

AgroCares

General Terms & Conditions

TABLE OF CONTENTS

SCOPE AND DEFINITIONS	3
CHAPTER 1 GENERAL TERMS	5
1. OFFERS AND ORDERS	5
2. PRICES AND PAYMENTS	5
3. INTELLECTUAL PROPERTY	6
4. NO WARRANTIES AND PERFORMANCE	6
5. LIMITATION OF LIABILITY.....	7
6. FORCE MAJEURE	7
7. CONFIDENTIALITY	7
8. DATA PROTECTION	8
9. WAIVER	8
10. TERM AND TERMINATION	8
11. APPLICABLE LAW AND DISPUTE RESOLUTION	9
12. MISCELLANEOUS.....	9
CHAPTER 2 PRODUCTS	10
13. SHIPMENT, RISK AND TITLE	10
14. ACCEPTANCE	11
15. SOFTWARE LICENSE	11
16. RESTRICTIONS ON USE.....	11

17. WARRANTY & REPAIRS	12
CHAPTER 3 SERVICES	13
18. PROVISION OF SERVICES	13
19. ANALYSIS	13
20. MAINTENANCE AND SUPPORT	13
21. TRAINING.....	14

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SCOPE AND DEFINITIONS

These General Terms and Conditions (“**Terms**”) govern the sale of goods and services by AgroCares, a trade name of Care4Aro BV., Nieuwe Kanaal 7C Wageningen Netherlands (CC: 765107721), or its Affiliates as defined below (together “**AgroCares**”), and apply to all agreements entered into, including all quotations made, order acknowledgments sent, purchase orders received, and invoices sent by AgroCares to a third party (“**Customer**”) and all other legal relationships between AgroCares and Customer and all other legal acts by AgroCares. These Terms shall also be applicable for all future transactions between AgroCares and Customer (each individually a “**Party**” or jointly the “**Parties**”), unless the Parties have explicitly agreed otherwise in writing.

AgroCares, in its sole discretion, shall at all times be entitled to amend these Terms and shall publish such amended Terms on the company website (www.agrocareds.com). Other derogations from and additions to these Terms shall not be valid, unless agreed explicitly in writing by the Parties.

The Terms consist of three chapters. Chapter 1 applies to all Agreements, legal relationships and other legal acts. Chapters 2 and 3 only apply insofar as they are applicable to the specific Agreement, legal relationship or other legal act as set out in the relevant chapter.

Definitions

"AgroCares Laboratory"	means AgroCares golden standard laboratory located at Nieuwe Kanaal 7, 6709 PA Wageningen, the Netherlands.
"Applicable Law"	means all laws, statutes, orders, rules, provisions, regulations, directives and guidelines which have legal effect and are applicable to the Agreement and/or AgroCares, whether local, national, European, international or otherwise existing from time to time, including but not limited to all Regulator’s rules, requirements, standards and guidelines.
"Agreement"	means any agreement entered into between AgroCares and Customer, including these Terms.
"Affiliate"	means in relation to an entity, another entity controlling, controlled by, or under common control with that entity.
"Analytical Services"	means soil, feed and leaf analyses services provided to customer by AgroCares Laboratory.
"Confidential Information"	means the substance of these Terms and all related Agreements, and all information, in any form (including written, verbal, visual, electronic information or copies thereof), regarding the performance of each Party’s obligations under these Terms and all Agreements, the business of each Party (including financial, commercial, strategic, sales and marketing information, forecasts, personnel information, etc.), and all other information, in any form, which has been disclosed by or on behalf of a Party in confidence, or which by its nature ought to be regarded as confidential.



