

ESDEC

GENERAL TERMS AND CONDITIONS OF SALE

Filed with the Dutch Chamber of Commerce on 13 February 2024

1. Company details

Esdec B.V.
Londenstraat 16
7418 EE Deventer, the Netherlands
Registration number Dutch Commercial Register (*Handelsregister*): 08127728
VAT number: NL813998955B01

2. Definitions and interpretation

In these Terms and Conditions, terms written with an initial capital have the meaning set out in Schedule 1 (*Definitions*) to these Terms and Conditions.

3. Scope and applicability

- 3.1 These Terms and Conditions apply to every Offer and Agreement, except to the extent expressly deviated therefrom in the Offer or Agreement. In the event of a conflict between the provisions in these Terms and Conditions and the provisions in an Offer or Agreement, the provisions in the Offer or Agreement will prevail. In the event of a conflict between the Warranty Conditions and the other provisions in these Terms and Conditions, the Warranty Conditions will prevail to the extent of such conflict.
- 3.2 The application to an Offer or Agreement of any general terms and conditions of procurement or other general terms and conditions used by a Customer (regardless of whether such terms and conditions are referenced in any purchase order, invoice, or in any correspondence between the Parties, or are implied by trade, custom, practice or course of dealing) is excluded unless such terms and conditions have expressly been accepted by Esdec in writing.
- 3.3 The Customer acknowledges and agrees that, in the context of each Offer and Agreement, the Customer is acting in the exercise of its profession or business, and not as a Consumer.
- 3.4 Esdec may change these Terms and Conditions at any time and shall use its reasonable efforts to notify the Customer thereof in a timely manner (which may include by way of a general notification through the Website). Any such changes shall apply to Offers and Agreements issued or concluded after the date such changes are stated to take effect. Any amendment to an Agreement after its conclusion shall require to be agreed in writing by the authorized representatives of each Party.
- 3.5 Should any provision of these Terms and Conditions or of an Agreement be or become invalid or unenforceable in whole or in part, such shall not affect the validity and enforceability of the remaining provisions of these Terms and Conditions or the Agreement. The Parties shall in such event in good faith negotiate to promptly replace such invalid or unenforceable provision with a valid and enforceable provision, which insofar as possible reflects the original intent. A failure to exercise or delay in exercising a right or remedy provided under these Terms and Conditions, an Agreement, or applicable law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies, and no single or partial exercise of such a right or remedy prevents further exercise of the right or remedy or the exercise of another right or remedy.

4. Offers and agreements

- 4.1 Any Offer, even if it contains an acceptance period, is not binding upon Esdec until an Agreement has been concluded in accordance with these Terms and Conditions.
- 4.2 An Offer will automatically lapse if the Products comprised in the Offer are no longer available for purchase, and if the Offer is not accepted by the Customer within a period of 30 (thirty) days from the date the Offer was issued or such other acceptance period as is set out in the Offer.
- 4.3 The Customer is solely responsible for ensuring the completeness and correctness of all information

provided by or on behalf of it to Esdec and acknowledges and agrees that Esdec may rely on such information in preparing any Offer or Agreement.

- 4.4 Without prejudice to Clause 4.3 and Clause 8, Esdec shall use its reasonable efforts to ensure that the information provided by it in an Offer is complete and correct, but shall not be bound to apparent errors in an Offer.
- 4.5 Esdec shall use its reasonable efforts to ensure that depictions of Products and general information on Products on its Website (including in brochures and product documentation made available by Esdec through its Website or otherwise) are accurate but shall not be liable for any variations of the actual Products provided from such depictions or information.
- 4.6 The Customer may submit written purchase orders for the provision of Products and shall, where applicable, use the form for such purchase orders prescribed by Esdec.
- 4.7 An Agreement is only concluded once the Customer has accepted an Offer in writing or has submitted a written purchase order for Products to Esdec, and (a) such acceptance or purchase order has been confirmed in writing by an authorized representative of Esdec, or (b) Esdec has demonstrably proceeded to perform the supply of Products under the Offer or purchase order.
- 4.8 The Customer may cancel or amend a purchase order prior to Esdec confirming such purchase order, by giving Esdec written notice of such cancellation or amendment. Any cancellation or amended after such time may be refused by Esdec, or, at Esdec's discretion, be accepted under the condition that the Customer compensates Esdec for the costs incurred.

