

Toledo Solar Limited Warranty Terms and Conditions - Module

Toledo Solar, Inc. ("Toledo Solar") hereby provides the limited "Workmanship Warranty" and "Power Output Warranty" (collectively "Limited Warranties") as more fully described below ("Warranty Terms and Conditions").

1. Limited Warranties

a. Workmanship Warranty

- i. Beginning on the date ("Warranty Start Date") that Toledo Solar or its Affiliate ships the Toledo Solar TS-Series Module (as applicable, "Product") from the factory to the original owner, Toledo Solar warrants that the Product will be free from defects in materials and workmanship under normal use, installation, operation and service ("Workmanship Warranty"). The Workmanship Warranty expires 15 years from the Warranty Start Date ("Workmanship Warranty Period"). This limited Workmanship Warranty does not warrant a specific power output of the Product, which are exclusively covered by the limited "Power Output Warranty" in Section 1.b., below.

- b. Upon determination by Toledo Solar of a valid claim under the Workmanship Warranty, Toledo Solar will, at its sole discretion, select one, or a combination, of the following exclusive remedies:

1. repair or replace the Product in accordance with the terms of Section 6 below; or
2. refund the "Degraded Value" of the Product, calculated as follows: (i) the purchase price per Wdc of the Product, multiplied by (ii) one minus the "Degradation Factor" (as defined in Section 1.c., below).

c. Power Output Warranty

- i. Beginning on the Warranty Start Date, Toledo Solar warrants that the actual power output of each Product will be no less than the Product's "Minimum Power Output" ("Power Output Warranty").
- ii. The "Minimum Power Output" is equal to 98% of the nominal power output stated on the Product's label, reduced by the Degradation Factor.
- iii. The Power Output Warranty expires 30 years from the Warranty Start Date ("Power Output Warranty Period").
- iv. To validate a claim under the Power Output Warranty, Toledo Solar (or an Affiliate or agent thereof) will conduct a power output measurement of the Product tested at the Product lead wires. The power output will be measured and normalized to Standard Test Conditions in accordance with International Electrotechnical Commission (IEC) 61215-2 using a method and laboratory approved by Toledo Solar, and the measurement will account for tolerances acceptable in the solar market.
- v. Upon determination by Toledo Solar that a claim under the Power Output Warranty is valid, Toledo Solar will, at its sole discretion, select one, or a combination, of the following exclusive remedies:
 1. repair or replace the Product in accordance with the terms of Section 6, below ; or
 2. provide supplemental Product; or
 3. provide a refund calculated as follows: (Minimum Power Output less actual peak power output of the Product) multiplied by the Product purchase price per Wdc, then less any prior refund provided under the Power Output Warranty with respect to such Product.
- vi. Where Toledo Solar provides a refund under the Power Output Warranty for a specific Product, after an initial valid Power Output Warranty claim, owner may only submit one subsequent Power

Output Warranty claim during the remaining term of the Power Output Warranty Period with respect to such Product.

- c. Any replacement Product provided by Toledo Solar will have (individually, in the case of a single Product provided as replacement, or in the aggregate, in the case where multiple Products are provided as replacement) a nominal power output rating no less than the nominal power output rating of the Product being replaced, reduced by applying a "Degradation Factor" equal to 0.6% for each year (and prorated on a monthly basis for any partial year) that has elapsed since the first anniversary of the "Degradation Start Date" (as defined below) of the Product being replaced.
- d. The "Degradation Start Date" means the date that is 6 months from the Warranty Start Date.
- e. The number of replacement Products that may be provided by Toledo Solar under the Limited Warranties need not be identical to the number of defective Products being replaced, unless Toledo Solar and the owner agree that the provision of a lesser or greater number of Products would be unreasonably burdensome upon the owner. Replacement Products may be products of the same or of a compatible successor type, but must be new and unused.
- f. Notwithstanding the express remedies stated under each of Sections 1(a)(ii) and 1(b)(v), and without otherwise restricting Toledo Solar's discretion as to which remedy to provide under these Warranty Terms and Conditions, as long as it is commercially reasonable, during the first 2 years of the applicable warranty period, Toledo Solar will repair or replace any nonconforming Product under the Limited Warranties as opposed to providing a refund.