“Equipment”	means the equipment sold by AgroCares for the purpose of the testing and analysis of soil, feed, crop or leaf samples. The equipment is used in combination with the Software and the Services.
“Intellectual Property Rights”	means patents, trademarks, service marks, logos, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi conductor topography rights, utility models, rights in know how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.
“Lab-in-a-Box”	means the set of hardware for soil sample preparation and soil analysis. More information on the website: https://www.agrocared.com/products/lab-in-the-box/
“License”	means the license provided by AgroCares to Customer to use the Software.
“Losses”	means any and all losses, damages, costs, fines, penalties, expenses (including reasonable legal fees) and other liabilities of any kind, whether foreseeable or not.
“Materials”	means any information or documentation (whether in tangible or intangible form) provided by AgroCares to Customer under the Agreement, including without limitation materials for training, testing, analysis, designs, reports and offers.
“Product”	means the Equipment and the Software that is made available by AgroCares to Customer, including any documentation and/or information relating to the Product.
“Regulator”	means any authority that regulates and/or supervises activities of AgroCares from time to time and/or, as the case may be, any authority that regulates and/or supervises the activities of Customer from time to time.
“Sample”	means any material, substance, product or good to be examined by AgroCares in the context of Services to be provided under the Agreement.
“Scanner”	means the NIR (near-infrared reflection) and databases driven handheld device for soil, feed and leaf analyses in the field.
“Services”	means the services to be provided by AgroCares to Customer under an Agreement, including but not limited to consultancy, and/or advice, and/or sampling, and/or analytical testing, support, maintenance, training and/or analysis.
“Software”	means the AgroCares software for the analysis of soil, feed, crop and leaf samples, including any AgroCares mobile application(s).

CHAPTER 1 GENERAL TERMS

1. OFFERS AND ORDERS

- 1.1 Customer shall solely provide information to AgroCares that is accurate and complete. Any offers and quotations based on inaccurate or incomplete information shall automatically expire, unless AgroCares notifies Customer in writing of non-expiration.
- 1.2 All orders placed by Customer for the Product or the Services shall be subject to acceptance by AgroCares. AgroCares is only bound by orders and changes therein if those have been confirmed in writing or if delivery has commenced.
- 1.3 If orders placed by Customer exceed AgroCares' available inventory and/or manpower, AgroCares shall allocate the available inventory and/or manpower on a basis that AgroCares, in its absolute discretion, deems equitable.
- 1.4 The Analytical Services allows Customers that are business users, which may include professional and other farmers and consultants, to send a sample to be analysed (Sample), together with any other relevant information relating to the Sample (Information), to the AgroCares Laboratory, which will in turn carry out tests and analysis on such Sample (Test) and send the results of such tests back to Customer by email. Test results and other Sample details may also be made available to Customer on any AgroCares digital solution or other Customer interface.
- 1.5 AgroCares shall never be obliged to perform (any part of) its Services if the content, purpose and/or other information required for an order is not clear and/or if it has not received all the information required (for the order in question). AgroCares may also, entirely at its own discretion and without creating any liability or obligation towards Customer, refuse an order (or an adjustment or deviation thereof) if this may (i) create a conflict of interest, (ii) jeopardise its integrity or (iii) impair the quality of the Services.
- 1.6 Any orders received and accepted by AgroCares, may not be cancelled by Customer, unless the Parties have agreed otherwise in writing.
- 1.7 AgroCares may perform the Services on behalf of a third party. In that case, the Services and the Software through which the Services are provided may be branded under the name of the third party and Customer may have entered or have to enter into a separate agreement with such third party for the provision of the Services and the use of the Software. The terms of such a separate agreement with a third party are not binding in any way for AgroCares and do not have any effect on the terms of the Agreement.

2. PRICES AND PAYMENTS

- 2.1 Customer shall purchase the Products and Services from AgroCares at the prices listed in the price list, which is available through the account manager or on the AgroCares webshop, unless Parties choose to depart from such prices. Any departures from the pricelist shall be agreed in writing.
- 2.2 Customer is aware that the prices for the Products and Services are subject to regular changes. AgroCares may adjust the prices listed in the price list at any time. AgroCares may apply an annual indexation on its prices, also for recurring licenses, based on the locally available Consumer Price Index, such as the CBS general Consumer Price Index (Netherlands).
- 2.3 Customer acknowledges that all prices for the Products and Services shall be exclusive of VAT and any other taxes and levies, as well as of any other expenses, such as but not limited to packaging and shipping. Customer shall bear any costs in connection to taxes, levies any other additional costs on top of the Product and/or Service price. Customer shall, prior to making any purchase, investigate which taxes, levies and other costs apply to its purchase of the Product and/or Service. Where applicable, Customer shall reimburse AgroCares for any such costs, taxes and levies incurred by it whether directly or collected afterwards by any organisation or authority.
- 2.4 Payments shall be due on the following moments:

