

Last update: January 2025

## **1. DEFINITIONS AND REFERENCES**

1.1 Terms and Conditions means these Terms and Conditions as amended from time to time.

1.2 Credits means pre-purchased credits that can be used to perform certain actions using the Software, such as creating new Solar system designs or reports.

1.3 Warranty Agreement means the document containing the specifications of the system to be installed and the corresponding return on warranty, entered into between Stichting Zonnegarant and the Customer.

1.4 Customer means the natural person or legal person who purchases a Solar Panel System from the Licensee.

1.5 Licensee means the person or the legal entity that uses or purchases the Software developed by Solar Monkey, purchases hardware for monitoring purposes and/or Solar Monkey's services.

1.6 License Agreement means the agreement entered into between Solar Monkey and Licensee to which these General Terms and Conditions apply.

1.7 License Fee means the fee paid by Licensee to Solar Monkey in exchange for obtaining a right of use for the Software with associated conditions.

1.8 Location Data means all data available to Solar Monkey in relation to a specific location for which a Solar Panel System is designed, as further described in clause 3.5 of these Terms and Conditions.

1.9 Software means the software made available or licensed by Solar Monkey to Licensee and the related applications that jointly enable: (i) the making of calculations and the production of reports on the expected electricity yield of Solar Panel Systems to be installed and (ii) monitoring the yield of already installed Solar Panel Systems, and everything related to it.

1.10 Solar Monkey means the private limited liability company having its registered address at Waldorpstraat 5 in The Hague, Netherlands, and registered at the Chamber of Commerce under number 64301400.

1.11 System Data means the specifications of the installation of solar panels, inverter, cabling, the location, orientation and installation angle of the solar panels to be installed.

1.12 Solar Panel System means the combination of all hardware and software required to generate electricity from solar panels.

## **2. APPLICABILITY OF THE TERMS AND CONDITIONS**

2.1 These Terms and Conditions apply to all demos, requests, orders and agreements between Solar Monkey and Licensee, regarding (i) any services provided by Solar Monkey to Licensee; and (ii) the delivery and use of all Software and associated services with regard to the design of Solar Panel Systems and the calculation of the proceeds for Solar Monkey supplied to the Licensee. The specific module or modules that have been agreed between Solar Monkey and Licensee also apply. If these Terms and Conditions are incompatible with the provisions of the License Agreement agreed between Solar Monkey and Licensee, the provisions of the License Agreement shall prevail.

2.2 The applicability of purchase terms or other terms and conditions of the Licensee is expressly rejected.

2.3 If any provision of these Terms and Conditions is void or is voided, the remaining provisions of these Terms and Conditions will remain in full force and effect. Solar Monkey and the Licensee will, in that case, consult with the aim of agreeing on new provisions to replace the void or voided provisions, taking into account to the extent possible the purpose and scope of the void or voided provisions.

### **3. LICENSE SOFTWARE FOR CALCULATIONS AND REPORTS**

3.1 Under the License Agreement, Solar Monkey grants Licensee a non-exclusive and non-transferable right of use (license) for use of the Software it has developed to Licensee, with the aim of (i) creating designs for Solar Panel Systems, (ii) calculating the expected electricity yield of Solar Panel Systems to be installed, (iii) monitoring the electricity yield of Solar Panel Systems that have already been installed and / or (iv) making order lists and orders.

3.2 The Software will be made available online by Solar Monkey to Licensee, and will only be used by Licensee for the purposes described in clause 3.1.

3.3 Licensee is not permitted to sell, rent, sublicense, dispose of, and / or grant any rights to the Software or to make the Software available to any third party for any purpose. even if such third party uses the Software exclusively for the benefit of the Licensee. Licensee will not make any changes to the Software other than to correct errors, and will not use the Software in the context of processing data for third parties (time-sharing).

3.4 Based on the System Data of the Solar Panel System supplied by Licensee, the Software calculates the expected electricity yield for that specific Solar Panel System in the circumstances described via the entered System Data and Location Data available to Solar Monkey.

3.5 Location Data include aerial photos, climate data and LiDAR 3D data used to calculate the influence of shadow on the solar panels to be installed.

3.6 Solar Monkey reserves the right to archive all projects, accounts and purchased Credits that have not been active for longer than 12 months.

## **4. LIABILITY AND DISCLAIMER**

4.1 Solar Monkey is in no way liable for any damage suffered by the Licensee as a result of an incorrect calculation or display. This includes, for example (i) any yield calculated with the Software and, in practice, lower or (ii) a Solar System set-up made in the Software that turns out to be impossible to achieve in practice.

