

Terms of Sale

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The following McCune Solar Works, LLC ("McCune") terms and conditions of sale and those appearing in McCune's order confirmations (collectively the "Terms of Sale") are exclusive and in lieu of all other terms and conditions appearing on Customer's purchase order or elsewhere and apply to all quotations made and all orders accepted by McCune for McCune products ("Products"). Customer agrees that McCune's acceptance of Customer's order is limited to McCune's Terms of Sale. Customer shall be deemed to have accepted McCune's Terms of Sale unless written notice of objection is given by Customer to McCune within 24 hours of receipt of McCune's order confirmation. Neither McCune's commencement of performance nor delivery of Products shall be deemed or constitute acceptance of any Customer additional or different terms and conditions. McCune's failure to object to provisions contained in any order or other writing of Customer shall not be construed as a waiver by McCune of its Terms of Sale or an acceptance of any terms and conditions of Customer, which are hereby rejected by McCune.

1. Performance. Performance of any order received by McCune is expressly conditioned upon acceptance by McCune management.

2. Orders and Cancellations.

a. All orders placed with McCune must be in a signed writing by Customer. All orders should include shipping address, requested delivery dates, quantities and complete description of Products being purchased, as well as Customer's name, contact name, address, email address, telephone number and fax number. Orders will be a binding contract only when received and accepted by confirmation in writing by McCune.

b. Customer orders requiring an export license will not be accepted until the export license has been obtained. Orders requiring a Letter of Credit will not be accepted until the Letter of Credit is received (unless otherwise negotiated prior to order acceptance) and meets McCune's standard terms for a Letter of Credit. No production will begin until payments terms are agreed upon.

c. Customer shall have 24 hours from receipt of McCune's order confirmation to make any corrections or changes. Failure to do so shall constitute acceptance of McCune's order confirmation.

d. Delivery dates may not be rescheduled without McCune's written approval.

e. Customer may not cancel any Product order in whole or in part without the written agreement of McCune and on condition of Customer's payment of McCune's cancellation charges.

f. If McCune agrees to cancel Customer's order, McCune may assess Customer cancellation charges of 20% of the contract price for cancellation of any order or part thereof for (i) standard Products that can readily be resold to McCune's other customers, or (ii) for custom or specially made Products, only if the order is cancelled before McCune begins performance. Once McCune begins performance on a custom or specially made Customer order, McCune's cancellation charges may include: x) the contract price for all completed Products; and y) with respect to non-completed Products, an equitable charge as determined by McCune based upon all costs (including but not limited to cost of materials purchased, labor, storage charges, handling, freight, duties and, taxes, and any destruction or recycling costs) incurred by McCune in performance of Customer's order to the date of cancellation and that McCune will thereafter reasonably incur as a result of such cancellation, plus a cancellation fee of 20% of the contract price for such Products, not to exceed in total the contract price. Customer shall pay all cancellation charges due within thirty (30) days of invoicing by McCune.

g. McCune's cancellation charges shall not be deemed McCune's exclusive remedies in the event of an unauthorized order cancellation by Customer.

3. Prices.

a. The prices of the Products are those specified on McCune's quotation or confirmation of Customer's order or, if no price is so specified, those in McCune's Price List current at the time of McCune's acceptance of an order. All prices printed in McCune's price list or quoted to individual Customers are subject to change without notice.

b. Prices include standard packaging. Extra charges will be added for special packaging and/or for expediting delivery.

c. Prices for Products do not include any federal, state or local taxes, or other governmental charges, which, when applicable, will be invoiced additionally.