- i. Products: 100% at placing the order;
 - ii. Licenses: 100% upfront or (if agreed) by means of periodic recurring payments;
 - iii. Services (on a fixed fee basis): 100% before initiation of the Services; and
 - iv. Services (on a time and material basis): shall be invoiced monthly in arrears.
- 2.5 Any amount not paid when due as indicated on the invoice, shall be increased with an interest rate equal to 1.5% per month or the commercial statutory rate (whichever is higher). The interest rate due shall be calculated over the period starting from the original due date until the date that payment has been received by AgroCares.
- 2.6 In case Customer has outstanding amounts, AgroCares has the right to suspend its provision of Services to Customer, e.g. by disconnecting Customer from the AgroCares database as long as Customer fails to provide full and effective payment.
- 2.7 All charges involved in the collection of outstanding debts are for the account of Customer.
- 2.8 AgroCares may, without Customer's consent, assign and/or transfer its rights to receive payments hereunder.
- 2.9 Customer shall not be permitted to set off any amounts payable by Customer to AgroCares under these Terms or any Agreement against any amounts payable by AgroCares to Customer under these Terms or any Agreement.

3. INTELLECTUAL PROPERTY

- 3.1 Customer acknowledges that all Intellectual Property Rights in AgroCares' Products, Equipment, Software, websites, data, files and Materials are the sole and exclusive property of AgroCares or its licensor(s). Any right provided to Customer in these Terms or under any Agreement is non-exclusive and Customer may not sub-license, transfer or pledge such right.
- 3.2 Customer shall not seek any Intellectual Property Right related protection or file any application for such protection in any country worldwide for any of AgroCares' Products, Equipment, Software, websites, data, files and Materials.
- 3.3 Customer may provide AgroCares with comments, suggestions, data, information or feedback ("**Feedback**") on the Product and/or Services. Customer acknowledges and agrees that such Feedback may be freely used by AgroCares, at its sole discretion, for the design, development, improvement, marketing and commercialization of its Products and/or Services, without any restrictions based on confidentiality or Intellectual Property Rights. Customer further agrees that AgroCares may use as Feedback any information transmitted with a warranty claim made by Customer.

4. (NO) WARRANTIES AND PERFORMANCE

- 4.1 Customer acknowledges and agrees that, insofar applicable, the Products, Lab-in-a-Box, Scanner, Software and/or Services are made available to it by AgroCares on an "as is" basis, and that AgroCares does not give any warranties in relation to the Products, Lab-in-a-Box, Scanner, Software and Services. This among other things means that AgroCares does not warrant that its Lab-in-a-Box and Scanner analyses are always accurate or that the Products shall be free of defects. If a bug or defect appears, Customer can report such defect to AgroCares. AgroCares shall use its best endeavors to promptly address all reported bugs and defects related to the Lab-in-a-Box and Scanner, but shall only make corrections or work-arounds available through general updates of the Software, all at AgroCares full discretion, unless agreed otherwise in writing as part of the Services.
- 4.2 AgroCares warrants that the Analytical Services offered by the AgroCares Laboratory will only be performed by AgroCares or its designated subcontractor and will be provided by suitably qualified and experienced personnel using reasonable care and skill and, as far as reasonably possible, in accordance with the

Agreement and at the intervals and within the times referred to in the Agreement. AgroCares shall be under no liability under this warranty:

- (a) in respect of any failure by Customer to follow AgroCares's instructions; or
- (b) if Customer has not paid the fees related to the order by the due date.

- 4.3 Due to the multitude of crops, grown in different production systems, on various soils, and under countless climatic conditions, AgroCares disclaims all warranties, express or implied, as to the accuracy of test results or any other information and recommendations provided as part of Customers use of Analytical Services, and takes no liability for management decisions based on this information. When using Analytical Services and related material, Customer accepts that it will take full responsibility for all agronomic decisions, results and yields.
- 4.6 All obligations related to the Lab-in-a-Box and Scanner solutions of AgroCares under any Agreement or these Terms are provided on the basis of reasonable efforts and are not results based, unless explicitly indicated otherwise.
- 4.7 All obligations provided by the AgroCares Laboratory provide a reliable result. AgroCares Laboratory uses methods published in international , regional or national standards, or by reputable organizations, or in relevant scientific , texts or journals, also we use our-developed methods, *such as International Soil-Analytical Exchange Wageningen evaluating programs for analytical laboratories*). These methods are applicable to soil analysis, and where appropriate for evaluation of the measurement uncertainty as statistical techniques for analysis of data. Customer can specify the method to be used for the Analytical Services. If customer hasn't specified the method to be used or the method requested by Customer is considered to be inappropriate or out of date by the AgroCares Laboratory, AgroCares will inform Customer of the (different) method to be used beforehand.

