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Formerly Everest Solar Systems 

## PRODUCT LIMITED WARRANTY TERMS AND CONDITIONS

K2 Systems, LLC [“K2”] shall provide the Limited Warranty [as defined herein] to the purchaser of any CrossRail, CrossRail Shared Rail, CrossRail Tilt Up, CrossRail Ground Mount, D-Dome Railless<sup>2</sup>, or MiniRail XPress component, except for non-structural plastic components, who purchased such CrossRail, CrossRail Shared Rail, CrossRail Tilt Up, CrossRail Ground Mount, D-Dome Railless<sup>2</sup>, or MiniRail XPress component directly from K2 or its authorized distributor [“Buyer”] and the CrossRail, CrossRail Shared Rail, CrossRail Tilt Up, CrossRail Ground Mount, D-Dome Railless<sup>2</sup> or MiniRail XPress component is used only at Buyer’s original installation site [the “Product”].

Subject to the terms and conditions of the Limited Warranty as set forth herein [the “Warranty Terms and Conditions”], a Product shall be considered a “Deficient Product” if Buyer provides written notification of the occurrence of the following within the associated warranty period enumerated below, and proves to K2’s satisfaction that the deviation exists:

- [i] the Product exhibits a structurally-relevant deviation from K2’s manufacturing specifications within a period of twenty-five [25] years from date of Product manufacture [“Structural Warranty”];
- [ii] the Product has an anodized finish resulting in visible peeling, cracking or chalking under normal atmospheric conditions within a period of five [5] years from date of Product manufacture [“Finish Warranty”]; collectively, the Structural Warranty, and the Finish Warranty are the “Limited Warranty”].

The Limited Warranty covers only the Product, and not PV modules, electrical components or wiring used in connection with the Product, or any other materials not provided by K2. The Limited Warranty applies exclusively to the Buyer, and third parties will have no rights or benefits under the Limited Warranty. The

Limited Warranty is non-assignable, except upon the written consent of K2 or if the Products remain at their original installation location. Claims for a breach of the Limited Warranty can only be made:

- [i] during the relevant Limited Warranty periods as set forth above,
- [ii] with a proof of purchase as was issued by K2 to Buyer which includes the Product purchase date and
- [iii] written notification of such Limited Warranty claim being given in writing within thirty [30] days of the alleged occurrence giving rise to the Limited Warranty claim to K2 at the following address: K2 Systems, 2835 La Mirada Drive, Suite A, Vista, CA 92081.

K2 shall have no obligation under the Limited Warranty:

- [i] with regard to the Finish Warranty, for problems or defects caused by physical damage or contact with any foreign substance;
- [ii] for Product installed in corrosive conditions, as determined solely by K2;
- [iii] with regard to the Finish Warranty, if the practices listed in AAMA 609 & 610-02 – “Cleaning and Maintenance for Architecturally Finished Aluminum” [www.aamanet.org] are not followed by Buyer;
- [iv] for damage to the Product that occurs during its post-sale 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;
- [v] for normal wear and tear;
- [vi] for events caused by faulty wiring work, faulty installation work or faulty handling during such work, or for events due to glass breakage caused by external influences or flying objects;
- [vii] for problems or defects due to other influences, such as dirt on the front glass, soiling or damage caused by smoke, salt or other dirt; or



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[viii] if, in K2's sole opinion: a) installation of the Product was not performed in accordance with the K2 Product instructions;

b) the Product was modified, repaired, or reworked in a manner not authorized in writing by K2 or c) the Product was installed in an application for which it was not designed.

K2 shall, at its sole option and discretion, either repair or replace with a comparable product, or refund Buyer's purchase price of, a Deficient Product ["Remedy"]. Buyer and K2 acknowledge and agree that the Remedy is K2's sole and exclusive obligation and Buyer's sole and exclusive remedy under this Limited Warranty and with respect to the Product. Where a Deficient Product is no longer being manufactured by K2, K2 reserves the right to supply another type. Absence of K2's receipt of written notification within the applicable warranty period in compliance with the terms and conditions set forth herein shall constitute a waiver of all claims under the Limited Warranty.

K2's performance of a Remedy shall not cause the beginning of a new warranty period, nor otherwise extend the applicable warranty period. K2's cumulative aggregate liability under this Limited Warranty shall not exceed the original purchase price of the Product. Buyer shall bear all costs of shipment and transportation related to the repair or replacement of Deficient Product.

EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH HEREIN, K2 MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER REGARDING THE PRODUCT AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

IN NO EVENT SHALL K2 BE LIABLE FOR, AND BUYER HEREBY AGREES TO INDEMNIFY K2 FROM AND AGAINST, ANY AND ALL CLAIMS AND COSTS, INCLUDING ATTORNEY'S FEES, ARISING IN ANY WAY FROM THE SALE, USE OR INABILITY TO USE THE PRODUCT, BASED ON: LOSS OF USE, REVENUE OR PROFIT; DIRECT, INDIRECT, SPECIAL, PUNITIVE, LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, OR ANY OTHER DAMAGE; OR INJURY TO PERSONS OR PROPERTY.

The rights, obligations and limitations contained herein are specifically negotiated as part of the agreement between the parties, and represent the specific intent to allocate risks, including those arising due to each party's own negligence or breach, and the potential of the Limited Warranty failing of its essential purpose.

Neither the sales personnel of K2 nor its distributors are authorized to make warranties or representations, whether oral or written, about the Products beyond those set forth in these Warranty Terms and Conditions, and no other warranties are given to Buyer other than the Limited Warranty set forth herein. These Warranty Terms and Conditions constitute the final expression of the parties' agreement, and it is a complete and exclusive statement of the terms of that agreement and supersedes all prior agreements, warranties, or statements regarding Products or any warranty associated with the Products. These Warranty Terms and Conditions cannot be amended, altered or modified in any way except in writing signed by an authorized officer of K2. These Warranty Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

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