5. Delivery

- 5.1 Unless otherwise provided in an Agreement, Esdec shall deliver Products DAP (Incoterms 2020) in suitable packaging at such location as is notified by Esdec to the Customer in the Agreement or otherwise in writing. In the event that delivery by Esdec at a Customer location is agreed, Esdec shall at all times be entitled to onward charge to the Customer all costs of export/import duties and transportation (including insurance during transport) incurred in delivering the Products.
- 5.2 Esdec is entitled to deliver the Products under an Agreement in parts and require payment of a partial delivery prior to proceeding to the subsequent partial delivery.
- 5.3 The risk of damages to or loss of the Products will pass to the Customer upon delivery in accordance with Clause 5.1. Legal title to Products will pass to the Customer only upon payment in full by the Customer of the purchase price due in respect of such Products, and until such time the respective Products are subject to the retention of title (*eigendomsvoorbehoud*) and the Customer (i) is obliged to ensure that the Products are not further processed or transferred, remain identifiable as deriving from Esdec, are traceable to the Agreement under which they were purchased, and are identified as the property of Esdec in the Customer's records and accounts, and (ii) shall provide Esdec all reasonable cooperation (including access to Customer controlled premises) to identify and reclaim the Products upon any default in payment for such Products by the Customer. In the event that Esdec cannot reclaim the Products due to specification (*zaaksvorming*), confusion (*vermenging*), accession (*natrekking*) or assignment (*overdracht*), the Customer shall be required to procure a pledge on the newly formed objects for the benefit of Esdec.
- 5.4 If a third party seizes the Products that are subject to the retention of title (*eigendomsvoorbehoud*) pursuant to Clause 5.3, or wishes to establish or enforce any rights with respect to such Products, the Customer shall be required to inform Esdec thereof immediately.
- 5.5 The Customer shall be responsible for accepting and signing transportation documents (proof of delivery) for Products delivered and for inspecting each delivery of Products by performing a check: (a) on the correctness of delivered Product types and models against the Agreement, (b) on the correctness of quantities delivered against the Agreement, and (c) of the Products against the Specifications.
- 5.6 The Customer shall notify Esdec of any apparent deficiencies resulting from the inspection conducted pursuant to Clause 5.5 within 2 (two) Business Days of delivery, thereby including reasonable evidence (e.g., photographs or video recordings) of the deficiencies. In the event that the Customer does not notify Esdec of deficiencies within the aforementioned timeframe, the Products delivered shall, without prejudice to Esdec's warranty obligations under the Agreement and these Terms and Conditions, be

deemed accepted by the Customer. In case of a deficiency reported in accordance with this Clause 5.6, Esdec shall, insofar as it is responsible for such deficiency and subject to the Warranty Conditions, at its cost remedy the deficiency as soon as reasonably possible and practicable.

- 5.7 The Customer shall compensate Esdec for all reasonable costs incurred by Esdec as a result of any failure by the Customer to take delivery of Products at the agreed time and location (including the costs of returning the Products). The Customer acknowledges and agrees that, unless otherwise agreed in writing between the Parties, Esdec shall in such aforementioned event and at its sole discretion store Products for a maximum period of 1 (one) month from the initially agreed delivery date at the Customer's cost and risk. After the aforementioned 1 (one) month period, Esdec may, without further notice to the Customer and without excusing Customer from its obligations under the Agreement, destroy, resell or otherwise dispose of the Products as it deems appropriate.
- 5.8 Delivered Products can only be returned to Esdec within 3 (three) months after date of the Esdec invoice pertaining to such products and only after written approval from Esdec, whereby Esdec shall specify the applicable requirements for a return shipment and the costs for return processing. Any costs for a return shipment shall be payable by the Customer unless the return is due to an error attributable to Esdec. Any Products for which returns are requested need to be in packaging that is unopened, full, and original.

6. Timing and delays

- 6.1 Esdec shall use its reasonable efforts to deliver Products on the date agreed between the Parties in or pursuant to the Agreement, however, unless expressly agreed otherwise in writing between the Parties, (a) each such delivery date shall be deemed an estimated date and not a final date (*fatale termijn*), and (b) any failure to meet a delivery date shall not entitle the Customer to claim any compensation of damages or costs resulting from such delay.
- 6.2 Without prejudice to Clause 6.1, each Party shall, without undue delay upon becoming aware thereof, notify the other Party of any circumstances that causes or may cause a delay in the performance of its obligations under an Agreement.