5. LIMITATION OF LIABILITY

- 5.1 AgroCares shall not be liable, whether for negligence, breach of contract, tort, misrepresentation or otherwise, for any indirect or consequential Losses. Any loss or destruction of data, loss of profit, loss of goodwill or business opportunity and damage to reputation shall in any case be deemed indirect Losses.
- 5.2 AgroCares shall have no liability to Customer for any loss, damage, costs, expenses or other claims arising from any Information or instructions that Customer has provided to AgroCares which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of Customer, Customer servants, agents or subcontractors.
- 5.2 The total cumulative liability of AgroCares for any Losses under or in connection with these Terms and any Agreement, whether for negligence, breach of contract, tort, misrepresentation or otherwise, shall be, in relation to all events occurring in a given calendar year, limited to an amount equal to the aggregate fees payable by Customer to AgroCares for the Agreement under which the Losses occurred in that calendar year.
- 5.3 The exclusions and limitations on liability set out in this section 5 do not apply to liability arising out willful intent, fraud or gross negligence by AgroCares or by AgroCares' directors or officers with leadership oversight over the performance of Agreements.
- 5.4 Any claims for compensation must promptly be reported in writing by Customer to AgroCares. Any claim that is reported to AgroCares after the expiry of a period of three (3) months from the occurrence that gave rise to the Losses shall therefore be invalid. Failure to report a claim within a period of three (3) months from the occurrence that give rise to the Losses results in the lapse of any rights of Customer arising from such a claim and the lapse of any obligations of AgroCares.

- 6.1 The Parties shall not be obliged to meet their obligations under any Agreement between them by reason of force majeure. Force majeure includes, inter alia: (a) force majeure on the part of the suppliers of AgroCares, (b) failure of suppliers that were prescribed to AgroCares by Customer to meet their obligations, (c) defects in any products, materials, equipment, items or software that were prescribed by Customer, (d) public measures, (e) power, internet, network and telecommunications facilities failures, (f) illness of AgroCares' personnel, (g) AgroCares' transportation problems. The inability to provide payments that are due shall not be considered a force majeure event, unless the banking or payments infrastructure is itself affected.
- 6.2 Dates and times by which AgroCares is required to perform any obligations under any Agreement or the Terms shall be postponed automatically for the period of time that AgroCares is prevented from meeting such obligations by reason of force majeure.

7. CONFIDENTIALITY

- 7.1 Each Party shall, both during the term of the Agreement and for a period of five (5) years thereafter:
- keep secret and confidential, and procure that its officers, employees (both during and after their employment) and representatives keep secret and confidential, all Confidential Information of the other Party;
 - use the same degree of care in relation to the Confidential Information of the other Party as it normally uses to avoid unauthorized disclosure of its own Confidential Information;
 - use, and procure that its officers, employees and representatives use the Confidential Information of the other Party only in the performance of the Party's obligations or the exercise of its rights under an Agreement;
 - only disclose to its officers, employees and representatives Confidential Information of the other Party that is reasonably required for the performance of the Party's obligations or the exercise of its rights under an Agreement, inform them of the confidential nature of the Confidential Information, and obtain written confidentiality undertakings from them consistent with this section 7;
 - promptly notify the other Party of any suspected or actual unauthorised use or disclosure of the Confidential Information of the other Party, and take all reasonable steps to prevent, limit or remedy such use or disclosure.
- 7.2 The obligations in clause 7.1 shall not apply to information that, as evidenced by documentation:
- is required to be disclosed by Applicable Law, provided that the disclosing Party promptly notifies the other Party of its requirement to disclose, and co-operates with the other Party in avoiding or limiting the disclosure;
 - was already in the possession of the Party making the disclosure without an obligation of confidentiality when it was received from the other Party;
 - was already in the public domain at the time of disclosure, except as a result of a breach of these Terms; or
 - was independently developed without access to the other Party's Confidential Information.

8. DATA PROTECTION

- 8.1 To the extent that AgroCares processes personal data of Customer or on behalf of Customer, AgroCares shall do so in accordance with Applicable Law. For more information, please find our privacy policy [here](#).