4.2 In the event Licensee prints out order lists and places them in the shopping cart at a partner distributor, Solar Monkey is in no way liable for incorrectly printing order lists and placements in the shopping cart. This includes but is not limited to ordering or purchasing too many materials, or damage suffered due to shortcomings in the order.

4.3 The total liability of Solar Monkey on the basis of an attributable failure to comply with the License Agreement is limited to: i. compensation for direct damages. In no event will the compensation amount to more than the amount invoiced annually to the Licensee under the License Agreement. Direct damages only include the reasonable costs that the Licensee would have to incur in order to have Solar Monkey's performance comply with the License Agreement. However, no damage will be compensated if the Licensee has terminated the License Agreement; ii. the costs that Licensee has incurred for the necessity to keep its old system or systems and related facilities operational for longer because Solar Monkey has not delivered on the delivery date it was bound to, less any savings resulting from the delayed delivery; iii. reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to direct damages within the meaning of these Terms and Conditions; iv. reasonable costs incurred to prevent or limit damage, insofar as the Licensee demonstrates that these costs have led to the limitation of direct damage within the meaning of these General Terms and Conditions.

4.4 Apart from the cases mentioned in this clause and to the extent legally permitted, Solar Monkey has no liability whatsoever for compensation. This limitation of liability will not apply if and insofar as the damage is the result of wilful misconduct or gross negligence on the part of Solar Monkey.

## **5. OFFERS, PRICE AND PAYMENT**

5.1 All offers and other expressions of Solar Monkey are without obligation, unless indicated otherwise by Solar Monkey.

5.2 All prices stated in any offers are exclusive of value added tax and other levies imposed by the government.

5.3 The monthly costs will be invoiced before the start of the month. So, payment takes place one month in advance.

5.4 Unless otherwise specified in the License Agreement, Solar Monkey is entitled to adjust its prices during the term of the License Agreement. These must be announced no later than 1 calendar month before the new rate starts. The Licensee remains liable to pay any amounts that become due under the License Agreement during the cancellation period.

5.5 Parties will record in the License Agreement the date or dates on which Solar Monkey invoices the License Fee. Amounts owed are invoiced monthly and must be paid within fourteen days of the date of the invoice. The Licensee is not entitled to suspend any payments or to set off amounts due.

5.6 If Licensee does not pay the amounts due or does not pay them on time, Licensee will owe statutory commercial interest on the outstanding amount without any notice or notice of default being required. If Licensee continues to pay the claim after a reminder or notice of default, Solar Monkey can hand over the claim to a debt collecting agency, in which case Licensee is also required to pay all judicial and extrajudicial costs, including all costs calculated by external experts.

5.7 The default payment methods for the Licensee are credit card or direct debit. If the Licensee chooses to pay by bank transfer based on an invoice after the fact, an administrative surcharge of 2% will be added to the monthly invoice amount. This surcharge will be automatically added to the monthly invoice.

5.8 Solar Monkey uses a “money-back arrangement”. If the Licensee wishes to claim this, it must notify Solar Monkey in writing or by email within 2 weeks of receipt of the invoice. If Solar Monkey considers the claim justified, the following amounts will be credited on the invoice: (i) the fixed subscription costs and (ii) the operating costs minus any purchase costs incurred by Solar Monkey such as costs of aerial photos. The money-back arrangement does not apply to monitoring or services granted for which working hours have been invoiced.

## **6. COPYRIGHT AND OWNERSHIP**

6.1 Solar Monkey reserves the rights and powers that accrue to it under the Dutch Copyright Act and other laws and regulations.

6.2 Solar Monkey has the right to use the knowledge gained through the implementation of the License Agreement, a demo, a request, any orders or any other agreements for other purposes as well, insofar as no strictly confidential information from Licensee is disclosed to third parties.

6.3 Solar Monkey provides a license to use the Software it has developed. All rights of intellectual property on the software, websites and documentation made available are exclusively with Solar Monkey. The licensee only obtains the rights of use explicitly granted by the License Agreement and by law. A right of use granted to the Licensee is non-exclusive, non-transferable to third parties and not sublicensable. The Licensee is under no circumstances entitled to and cannot claim any source code for the Software.

6.4 Licensee is not permitted to reproduce or publish the Software and documentation or parts thereof provided by Solar Monkey in any way whatsoever, unless explicitly agreed by Solar Monkey.

6.5 Licensee will not provide login codes for the Software to third parties.

6.6 The database that forms the basis of the Software is and remains the property of Solar Monkey. Upon request, Solar Monkey will make available to Licensee all source data of the Solar Panel Systems installed by the Licensee.