7. Prices and payment

- 7.1 All prices for Products are stated in Euros on an Ex Works (Incoterms 2020) basis, and are payable in Euros. Insofar as the Parties have agreed that Esdec shall invoice amounts due in any other currency than Euros, the invoiced amounts shall be calculated in the relevant local currency using the exchange rate published by the European Central Bank at the date of invoicing.
- 7.2 All amounts payable pursuant to an Agreement are stated exclusive of any VAT, excise and export/import duties, and other taxes and levies, all of which (other than taxes levied on Esdec's income) are payable by the Customer unless expressly agreed otherwise in writing between the Parties. If any such taxes (other than reverse charge VAT) are properly chargeable on any provision of Products under an Agreement, the Customer shall pay to Esdec, in addition to the prices for the Products, an amount equal to the amount of the applicable taxes against delivery of an invoice that is appropriate and valid under the applicable tax rules. The Parties shall cooperate to minimize any VAT or other taxes and duties due in relation to an Agreement to the extent legally permitted.
- 7.3 The Customer shall pay amounts due in full, without set-off, deduction or withholding, in the currency in which they are invoiced, to the designated bank account of Esdec within 14 (fourteen) days from the date of the invoice or such other payment term as is agreed in the Agreement or set forth in the invoice. Esdec shall at all times be entitled to demand full or partial payment for Products in advance of delivery, or to demand security for payment. Esdec shall at all times be entitled to set appropriate credit limits for the Customer and any changes Esdec makes to the Customer's credit limit will be notified to the Customer from time to time.
- 7.4 If the Customer is in default in respect of any payment obligation towards Esdec, Esdec shall, without prejudice to its other rights and remedies, be entitled to charge and the Customer shall be obliged to pay: (i) the higher of the statutory interest under Dutch law (*wettelijke rente bij handelstransacties*) or, if different, any maximum interest permitted under the law governing the Agreement on any overdue amounts, which interest shall accrue daily from the due date to the date of actual payment in full, and (ii) the extrajudicial costs of collection of all amounts owed to Esdec. In the event of the Customer's payment

default under any Agreement, Esdec shall additionally be entitled to suspend (further) performance of any and all of its obligations under all Agreements until the Customer has fully complied with all payment obligations.

- 7.5 The Customer is not entitled to set off amounts due by it to Esdec under an Agreement against amounts due to the Customer by Esdec under that Agreement or any other agreement between the Parties.
- 7.6 Esdec may, at its sole discretion and at any time, unilaterally discontinue or change the Products, and change the List Prices or the Specifications of Products, that are available for purchase by the Customer. Esdec shall use its reasonable efforts to provide the Customer advance written notice (including by way of a general notice through its Website or customer account) of any such material changes in a timely manner. Any such change to the Products, Specifications, and List Prices shall not affect any purchase orders that were confirmed by Esdec and are existing at the date that such change takes effect, unless (i) otherwise agreed between the Parties in writing or (ii) any factor on which the price was based changes between the date of confirmation of the order and the delivery date, including, but not limited to, any changes to (a) the Agreement, (b) the Specifications or (c) labor costs, raw material prices, taxes, and other legal charges or obligations.

8. Advice, instructions, training, and support

- 8.1 Esdec may offer advice, instructions, training, and support in respect of the design, purchase, installation, maintenance, or use of the Products. Esdec shall use its reasonable efforts to provide such advice, instructions, training, and support using the skill, expertise, and care one might reasonably expect from a diligent, suitably qualified, and experienced service provider, however, the Customer shall be solely responsible for its use of and reliance on any such advice, instructions, training and support, and any specifications, calculations, drawings, designs, and other information provided in the context thereof.
- 8.2 While Esdec may provide guidance and instructions on, and (software) tools for, the inspection of sites and structures for installation of the Products, the calculation of load bearing pressure, and the installation and maintenance of the Products, Esdec is never involved in the installation of the Products and the Customer is solely responsible for such inspection, calculations, installation, and maintenance, including by validating any such aforementioned guidance and instructions, and the results of any such aforementioned tools. The Customer, nor any other party, can derive any rights from any such advice, guidance, or instructions provided by Esdec, including (but not limited to) any calculations performed by Esdec.
- 8.3 The Customer hereby indemnifies Esdec and its Affiliates and shall hold them harmless from any and all Losses that they may incur as a result of any claims with respect to the use of designs, drawings, calculations, or other tools provided by Esdec in connection with the Products.
- 8.4 In the event that Esdec engages a third party for inspection of a site to determine the cause of any defects, Esdec shall be entitled to pass on any reasonable costs for such inspection to the Customer, or to any other party responsible for the installation of the Products, in the event that the third-party inspector determines that the cause of the defects lies in an installation error or any other non-compliance with instructions, guidance or advice provided by Esdec in connection with the use of the Products.