9. WAIVER

- 9.1 The failure of AgroCares to enforce or insist upon adherence to all or any of the provisions of these Terms shall not constitute a waiver of such provisions and shall not relieve Customer of the obligation to comply with such provisions.
- 9.2 No waiver of any provision of these Terms may be exercised or enacted unless prior written permission has been granted to Customer by an authorized AgroCares representative and such permission is explicitly stated to be a waiver of said provision.

10. TERM AND TERMINATION

- 10.1 An Agreement enters into effect as of the date the Agreement is signed or otherwise expressly accepted by both Parties and shall remain in effect for an indefinite period of time, until a Party terminates in accordance with these Terms or specific terms as provided in the Agreement in writing.
- 10.2 The Parties waive their right to rescind an Agreement on the basis of article 6:265 of the Dutch Civil Code.
- 10.3 Either Party has the right to terminate an Agreement in whole or in part by giving at least sixty (60) days' written notice by registered letter to the other Party. In the event that Parties have agreed on a specific term for the Agreement, either Party shall solely be entitled to terminate the Agreement after the lapse of this term.
- 10.4 Each of the Parties has the right to terminate an Agreement in whole or in part, with immediate effect or with effect from a later date specified by that Party, by notifying the other Party in writing:
 - a) if the other Party has committed a material breach of an Agreement which is irremediable;
 - b) if the other Party has committed a material breach of an Agreement which is capable of remedy and it has failed to remedy the breach within a reasonable period of time of at least twenty (20) days of receiving notice to do so;
 - c) if the performance by the other Party of one or more of its obligations under an Agreement becomes permanently impossible;
 - d) if the other Party is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness, or goes bankrupt or becomes insolvent; or
 - e) if the other Party is unable to comply with its obligations under this Agreement for a period of more than three (3) months as a result of a force majeure event.
- 10.5 On a termination or expiry of an Agreement, the License shall automatically terminate, and Customer shall promptly (i) cease use of the Software, (ii) cease the use of any Confidential Information of AgroCares, (iii) provide AgroCares any delivered and not yet fully paid Products with settlement of amounts already paid (iv) transfer, on AgroCares' request, the Confidential Information of AgroCares in its possession in a format and on media reasonably requested by AgroCares, and (v) remove all Software and Confidential Information of AgroCares from its computer hardware and other storage media.
- 10.6 Termination or expiry of an Agreement shall not affect a Party's accrued rights and obligations at the time of termination or expiry.
- 10.7 The obligations under an Agreement and these Terms which by nature are intended, for whatever reason, to survive also after termination or expiry of an Agreement will continue to exist after such expiry or termination. These obligations include, but are not limited to, stipulations pertaining to liability, Intellectual Property Rights, confidentiality, dispute resolution and Applicable Law.

11. APPLICABLE LAW AND DISPUTE RESOLUTION

- 11.1 These Terms, any Agreement and the relationship between the Parties shall be exclusively governed by, and interpreted in accordance with the laws of the Netherlands. The applicability of the Vienna Convention on Sales is hereby explicitly excluded.
- 11.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be brought exclusively before the District Court of Gelderland, the Netherlands.

12. MISCELLANEOUS

- 12.1 If any provision of these Terms or the terms of an Agreement are deemed by a competent court or other authority to be unlawful, void, invalid or unenforceable, such provision shall be severed from these Terms or the Agreement and the remaining terms, conditions and provisions shall remain in full force. In the event of the severance of any provision of these Terms or an Agreement, the Parties shall use all reasonable endeavours to replace it with a valid and enforceable substitute provision or provisions, with an effect as close as possible to the intended effect of the illegal, invalid or unenforceable provision.
- 12.2 Customer will require AgroCares consent to transfer any of its rights or obligations under these Terms or any Agreement to a third party, or to otherwise assign, transfer or charge such rights or obligations.
- 12.3 Customer shall not be permitted to suspend performance of any of its obligations under this Agreement. Article 6:52 and 6:262 of the Dutch Civil Code are excluded.
- 12.4 The Parties shall at all times comply with Applicable Law in connection with the performance of their rights and obligations under this Agreement, and they shall not engage in any unethical or illegal activities.
- 12.5 These Terms and the Agreement(s) set out the entire agreement and understanding between the Parties in connection with the subject matter of these Terms and the Agreement(s). These Terms and this Agreement supersede and replace any previously signed agreements between Parties.
- 12.6 Except as expressly provided in these Terms or any Agreement, only a Party or a Party's permitted assignees or successors may enforce the terms of this Agreement. To the extent that any third party stipulation is contained in these Terms or this Agreement, Section 6:254 of the Dutch Civil Code is excluded.