## **7. SOFTWARE UPDATES**

7.1 It is likely that Solar Monkey will further develop the Software during the term of the License Agreement. During the term of a License Agreement with Solar Monkey, Licensee is always entitled to the most recent version of the Software relating to the functionalities purchased by Licensee.

7.2 Any updates will be installed by Solar Monkey free of charge.

7.3 Even if not explicitly agreed, Solar Monkey is allowed to perform updates on the Software. The approval of the Licensee is never required for this.

7.4 At the request of Solar Monkey Licensee is obliged to provide the cooperation required to install updates.

## **8. CONDITIONS OF SALE - PHYSICAL GOODS**

8.1 The conditions of sale as outlined in chapter 8 apply to all sales of physical items by Solar Monkey to Licensee. Any additional or different terms, which may be contained in any documents furnished by Licensee, are deemed material and Solar Monkey hereby objects to and rejects them. Any such additional or different terms are effective only if in writing and signed by an authorized representative of Solar Monkey. In case Licensee does not object to these conditions of sale reasonably and in writing and accepts delivery of some or all of the items ordered, it is concluded that Licensee accepts said conditions of sale.

8.2 All offers for delivery of physical items are made for immediate acceptance and can be changed without prior notice. All sales for delivery of physical items are EXW (Incoterms 2010) Solar Monkey loading dock, unless otherwise specified in writing by Solar Monkey. Prices are listed in EUR and do not include any taxes or duties on the purchase or sale of items, including, but not limited to, federal, state, or municipal excise, sales, use or value added taxes or import duties, if any. Any such taxes and duties that may become due and owing will be paid by the Licensee. Licensee shall reimburse Solar Monkey upon demand for any such taxes, duties or similar charges that Solar Monkey is required to pay or collect.

8.3 Provided Solar Monkey's Finance department has granted credit terms to Licensee, or unless other terms have been included in the delivery documents issued by Solar Monkey for the items ordered, Licensee will pay Solar Monkey's invoices within 21 days of their date. If Solar Monkey determines in its sole discretion that Licensee fails to qualify for credit terms at any time, then Solar Monkey may, without notice to Licensee, modify or withdraw credit terms including, but not limited to, requiring advance payment, letters of credit, guarantees, or other security. Licensee agrees to pay interest on all outstanding payments at the highest contractual rate allowed under applicable law.

8.4 Delivery of items shall be EXW (Incoterms 2010) Solar Monkey's facility, unless otherwise specified in writing by Solar Monkey. After notifying Licensee, ownership of the items will pass to Licensee at the same moment as the risk of loss in accordance with the Incoterm specified in article 8.2. By accepting delivery, Licensee agrees that items are free of defects which careful inspection would reasonably uncover. Solar Monkey will prepare and package items in accordance with normal commercial practices as applicable to one-way air- and/or surface transportation.

8.5 Shipping dates are communicated based on the conditions applicable at the time of ordering as well as the information provided by Licensee. Solar Monkey shall, in good conscience, aim to ship at the estimated date, but cannot be held accountable for any delay or damages resulting from deviating from said date

8.6 Orders placed by the Licensee cannot be changed or cancelled unless agreed in writing and signed by Solar Monkey and Licensee. Should an order be cancelled in part or completely as a result of such a change or cancellation, Licensee shall, unless a valid written agreement to the contrary exists between Solar Monkey and Licensee, pay any costs resulting from said change or cancellation based on accepted accounting principles, plus a reasonable profit. In all cases, no items can be returned for credit by Licensee without prior written agreement by Solar Monkey

8.7 Licensee recognises that items are purchased from Solar Monkey in its capacity as distributor of such items on behalf of the manufacturers of such items. Licensee agrees that Solar Monkey does not provide any warranties in this capacity, both explicit, implied or legal, including but not limited to guarantees with regards to suitability for sale or fitness for a specific use.

8.8 In het geval dat de Licentiehouders claimt dat Solar Monkey één van zijn verplichtingen uit hoofde van de voorwaarden gesteld onder hoofdstuk 8 heeft geschonden, mag Solar Monkey om de teruggave van de producten vragen en de door de Licentiehouders betaalde aankoop prijs aan de Licentiehouders aanbieden, en heeft Solar Monkey in dat geval geen verdere verplichtingen onder deze overeenkomst, behalve om een dergelijke aankoop prijs te restitueren bij teruglevering van de producten. Indien Solar Monkey om de teruggave van de producten verzoekt, zullen de producten op kosten van Solar Monkey opnieuw aan Solar Monkey worden geleverd in overeenstemming met de instructies van Solar Monkey.