2. Warranty Exclusions and Limitations. Toledo Solar is not responsible for, and will assume no liability under the Limited Warranties for, defects or failures caused by:

- a. Failure to install, use, operate, and service the Product in accordance with both the applicable Toledo Solar installation instructions;
- b. Normal wear and tear;
- c. Any external scratch, stain or mold that occurs after such Product is delivered to the original owner;
- d. The devices or structures on which the Product is mounted;
- e. Any defect that does not have an adverse appreciable impact to basic functionality of the Product;
- f. Cosmetic variations, changes in appearance, or weathering of glass or glass coatings that do not cause the Product to fail to meet its warranted power output rating under the Power Output Warranty; or
- g. Damage to the Product due to lightning, fire, flood, and other natural occurrences, power or voltage surges, improper handling (including operation, maintenance and installation), physical abuse, negligence in transportation or storage or other events that are reasonably beyond the control of Toledo Solar.

No claim may be made under the Workmanship Warranty or the Power Output Warranty at any time after the expiration of their respective applicable warranty period.

3. **Warranty on Repaired, Replaced, or Supplemental Product.** These Warranty Terms and Conditions will apply to any repaired, replacement, or supplemental Product provided to owner under the Limited Warranties and will be effective for the balance of the original applicable warranty period for such Product.
 4. **Limitation of Remedies. *The remedies set forth in these Warranty Terms and Conditions are the sole and exclusive remedies for any non-conforming Product or for any breach of the Limited Warranties by Toledo Solar.*** These exclusive remedies will not be deemed to have failed their essential purpose so long as Toledo Solar is willing and able to provide any one of the exclusive remedies applicable to the Limited Warranties set forth herein.
 5. **Transfer of Warranty.** Subject to the following, and upon written notice to Toledo Solar, the owner of the Product may transfer these Warranty Terms and Conditions to a subsequent owner to whom owner has transferred title to the Product:
 - a. The Limited Warranties will continue in effect for the remainder of the original applicable warranty periods set forth above.
 - b. The written notice must: (i) be signed by the transferor and transferee; (ii) include an acknowledgment by the transferee that it has received and agrees to be bound by these Warranty Terms and Conditions (including an acknowledgment that it has received an actual copy of these Warranty Terms and Conditions, including information regarding the Liability Cap); (iii) provide information about the transferee sufficient to update the Site Registration; (iv) confirm the Product remains deployed in accordance with the Site Registration; and (v) confirm the Product continues to be operated and maintained in accordance with the User Guide.
 - c. Toledo Solar will not bear any costs and expenses associated with the transfer of these Warranty Terms and Conditions.
 6. **Return Policy**
 - a. Any claims under the Limited Warranties:
 - i. Must be submitted to Toledo Solar within a reasonable time after owner discovers or should have discovered the alleged non-conformance.
 - ii. Must be submitted to Toledo Solar on a claim form, not later than the expiration of the applicable warranty periods set forth above, with a description of the claimed defect, evidence of the claimed defect, the Product serial number, a copy of the valid Site Registration, and evidence of the Warranty Start Date and the applicable warranty period's expiration.
 - b. With respect to a remedy provided by Toledo Solar under these Warranty Terms and Conditions, the owner must execute any and all documents, take all measures necessary and pay any and all taxes, duties, or customs charges related to the import or export of any Product.
 - c. Toledo Solar will not accept return of the Product to evaluate a potential warranty claim unless:
 - i. Toledo Solar has issued a return material authorization (the "RMA"), and
 - ii. upon First Solar's request, Toledo Solar is provided commercially reasonable access to the Product at its place of installation or storage for inspection and analysis of the claimed defect.
 - d. Upon Toledo Solar's request, the owner of the Product, at its sole cost and expense, must remove and ship the Product to Toledo Solar for evaluation, freight pre-paid, and in accordance with Toledo Solar's module return packaging, storage, and shipping guidelines.
 - e. If the claimed defect is accepted by Toledo Solar, Toledo Solar will provide one of the remedies described in Section 1.a.ii or Section 1.b.v (as applicable) at its sole cost and expense, including the cost of the return shipping of the repaired, replaced, or supplemental Product to owner. Owner must install the replacement Product at its sole cost and expense.