4. Payment.

- a. Payment shall be due thirty (30) days after the date of the invoice unless otherwise specified in McCune's quotation or order confirmation. For orders with multiple delivery dates, McCune may invoice Customer and Customer shall pay for each delivery separately and each delivery shall be considered a separate and individual contract.
- b. McCune may charge Customer interest for all late payments computed on a daily basis from the due date until paid in full at the rate of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law, whichever is less.
- c. McCune reserves the right to establish and/or change credit and payment terms extended to Customer when, in McCune's sole opinion, Customer's financial condition or previous payment record warrants that action. Further, on delinquent account, McCune shall not be obligated to continue performance under any agreement with Customer.
- d. McCune retains a security interest in the Products delivered to Customer, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (collectively, the "Collateral"), to secure payment of all amounts due under this Agreement. If Customer fails to pay any amount when due, McCune shall have the right to repossess and remove all or any part of the Collateral from Customer but not from Customer's customers. Any repossession or removal shall be without prejudice to any other remedy of McCune hereunder, at law or in equity. Customer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by McCune to transfer, create, perfect, preserve, protect and enforce this security interest.
- e. Customer is responsible for and shall pay all costs, fees and expenses, including reasonable attorneys' fees and the fees of collection agencies, incurred by McCune in enforcing any of the terms, conditions or provisions hereof or in protecting McCune's rights herein or with respect to past due Customer accounts.

5. Shipments.

- a. Unless otherwise agreed to in writing by McCune, all prices quoted or printed in McCune's Price List are F.O.B. McCune's premises or those of McCune's supplier or, with respect to imported goods, F.O.B. United States point of shipment.
- b. Customer agrees that all freight, express and delivery charges shall be paid by Customer and shall not be subject to discount.
- c. If McCune has agreed with Customer to arrange for shipping of Products, McCune will select the carrier in the absence of specific instructions by Customer and all shipments shall be freight collect, unless otherwise negotiated.
- d. In no event shall McCune be liable for any delay in delivery nor shall the carrier be deemed an agent of McCune.
- e. Delivery will be deemed complete and risk of loss or damage to the Products will pass to Customer upon delivery to the carrier.

6. Inspection and Acceptance; Returns.

- a. Customer shall have the right to inspect the Products at the time and place of delivery before paying for or accepting them.
- b. The Products shall be deemed accepted by Customer unless notice of defect or shortage is received within thirty (30) days of shipping and defective Product is returned to McCune within sixty (60) days of shipping.
- c. Products must be in their original packaging and be in new condition. No Products may be returned to McCune without McCune's prior written authorization.
- d. In the event that Customer claims that Products do not conform to contract specifications and after inspecting the Products McCune determines that the Products do not conform to the contract, McCune's sole obligations and Customer's exclusive remedies with respect to a non-conforming Product shall be, at McCune's option, repair or replacement of the Product or refund to Customer of the purchase price paid for the Product.
- e. Customer shall be responsible for all costs associated with the return of Products if the Products are found to be within specification. Otherwise McCune will bear the return cost.
- f. Customer shall be responsible for any damage to returned Products resulting from handling by Customer with less than due care.

7. Ownership of Production Tooling, Materials and Equipment, No license granted.

- a. Unless otherwise agreed in writing, all material, equipment, facilities, and tooling used in the manufacture of the Products covered by any Customer order shall remain the property of McCune.
- b. McCune shall not be responsible for any Customer furnished materials or tooling damaged during processing or manufacturing.
- c. McCune's supply of Products to Customer does not in any way convey or grant to Customer any license or right to make, have made or use the Products or any additional products (whether or not identical to the Products supplied by

McCune) coming within past or future patents and/or inventions owned, made or controlled by McCune.

8. Warranty.

- a. McCune warrants to Customer that at the time of delivery all Products will conform to and perform in accordance with the applicable current specifications issued by McCune.
- b. Any Products sold by McCune with any additional express warranties shall be subject to the specific terms and conditions of those warranties. The duration of any Products warranty given by McCune shall be limited to the applicable warranty duration stated by McCune. If no warranty duration is specified by McCune then the warranty duration shall be thirty (30) days from the date of shipping to Customer.
- c. Unless otherwise agreed to in writing by McCune, no warranty shall extend to or be for the benefit of any third party.
- d. No warranty shall apply to any Product that is subject to misuse, abuse, accident, disaster, or repair by anyone other than McCune, or that has been used contrary to current instructions.
- e. MCCUNE'S ENTIRE RESPONSIBILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY IS LIMITED, AT MCCUNE'S OPTION, TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE WARRANTY CLAIM.
- f. Customer will be deemed to have waived any warranty claim unless written notice of such claim is given to McCune promptly but in no event later than thirty (30) days from date of discovery of such breach of warranty.
- g. THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY McCune IN CONNECTION WITH THE PRODUCTS, AND MCCUNE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