8.8 Should Licensee claim that Solar Monkey is delinquent in its obligations as outlined in chapter 8, Solar Monkey may request that any items are returned and reimburse Licensee for the amount of the original purchase price, in which case Solar Monkey will have no further obligations under this agreement except for reimbursing Licensee for said amount upon return of the items. Should Solar Monkey request a return of items, the return delivery of said items to Solar Monkey will take place in accordance with any instructions by Solar Monkey and will be paid for by Solar Monkey

8.9 Licensee agrees in good conscience to oblige its agents (including but not limited to brokers and expeditors) to (i) satisfy any obligations with regards to any applicable law governing transport security en (II) supply proper identification en purchase reference number when items are collected

## **9. INFORMATION SHARING AND CONFIDENTIALITY**

9.1 In order to make the Software or any services available to Licensee, it is necessary to exchange data. This includes but is not limited to: electricity yield from Solar Panel Systems, personal data, results of analyses and calculations.

9.2 Both parties to the License Agreement ensure that any information received from the other party that is known or reasonably known to be of a confidential nature remains confidential. Data will in any case be considered confidential if it is indicated as such by one of the parties.

9.3 Both parties to the License Agreement declare that personal data will not be published or shared with third parties unless expressly agreed in writing. An exception to this is the direct communication with the Customer about the data and electricity yield of a Solar Panel System in the possession of the Customer.

9.4 In the event that, under the License Agreement or any other agreement, data from Customer's electricity proceeds will be read out and stored, Licensee is responsible for obtaining the Customer's consent to Solar Monkey, and Licensee indemnifies Solar Monkey against all damages and costs arising from a lack of permission.

9.5 Solar Monkey reserves the right to use anonymized data obtained through the Software for purposes other than directly necessary for licensing the Software.

## **10. TERMINATION, CHANGES TO AND CONTINUATION OF AGREEMENTS**

10.1 Agreements between Solar Monkey and its counterparty may be amended or terminated in writing with mutual consent.

10.2 Unless otherwise specified, any agreement between Solar Monkey and its counterparty is entered into for an indefinite period of time, and can be terminated subject to a notice period of one month or as otherwise agreed by the Parties.

10.3 Each of the parties may terminate these Terms and Conditions or any other agreement between the parties in writing, with immediate effect, (i) if the other party is granted suspension of payment, whether or not provisionally, (ii) if the other party is declared bankrupt, (iii) if the other party is liquidated or terminated other than for the purpose of reconstruction or merger of enterprises, or (iv) if decisive control of Solar Monkey's counterparty's enterprise changes. By terminating the Terms and Conditions or any other agreement on one of these grounds, Solar Monkey is never obliged to refund any monies already received or to pay compensation. In the event of Licensee's bankruptcy, the Licensee's right to use Software immediately expires.

10.4 Each of the parties is entitled to rescind the License Agreement and any other agreement in case of a culpable failure by the other party to comply with its essential obligations under the License Agreement and any other agreement, in all cases after a

written notice of default whereby a reasonable grace period is set to perform the obligation,. Payment obligations and obligations to cooperate with the involved party or third party are considered as essential obligations.

## **11. FORCE MAJEURE**

11.1 The parties can postpone their obligations under the License Agreement and any other agreement during the situation of force majeure.

11.2 If the situation of force majeure lasts longer than two months, each party will be entitled - without obligation to pay compensation for damage to the other party - to terminate the License Agreement and any other agreement.

11.3 Force majeure is understood to mean - in addition to what is included below in law and case law - all external causes, foreseen or unforeseen, which the party concerned cannot influence, but as a result of which it is unable to meet its obligations towards the other party.

11.4 Force majeure also includes: (i) force majeure of suppliers, (ii) defectiveness of goods, equipment, software or materials supplied by third parties, the use of which is required for the implementation of obligations in this agreement, (iii) government measures, (iv) power failure , (v) failure of the internet, (vi) workload and (vii) unavailability of one or more employees.

11.5 Either party may invoke force majeure if a circumstance that prevents (further) fulfillment occurs after he should have fulfilled his obligations.

## **12. GOVERNING LAW AND JURISDICTION**

12.1 These Terms and Conditions, the License Agreement and any other agreement between Solar Monkey and Licensee and the legal relationship arising therefrom between Solar Monkey and the Licensee will be governed by the laws of the Netherlands. Disputes arising from or related to the License Agreement, any other agreement or these Terms and Conditions may only be submitted to the competent court at the location of establishment of Solar Monkey.