CHAPTER 2 PRODUCTS

The provisions in this Chapter 2 shall apply in addition to the provisions of Chapter 1 in the event that Customer acquires a License or purchases Products from AgroCares.

13. SHIPMENT, RISK AND TITLE

- 13.1 Prior to the shipment by AgroCares of any Equipment, Customer is required to provide to AgroCares the following information:
- a) The contact details (phone and email) for the person who is to handle all shipping related communications on behalf of Customer;
 - b) The delivery address for each shipment;
 - c) The contact details (phone and email) for both:
 - i. Customer's assigned custom clearance agency; and
 - ii. the clearance agency's contact person to handle all shipping related communications.
- 13.2 AgroCares will release its Equipment as "Ex works" (Incoterms 2010). AgroCares shall release the Equipment at its premises and Customer shall be fully responsible for shipping and all related duties

and/or taxes. AgroCares can assist in selecting a logistics provider from the Netherlands if required by Customer.

- 13.3 AgroCares shall inform Customer, if possible within a reasonable timeframe prior to the delivery, about the location, date and time that the Equipment will be ready for pick-up by Customer.
- 13.4 AgroCares will reasonably endeavor to comply with any delivery deadlines, periods, dates and times, whether these have been indicated by AgroCares, requested by Customer or agreed between Parties. Nevertheless, any such delivery details shall be indicative, will not bind AgroCares and shall not be enforceable.
- 13.5 AgroCares shall be entitled to make partial deliveries provided that delivery of the remaining Equipment is ensured and that Customer does not incur any additional costs as a result. In case of partial deliveries, each delivery shall be considered a separate Agreement.
- 13.6 The risk of damage, loss, theft and misappropriation of Equipment shall pass on to Customer at the time at which the Equipment has been placed at the disposal of Customer. In case of Software such time will be the moment that the Software has become available to Customer.
- 13.7 Title to the Equipment, passes to Customer as soon as full payment of all fees related to the order has been received by AgroCares.
- 13.8 For certain Equipment, such as Lab-in-a-Box equipment, AgroCares requires that it may only be unpacked by AgroCares employees, according to the *Getting Started manual*.
- 13.9 AgroCares is entitled to charge in full for the logistics Services related to delivery of the soil, feed or leaf samples that it (or any of its Affiliates) is required to perform under the Agreement. The logistics Services will not be charged if they are cancelled on time, meaning:
 - a. no later than forty-eight (48) hours prior to pick-up Services;
 - b. no later than ninety-six (96) hours prior to the start of sampling Services;
 - c. no later than 1 (one) calendar week prior to the start of audit Services.

14. ACCEPTANCE

- 14.1 Claims of Customer related to the damaged condition of Equipment, must be reported in writing within forty eight (48) hours from the moment that the Equipment is delivered to Customer. All damaged Products shall be written down on the packing list, airway bill or other shipping documents. Failure to do so denies Customer any right of claim regarding the damaged Equipment.
- 14.2 Upon receipt of Customer's notice of defect, AgroCares will acknowledge receipt of the notice of defect and will investigate the validity of the claim. If its established that the notice of defect is valid, AgroCares will have the option to (i) provide remote assistance to fix the defect, (ii) repair the Equipment on site, or (iii) request Customer to return the Equipment for repair or replacement. AgroCares shall, at its sole discretion, decide whether option (i), (ii) or/and (iii) shall be followed. AgroCares shall bear all costs relating to repairs and shipping of the damaged Equipment. A description of the handling process for complaints regarding the Analytical Services provided by AgroCares will be provided to Customer on request.
- 14.3 The Equipment will be deemed accepted by Customer within thirty (30) days after date of delivery, unless by this date AgroCares has received written notice of defect, specifying the ground(s) for non-acceptance.