9. Assignment. Customer's purchase order shall not be assigned in whole or in part by either party without the written consent of the other party, except that McCune may assign its rights, liabilities and obligations arising out of Customer's purchase order to one or more of its subsidiary or affiliated companies.

10. Statute of Limitations. No claim or cause of action by Customer arising from this Agreement may be brought at any time more than twelve (12) months after the facts occurred upon which the claim or cause of action arose.

11. Export Control. Customer shall comply with all applicable U.S. export laws, regulations and treaties relating to export or re export of the Products. Customer will defend, indemnify and hold McCune harmless for any claims, penalties, fines, damages or costs to McCune arising from Customer's failure to comply with this provision.

12. Limitations of Liability. MCCUNE'S ENTIRE AND AGGREGATE LIABILITY FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, WHETHER FOR INFRINGEMENT, BREACH OF WARRANTY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE SHALL NOT EXCEED CUSTOMER'S PAYMENTS TO MCCUNE FOR THE PRODUCTS PURCHASED UNDER THIS AGREEMENT THAT CREATE SUCH LIABILITY. MCCUNE SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES FOR ANY CLAIM MADE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, THE PRODUCTS, OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS, OR OTHERWISE. It is expressly agreed by customer that McCune assumes no liability or obligation for any technical advice or recommendations given with respect to the use of McCune products, or results obtained, all such advice or recommendation being given and accepted at customer's risk.

13. Governing Law. The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of New Mexico excluding any of its choice of law provisions. McCune and Customer specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement.

14. Choice of Forum. Any and all claims or actions challenging the validity, interpretation or performance of this Agreement shall be brought in either the New Mexico State District Court for the County of Bernalillo or the United States District Court of New Mexico. Notwithstanding the foregoing, McCune may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged or anticipatory breach of such party's proprietary rights.

15. Force Majeure. Except for the payment of money due and owing, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by causes beyond its reasonable control ("Force Majeure Conditions"), including, but not limited to, fire, flood, explosion, war,

strike, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes and, with respect to McCune, inability to reasonably obtain necessary labor, materials, components or manufacturing facilities. If any Force Majeure Condition occurs, the party delayed or unable to perform ("Delayed Party") shall give immediate notice to the other party ("Affected Party"), and the Delayed Party, upon giving prompt notice to the Affected Party, shall be excused from performance under this Agreement for the duration of the Force Majeure Condition; provided, however, that the Delayed Party shall take all reasonable steps and cooperate with the Affected Party to avoid or remove the cause of nonperformance and shall resume performance hereunder with dispatch when the cause is removed. If the Delayed Party cannot within sixty (60) days remove the cause of nonperformance, the Affected Party may terminate this Agreement. If Force Majeure Conditions cause shortages in McCune's supply of Products or materials necessary to produce the Products, McCune may, without obligation to obtain similar products or such materials from other sources, first satisfy its own requirements and the requirements of its divisions, subsidiaries and affiliates for such materials and Products and then allocate the remainder among its customers in a manner and amount that, in McCune's sole judgment, is fair and reasonable.

16. Non-Waiver. No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition.

17. Entire Agreement. McCune's Terms of Sale shall constitute the entire agreement (the "Agreement") between the parties with respect to the sale of the Products and shall not be modified or rescinded, except by a writing signed by McCune and Customer. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement.

McCune
Solar Works