9. Intellectual Property Rights

- 9.1 Unless expressly agreed otherwise in writing between the Parties, all Intellectual Property Rights in and to the Products, the Esdec Trademarks, and any other works, materials (including software) or documentation made available by Esdec under an Agreement (including where the same has been developed by Esdec for the Customer at its cost), or used by Esdec in the performance of an Agreement, including all improvements, translations, modifications or derivative works relating thereto, shall exclusively vest in Esdec or its third party licensors. Unless expressly specified otherwise in an Agreement, Esdec does not grant the Customer any license under, right or interest in, or make any assignment of, any such aforementioned Intellectual Property Rights.
- 9.2 The Customer shall not alter any of the Products, deface, remove, conceal or otherwise alter Esdec Trademarks used on, in or in relation to the Products, or attach any other trademarks or markings than the Esdec Trademarks to any Product. The Customer shall furthermore not (i) act in any manner which may invalidate or is inconsistent with any Intellectual Property Rights of Esdec, or which may harm the

Esdec Trademarks' distinctive qualities, or Esdec's reputation or goodwill in this regard, or harm Esdec's business or trade name, or (ii) oppose the validity of Esdec Trademarks or seek (directly or indirectly) to register or assert any ownership rights to any Esdec Trademarks (in whole or in part) in any jurisdiction, or seek (directly or indirectly) to register, assert ownership of, or use trade names, trademarks, product and service names, brands, logo's, domain names, or any other marks which are, in Esdec's sole opinion (acting reasonably), identical or confusingly similar to (any element of) the Esdec Trademarks.

- 9.3 At Esdec's first request, the Customer is required to return any and all data as referred to in Clause 9.1 within the reasonable time as set by Esdec.

10. Confidentiality

- 10.1 Each Party (the "**Receiving Party**") receiving Confidential Information of the other Party (the "**Disclosing Party**") shall use and disclose such information only for the purposes of the performance of the Agreement in accordance with the terms thereof. The Receiving Party shall take all reasonable measures to protect the Confidential Information of the Disclosing Party against unauthorized disclosure to or access by third parties, and shall in any event use such care in respect of that Confidential Information as it would use in respect of its own Confidential Information and never less than a reasonable standard of care.
- 10.2 Clause 10.1 does not apply to any information which the Receiving Party can demonstrate:
- (a) is in or subsequently enters the public domain other than as a result of a breach of Clause 10.1;
 - (b) has been or is subsequently received by the Receiving Party from a bona fide third party who is under no confidentiality obligation in respect of that information;
 - (c) has been or is subsequently independently developed by the Receiving Party without use of the Confidential Information; or
 - (d) was previously known to the Receiving Party free from any obligation to keep it confidential.
- 10.3 The confidentiality obligations under Clause 10.1 shall not restrict any disclosure of Confidential Information (a) which is required for the purposes of defending or enforcing a Party's rights under an Agreement at law, or (b) which is required by law or by a rule of a listing authority or stock exchange to which any Party is subject or submits, or by any court, arbitrator, supervisory authority or governmental authority with relevant powers to which any Party is subject or submits.

11. Data protection

- 11.1 For the purposes of this Clause 11, the terms "personal data", "controller", and "process" (including conjugations thereof) have the meanings given in the GDPR.
- 11.2 Each Party acknowledges that it is a controller in respect of any personal data of or deriving from the other Party processed by such first-mentioned Party in performing its obligations under an Agreement, and that it shall process such data in strict accordance with all applicable data protection laws and regulations (including the GDPR, as applicable).
- 11.3 The Customer acknowledges and agrees that Esdec shall process personal data of or deriving from the Customer in accordance with Esdec's privacy statement as made available on the Website, as the same may be varied from time to time.