15. SOFTWARE LICENSE

- 15.1 Subject to Customer meeting its obligations under the Agreement in full, AgroCares hereby grants Customer a non-exclusive, non-sublicensable, non-transferable, revocable, limited, royalty free License to use the Software in accordance with the terms and conditions set out in the Agreement.
- 15.2 The License granted by AgroCares solely allows Customer to use the Software to run the Equipment, to connect to AgroCares' systems for analysis of soil, feed, crop or leaf, send and receive information and to purchase credits (data units), if applicable, to be used for the payment of the analysis Services.
- 15.3 Any failure of Customer to meet the obligations set out in section 15 and 16 shall be deemed a material

breach for the purpose of section 10.

16. RESTRICTIONS ON USE

16.1 Customer shall not, and shall procure that its staff and/or contractors shall not:

- a) use the Products other than for the purpose of testing and analysis of soil, feed, crop and leaf samples;
- b) decompile, decrypt, disassemble, modify, or reverse engineer the Products in any way, otherwise attempt to discover the internal workings and design of the Products or create derivative works based on (any part of) the Products, except as otherwise expressly permitted in an Agreement;
- c) remove, move, cover-up, deface or otherwise interfere with any AgroCares patent markings, copyright notices, trademarks, disclaimers or warning as such appear in or are placed on the Products;
- d) (attempt to) distribute or otherwise (commercially) exploit the Products, unless expressly permitted in an Agreement;
- e) use the Products for any unlawful or illegal activity;
- f) use the Software in combination with any equipment other than the Equipment; or
- g) intentionally harm, infringe, misuse or otherwise bring into disrepute the reputation of AgroCares and/or the Products;

17. WARRANTY & REPAIRS

17.1 **Equipment Warranty**

17.1.1 Equipment sold by AgroCares is warranted for manufacturing defects for the period of one (1) year, starting from the date of delivery as described in section 13.2. If AgroCares meets a claim after expiration of the warranty period, AgroCares does so without any obligation, and no rights can be derived from this by Customer.

17.1.2 The warranty is limited to the repair and/or replacement or refund of any defective Equipment, which is at AgroCares' sole discretion. This Warranty shall be customer's sole remedy in case of defective Equipment. Article 7:17 of the Dutch Civil Code is excluded.

17.1.3 Equipment will not be covered by the warranty in the following situations:

- a) The Equipment is damaged due to natural disasters (such as by lightning, flood, earthquake etc.) or other external forces such as power cuts, environmental or atmospheric disturbances;
- b) The Equipment has been subjected to misuse, abuse, or unauthorized repair, whether by accident or intentionally;
- c) The Equipment's warranty stickers have been removed, blemished or impaired;
- d) The Equipment has been updated, reworked, or improperly tested by Customer or a third party;
- e) The Equipment is an expendable item, such as a fuse or battery;
- f) The Equipment has been found to be defective after the Warranty period has expired;
- g) The Equipment was used contrary to the instructions in the relevant instructions manual;

17.1.4 Repaired or replaced Equipment is warranted for thirty (30) days from the delivery date of the repaired or replaced Equipment, or for the remainder of the original Equipment's warranty period, whichever is longer.

17.1.5 Defects to Equipment must be registered with AgroCares, by sending an email to support@agrocareds.com

17.1.6 After registration of the issue, AgroCares agents will provide Customer with an initial remote diagnosis.

17.1.7 If repair or further diagnostics are required the Equipment needs to be returned to AgroCares, or a designated repair facility.

17.1.8 Customer agrees to use the original shipping flight case and AgroCares' packaging instructions for any

- return shipments ([as available on the online helpdesk](#)).
- 17.2 Equipment defects covered within the warranty's scope**
- 17.2.1 After receipt of Customer's email, AgroCares agents may provide Customer with a return merchandise authorization ("RMA") for the defective Equipment.
- 17.2.2 Within ten (10) calendar days of receiving the RMA, Customer shall return the defective Equipment to AgroCares' designated repair facility.
- 17.2.3 AgroCares shall decide on the shipping method and shall pay for logistics.
- 17.2.4 At AgroCares' option, AgroCares will either:
- i. exchange such Equipment for new Equipment of the same type or a type of equivalent functionality;
 - ii. repair the Equipment; or
 - iii. refund the amount paid by Customer for the Equipment.
- 17.3 Equipment defects outside of the warranty's scope**
- 17.3.1 Customer shall pay a diagnostic and administrative fee for Equipment that it returns for repair if the Equipment is not covered by the warranty.
- 17.3.2 AgroCares shall provide Customer with a repair quotation based on the actual cost of repairing the defective Equipment (i.e. with no margin added by AgroCares). In some situations, due to either high cost of repairs or irreparable damage, AgroCares will recommend Customer to purchase replacement Equipment. Upon Customer's written approval of the repair quotation, AgroCares will proceed with the repairs. Once the repairs have been completed, an invoice for the repairs will be issued to Customer.
- 17.3.3 Any shipping costs related to the delivery of defective Equipment to AgroCares or to the factory for repair will be borne by Customer.