 - f. If the claimed defect is subsequently denied by Toledo Solar:
 - i. Toledo Solar will not be responsible, and owner must reimburse Toledo Solar for any reasonable costs and expenses associated with the analysis, transportation, inspection, or testing of the Product, plus 10% of such costs, as overhead.
 - ii. Toledo Solar is not responsible for the packaging and transportation costs (if any) associated with return of the Product to owner.
 - iii. In the event owner does not arrange for removal (at its cost) of the Product from Toledo Solar's warranty inspection center within 30 days after Toledo Solar's denial of warranty coverage, and owner does not have a recycling services agreement in place with Toledo Solar, then (in addition to the costs and expenses described in Section 6(f)(i) above), Toledo Solar will charge owner, and owner will pay to Toledo Solar, an amount equal to the actual and reasonably substantiated costs incurred by Toledo Solar related to the storage, handling and recycling of such Product, plus 10% of such costs, as overhead.
 - iv. Owner must pay Toledo Solar any charges or reimbursement under this Section 6(f) within 30 days of receipt of Toledo Solar's invoice. Toledo Solar may charge interest on any delinquent and unpaid balance at the rate equal to the lesser of (i) 1.5% per month, or (ii) the maximum amount allowable by law.
 - g. The owner, including any subsequent owner to whom these Warranty Terms and Conditions are transferred, agrees the charges described in this Section 6 are reasonable and appropriate and do not constitute a penalty.
 - h. A reference to Toledo Solar under this Section 6 includes Affiliates, and authorized representatives or agents of Toledo Solar.
7. **Disclaimer of Warranties and Limitation of Liability. *Except as expressly set forth above, Toledo Solar makes no representation or warranty of any kind whatsoever, whether express or implied, including but not limited to any warranty of merchantability, fitness for use, fitness for a particular purpose, or non-infringement. In no event will Toledo Solar, or its Affiliates, be liable for any incidental, consequential, special, or indirect damages, including loss of profits, loss of revenues, or loss of use, even if informed of the possibility of these damages. To the extent permitted by law, these limitations and exclusions will apply regardless of whether the liability arises from breach of contract, warranty, tort (including negligence), or by operation of law. Under no circumstances will Toledo Solar's, or any of its Affiliates', liability exceed the purchase price paid for the particular Product giving rise to the claim ("Liability Cap"). Nothing in these Warranty Terms and Conditions will limit or exclude Toledo Solar's, or an Affiliate's, liability for death, personal injury, fraud, or for any other liability which cannot be validly limited or excluded by law.***
 8. **General**
 - a. "Affiliate" means any corporation or other business entity (a) controlling, (b) controlled by, or (c) being under common control with, Toledo Solar from time to time, with "control" meaning direct or indirect ownership of 50% or more of the voting securities or voting interest in such corporation or other business entity).
 - b. If any provision of these Warranty Terms and Conditions is determined to be unlawful or unenforceable in any respect, such illegality or unenforceability will not affect any other provision hereof and these Warranty Terms and Conditions will be construed as if the unlawful or unenforceable provision were not included herein.
 - c. These Warranty Terms and Conditions constitute the entire agreement of the parties regarding warranties and these Warranty Terms and Conditions

supersede any prior written or oral communications with respect to the subject matter and cannot be changed except by written agreement signed by authorized representatives of the parties.

- d. These Warranty Terms and Conditions are governed by and construed in accordance with the laws of the State of Ohio, without regard to its conflicts of law provisions to the extent such principles or rules would require or permit the application of the laws of another jurisdiction. In no event will the United Nations Convention on Contracts for the International Sale of Goods (CISG) apply to or govern these Warranty Terms and Conditions.
- e. Any claim, dispute, or controversy arising out of or in connection with these Warranty Terms and Conditions will be finally settled through litigation in the state or federal courts sitting in Wood County, Ohio. Each Party irrevocably submits to the exclusive jurisdiction of such courts (or, if such courts do not have or decline to exercise such jurisdiction, then any United States federal court of competent jurisdiction) and waives any jurisdictional defense that such litigation is brought in an inconvenient forum. **Further, each party irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to these Warranty Terms and Conditions.**