12. Warranties

- 12.1 Each Party represents and warrants that:
- (a) it is duly incorporated and validly existing under the applicable law of the country of its incorporation;
 - (b) it has the requisite power, capacity and authority, and has obtained all consents, permissions and licences necessary, to enter into, deliver and perform its obligations under each Agreement; and
 - (c) its entry into and performance of an Agreement does not and will not conflict with (or cause such Party to breach) (i) any applicable law, (ii) its constitutional documents, or (iii) any agreement, licence or instrument binding upon it or any of its assets.

- 12.2 Esdec represents and warrants that:
- (a) upon delivery, the Products shall be new (not used or refurbished), and title to the Products shall be free and clear of all liens, security interests, charges, encumbrances and other restrictions except as set out in Clause 5.3; and
 - (b) for the Warranty Period, the Products shall, subject to Clause (b), be free from material deficiencies in materials or workmanship and materially comply with their relevant Specifications.
- 12.3 The warranties given by Esdec under Clause 12.2 in respect of the Products are subject to the Warranty Conditions and the further provisions of this Clause 12, and the Customer shall follow the warranty procedure set out in the Warranty Conditions in order to be entitled to any remedy in respect of Defects. The remedies set forth in the Warranty Conditions shall, to the fullest extent permitted under applicable law, constitute Esdec's sole liability and the Customer's sole remedies in respect of Defective Products.
- 12.4 To the extent permitted under applicable law and except as otherwise provided in an Agreement or these Terms and Conditions, all express or implied representations, warranties, and conditions in respect of the Products, including as regards their conformity to the Agreement, quality, fitness for any particular purpose, merchantability, or non-infringement are expressly excluded.

13. Liability

- 13.1 Without prejudice to the provisions of Clause 12 and subject to the further provisions of this Clause 13, Esdec's aggregate liability under any Agreement for damages incurred by the Customer shall be limited to the lower of the amount (a) paid by the Customer under the Agreement in relation to the Products in respect of which the damages are claimed, or (b) received by Esdec under any insurance of Esdec in relation to the damages concerned.
- 13.2 Esdec's liability under any Agreement for any loss of profits, loss of revenues, loss of anticipated savings, loss of goodwill, loss of business opportunities, business interruptions or any other indirect damages or loss is excluded.
- 13.3 Nothing in these Terms and Conditions or in an Agreement shall operate to exclude or restrict a Party's liability for any damages or loss resulting from its wilful misconduct (*opzet*), fraud (*bedrog*) or gross negligence (*bewuste roekeloosheid*), or which can otherwise not lawfully be excluded or limited under mandatory provisions of applicable law.

14. Force Majeure

- 14.1 If a Party is delayed or prevented from complying with its obligations under an Agreement by a Force Majeure Event, then the requirement to comply with those obligations shall be suspended to the extent that performance is delayed or prevented by that event. As soon as reasonably practicable after becoming aware of the Force Majeure Event, the respective Party shall notify the other Party in writing of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement.
- 14.2 Each Party shall use its reasonable efforts to prevent and mitigate the effects of the Force Majeure Event on the performance of its obligations under an Agreement, and as soon as reasonably possible after the end of the Force Majeure Event notify the other Party in writing that the Force Majeure Event has ended and resume performance of its obligations under the Agreement.

15. Termination

- 15.1 Without prejudice to any termination rights provided in an Agreement or under applicable law, a Party may, without prejudice to its other rights or remedies, terminate an Agreement in whole or in part without court intervention with immediate effect by written notice to the other Party upon the occurrence of any of the following events:
- (a) a breach by the other Party of its obligations under an Agreement, which breach is incapable of remedy or which breach, if capable of remedy, is not remedied within 30 (thirty) days after written notice from the other Party requiring the breach to be remedied or such longer period as is indicated in such notice;

- (b) if the other Party:
- (1) has an administrator, receiver or administrative receiver appointed to it or any substantial part of its assets;
 - (2) is dissolved or passes a resolution or makes a determination for its dissolution or liquidation (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
 - (3) becomes subject to an administration order or petition for its insolvency or bankruptcy;
 - (4) is unable to pay its debts when they fall due; or
 - (5) ceases (or threatens to cease) to carry on business.
- (c) A Force Majeure Event has prevented, hindered or delayed the other Party's performance of its obligations under an Agreement for a consecutive period of more than 60 (sixty) days.

