limit for Bringing any Suit.** In addition to the other limitations contained herein, any action hereunder must be commenced within one year following the original purchase of the goods or services.

**15. Customer Data.** KINECT shall be allowed to process and store Customer's business data as well as the Customer's contact persons' business contact data and share such data with the affiliated companies of Customer and/or KINECT and any other company that may be retained by KINECT for sales, marketing, debt collection or legal purposes. Customer specifically consents to such use of Customer Data.

**16. Termination by KINECT.** If Customer fails to fulfill any of its payment obligations, KINECT may suspend performance and delivery. Any cost incurred by KINECT due to such suspension, including but not limited to storage costs, shall be payable by Customer upon submission of KINECT's invoices. Performance of KINECT's obligations shall be extended during Customer's non-fulfillment of any part of the payment terms (whether or not KINECT suspends performance) and such additional time as may be necessary. If the Customer does not correct such failure in a time and manner satisfactory to KINECT, KINECT may, at its option, terminate the transaction as to goods not delivered and services not yet performed. If Customer

becomes bankrupt or insolvent, or if any proceeding is brought against Customer, voluntarily or involuntarily, under the bankruptcy laws or any insolvency laws, KINECT shall be entitled to terminate the transaction as to goods not delivered and services not yet performed. Customer shall pay KINECT its reasonable termination charges in the event of any such termination. KINECT's rights under this paragraph are in addition to, and not in lieu of, any additional rights provided to KINECT hereunder or by law or in equity.

**17. Canceled Orders.** Accepted orders or other contracts or agreements between the parties, may only be canceled or altered with KINECT's express written consent. In the event that Customer cancels an order for any reason, KINECT shall be paid a reasonable restocking fee of 15%, plus actual direct costs incurred by KINECT resulting from cancellation. Cancellation charges associated with orders for custom goods or special orders specifically manufactured or sourced to Customer's specification may equal the actual purchase price of the goods, delivery and services contracted for.

**18. Assignment by KINECT.** KINECT may use subcontractors, agents and/or third parties for services or goods to be provided. No quotation or any offer to sell may be assigned by Customer in whole or in part without KINECT's prior written consent. Any attempted assignment by Customer without such consent shall be void.

**19. Third Party Contract Obligations of Customer.** In the event that Customer has obligated itself with any third party for the completion of any portion of any project in which KINECT's goods or services will be used, Customer and KINECT agree that KINECT is not a party to such obligation, and KINECT does not assume any liability or obligation under any such obligation of the Customer. Customer releases and agrees to defend, indemnify, and hold KINECT harmless for any claims of any nature whatsoever related to any obligation, risk, liability or responsibility which was or is Customer's under any contract, or which was assumed by Customer, towards any third party involving the goods or services supplied by KINECT.

**20. Intellectual Property.** 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 reserved by KINECT, or any trademarks or service marks owned by suppliers to KINECT. All materials contained on the [www.KINECTSOLAR.com](http://www.KINECTSOLAR.com) website are subject to the ownership rights of KINECT and its suppliers. Customer shall have no right to link to, or copy or use any of the intellectual property of KINECT or its suppliers without KINECT's



permission. Such site is provided on an “AS-IS” basis. KINECT DOES NOT WARRANT THAT ACCESS TO SUCH SITE WILL BE UNINTERRUPTED OR ERROR FREE. NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE MADE REGARDING THE INFORMATION ON SUCH SITE. KINECT WILL HAVE NO LIABILITY (WHETHER DIRECT OR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL, OR FOR LOST SALES OR PROFITS OR OTHERWISE) BASED ON BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED AS TO THE POSSIBILITY OF SAME, WITH RESPECT TO THE INFORMATION, CONTENT OR OPERATION OF SUCH SITE. The foregoing is intended as a complete allocation of the risks between the parties relative to such site, and Customer hereby agrees that this limitation upon remedies will not have failed of its essential purpose.

**21. Amendment to Standard Terms and Conditions.** No alteration, variation, amendment, modification or waiver of any of these Standard Terms and Conditions shall be binding on KINECT unless expressly stated in writing and signed by an authorized officer of KINECT. KINECT may elect to make amendments to these Standard Terms and Conditions from time to time, which amendment shall be effective when made. Notice of changes to these Standard Terms and Conditions shall be provided by posting at <https://kinectsolar.com/terms-conditions/> or by mail or email notice to Customer.

**22. Severability.** If any portion of these terms and conditions is found to be invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable term shall be severed from these terms and conditions, and the remaining terms and conditions shall be valid and fully enforceable as written.

**23. Complete Agreement.** The terms and conditions in: (i) KINECT’s forms; (ii) acknowledgments; (iii) quotations; (iv) invoices; (v) websites; (vi) catalogs; (vii) contracts and agreements and (viii) extensions of credit are incorporated herein by reference, and constitute the entire and exclusive agreement between Customer and KINECT.

**24. Waiver.** Neither any failure nor any delay on the part of KINECT in exercising any rights hereunder shall operate as a waiver of any of KINECT’s rights hereunder. All rights and remedies granted herein to KINECT are in addition to all remedies available to KINECT at law or in equity.

**25. Independent Contractors.** KINECT and Customer are independent contractors and not principal and agent. Nothing contained in these terms and conditions shall be construed to

create a partnership, dealership, reseller, agency, employment or joint venture relationship. Customer will not have the right to bind or otherwise obligate KINECT in any manner, nor will Customer represent to anyone that it has the right to do so.