16. Consequences of termination

- 16.1 Subject to the further provisions of this Clause 16, The termination or expiry of an Agreement shall not affect (i) any accrued rights or liabilities of a Party under the Agreement existing at the time of such termination or expiry, or (ii) the continuance of those provisions of the Agreement which are necessary for the interpretation or enforcement of the Agreement or which by their wording or nature are reasonably intended to continue.
- 16.2 Upon the termination or expiry of an Agreement for any reason and upon written request of the Disclosing Party, the Receiving Party shall, at its own costs and at the option of the Disclosing Party, either return or destroy all Confidential Information related to or provided by the Disclosing Party that is in its possession or control, provided that the Receiving Party shall be entitled to retain (without prejudice to the confidentiality obligations under an Agreement) such information as is required to comply with its mandatory obligations under applicable law or as contained in any electronic file created pursuant to any routine backup or archiving procedure so long as such file is not generally accessible beyond the need for disaster recovery or similar operations.

17. Governing law and jurisdiction

- 17.1 These Terms and Conditions and, except as otherwise provided in an Agreement, each Agreement are governed by the laws of the Netherlands. The application to any Agreement of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 17.2 Unless expressly agreed otherwise between the Parties in writing, any dispute, claim, or controversy relating to these Terms and Conditions or an Agreement, or to the breach, termination, enforcement, interpretation or validity thereof, whether contractual or non-contractual, that cannot be resolved amicably shall be exclusively referred for adjudication in first instance (*in eerste aanleg*) by the competent courts of Overijssel, the Netherlands, provided that in urgent matters Esdec shall additionally be entitled to seek injunctive relief or provisional measures (*voorlopige voorzieningen*) in any court of competent jurisdiction under applicable law.

Lastly amended: 13 February 2024.

SCHEDULE 1
DEFINITIONS

1. In addition to terms defined elsewhere in these Terms and Conditions, the following terms with an initial capital shall have the following meanings throughout these Terms and Conditions (including its recitals and Schedules) unless the context apparently requires otherwise:
- (a) "**Affiliate**" means, with regard to Esdec B.V., any other Person directly or indirectly controlling, controlled by, or under common control with Esdec B.V., and the term "control" (and conjugations thereof) shall in this context mean the direct or indirect (i) ownership of more than 50% (fifty per cent.) of the nominal value of the share capital issued, (ii) possession of more than 50% (fifty per cent.) of the voting power at general meetings, or (iii) power to appoint and to dismiss a majority of the directors or to otherwise direct the activities of Esdec B.V.
 - (b) "**Agreement**" means any agreement, including a confirmed purchase order, for the sale and delivery of Products by Esdec entered into between the Parties.
 - (c) "**Business Day**" means any day of the week, except Saturday and Sunday and public holidays in the Netherlands.
 - (d) "**Confidential Information**" means (i) the terms of an Agreement, and (ii) all information about a Party or pertaining to the business affairs of a Party or its Affiliates which, in relation to or in connection with an Agreement, is (directly or indirectly) disclosed to or otherwise acquired by the other Party in any form (whether orally, electronically, in writing or by another means), including information on products, services, operations, processes, plans or intentions, developments, trade secrets, knowhow, (works protected by) Intellectual Property Rights, market opportunities, personnel, customers, suppliers, and subcontractors, and all information derived from the foregoing, in each case insofar as such information would, under the circumstances, appear to a reasonable person to be of a confidential nature or is expressly stated to be confidential or proprietary.
 - (e) "**Consumer**" means a natural person who is acting for purposes other than in the context of his or her business or professional activities.
 - (f) "**Customer**" means each Person to whom Esdec has submitted an Offer or with whom Esdec has concluded an Agreement.
 - (g) "**Defect**" and "**Defective**" means a demonstrable failure of a Product to conform to the warranties under Clause 12.2(b).
 - (h) "**Disclosing Party**" has the meaning ascribed to it in Clause 10.1.
 - (i) "**Esdec**" means Esdec B.V. or any of its subsidiaries from time to time.
 - (j) "**Esdec Trademarks**" means any registered or unregistered trademark, trade name, product name, service name, domain name, brand, logo, or other mark owned or used by or on behalf of Esdec.
 - (k) "**Force Majeure Event**" means an event which is beyond the reasonable control of Esdec, including any strike, lock-out or labour disputes, act of God, fire, flood, storm and other extreme weather conditions, war, military action, acts of governmental authorities, riot, terrorism, epidemic, pandemic, explosion, material breakdown or malfunction of plant, machinery or software, failure of delivery or material lack or shortage of essential supplies and services (including raw materials, waste processing, electrical power, fuel, or water), and including where any such event arises in respect of Esdec's suppliers or subcontractors.
 - (l) "**GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
 - (m) "**Intellectual Property Rights**" means (i) any and all intellectual or industrial property rights anywhere in the world, whether registered or unregistered and whether having a statutory basis or existing under equity, common law or otherwise, including, without limitation, patents, utility model rights, rights in layout-designs (topographies) of integrated circuits, rights in trade secrets, rights in confidential information and know-how, design rights, copyrights (including rights in software),

neighbouring rights, database rights or other rights in compilations of data, and any and all rights of a similar nature, and (ii) all applications and rights to apply for any of such aforementioned intellectual or industrial property rights, including registrations, renewals and extensions, anywhere in the world.

- (n) "**List Prices**" means Esdec's non-discounted, gross prices for the Products as determined by Esdec from time to time and made available to the Customer including by way of a general notice through a Website or customer account.
 - (o) "**Loss**" or "**Losses**" means any and all claims, losses, damages, liabilities, penalties, fines, taxes, charges, costs (including internal costs), and expenses of whatever nature (including attorneys' fees and court fees) howsoever arising.
 - (p) "**Offer**" means any offer or quotation made by or on behalf of Esdec by an authorised representative of Esdec for the sale and delivery of Products by Esdec.
 - (q) "**Parties**" means Esdec and Customer.
 - (r) "**Person**" means any individual, firm, partnership, trust, limited liability entity, joint venture, company, corporation, body corporate, unincorporated body, association, organization, government, state, agency of a government or state, local or municipal authority or other governmental body, in each case whether or not having separate legal personality, and includes that person's legal representatives, successors, permitted assigns and permitted nominees in any jurisdiction.
 - (s) "**Products**" means mounting materials and systems for solar panels, and any other goods (including spare parts) that Esdec may offer for sale from time to time.
 - (t) "**Receiving Party**" has the meaning ascribed to it in Clause 10.1.
 - (u) "**Specifications**" means, in respect of each Product, the written functional and technical specifications of such Product as set forth in the documentation provided by Esdec in respect of such Product, and as may be further specified in an Agreement.
 - (v) "**Terms and Conditions**" means the present general terms and conditions of sale, including the Warranty Conditions, as the same may be amended from time to time in accordance with the provisions herein.
 - (w) "**VAT**" means (i) any tax imposed in compliance with the EU Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, and (ii) any similar sales or use tax, or tax of a similar nature imposed in any jurisdiction, and (iii) any tax imposed in substitution for, or levied in addition to, such tax referred to in the aforementioned items (i) or (ii).
 - (x) "**Warranty Conditions**" means the warranty conditions of Esdec in respect of the Products which apply at the date of delivery thereof under an Agreement, as set forth from time to time on the Website.
 - (y) "**Warranty Period**" has the meaning given in the Warranty Conditions.
 - (z) "**Website**" means www.esdec.com or any other website that may be notified by Esdec to the Customer from time to time.
2. In these Terms and Conditions:
- (a) the words "**include**", "**including**" and "**includes**" shall be deemed to be followed by the words "**without limitation**";
 - (b) a reference to a "**Clause**" or a "**Schedule**" shall mean a clause of or schedule to these Terms and Conditions;
 - (c) a reference to any statutory law shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and any rules and regulations which are made under it, and any subsequent re-enactment or amendment of the same; and
 - (d) the headings are inserted for convenience and reference purposes only and do not affect the

interpretation of the Terms and Conditions.

3. Where in these Terms and Conditions any information, confirmation, offer, order, acceptance, approval, or consent is required to be "written" or to be provided "in writing", such shall include the provision thereof in a generally accessible, reproducible and storable digital format, and the communication thereof by email or any other form of electronic communication set forth in these Terms and Conditions or otherwise agreed between the Parties.