CHAPTER 3 SERVICES

The provisions of this Chapter 3 shall apply in addition to the provisions of Chapter 1 in the event that AgroCares provides Services to Customer.

18. PROVISION OF SCANNER AND LAB-IN-A-BOX SERVICES

- 18.1 The Services provided by AgroCares in combination with the Lab-in-a-Box and Scanner equipment consist of Analysis (section 19), Maintenance and support (section 20) and/or Training (section 21).
- 18.2 AgroCares shall perform these Services with the best of its ability, care and in accordance with the Agreement.
- 18.3 AgroCares shall at all times endeavour to provide as accurate results as possible on the basis of the information submitted by Customer, but AgroCares does not guarantee any results or profits to be obtained by Customer. AgroCares shall never be responsible or liable for the results of the use of the Service by Customer or use by Customer of these results. In any event, AgroCares shall not be liable in case expectations of Customer (on the basis of the results provided by AgroCares) are not met.
- 18.4 AgroCares shall deliver the Services on a time and materials basis or on a fixed price basis, as set out in the Agreement and/or the applicable price list.

19. ANALYSIS USING THE SCANNER AND LAB-IN-A-BOX EQUIPMENT

- 19.1 Customer makes use of the Services of AgroCares in combination with the Lab-in-a-Box and Scanner equipment of AgroCares for the analysis of soil, feed, crop or leaf samples by installing the Software and purchasing a license key from AgroCares. The license key enables Customer to obtain sample analyses from AgroCares.
- 19.2 AgroCares shall use its reasonable efforts to ensure the maximum availability of the Services to the Customer, excluding any reasonable downtime for maintenance.

- 19.3 Under no conditions will AgroCares be obliged to compensate customer for unused License.
- 19.4 Customer shall sign into the Software with the login details as provided by AgroCares. Customer is responsible for safeguarding the login details and for any activities and actions taking place using his login details. Customer is not allowed to share his login details with any third party.

20. ANALYTICAL SERVICES

Obligations of customer

- 20.1 Samples should be sent directly to the AgroCares Laboratory, address: Nieuwe Kanaal 7, 6709 PA Wageningen (the Laboratory). Customer shall ensure that any Sample sent for analysis is representative of the area requiring analysis and that Samples are obtained in accordance with established sampling techniques. A leaflet containing instructions on how to take Samples will be provided by AgroCares to Customer when accepting an order to provide Analytical Services. When an order is raised, Customer will be issued with a unique Sample identification number. Customer will ensure that such identification number is clearly marked on the Sample.
- 20.2 The Samples to be analysed by AgroCares must have correct and full identification/ information and the packaging of the Samples must not be damaged, to make sure that the preparation of reports/analyses is possible without further ado and does not result in any additional (unexpected) work for AgroCares in the performance of its Services.
- 20.3 Prior to the performance of the Analytical Services in question, Customer shall provide AgroCares with all relevant information and rights of use that are (reasonably) necessary or desirable for the optimal performance of the Analytical Services. If and insofar as any necessary information and/or right of use has not been provided by Customer and the performance of the Analytical Services is delayed or made impossible as a result, the inability to perform the Analytical Services (in the best manner) shall never constitute a shortcoming and/or breach of the Agreement on the part of/by AgroCares.
- 20.4 AgroCares is entitled to carry out a preliminary investigation into the condition of the Samples before processing the Samples or commencing the performance of the Analytical Services if and insofar as it deems this necessary.
- 20.5 AgroCares will not perform Analytical Services of any Samples that are received in damaged, contaminated or improperly preserved condition or which do not meet the Sample volume requirements.
- 20.6 AgroCares reserves the right to refuse to accept any Sample(s) for analysis and will notify Customer of any such decision.
- 20.7 The costs of a preliminary examination shall be borne by Customer if the preliminary examination shows that the Sample(s) are not suitable for analysis or can only be analysed under less favourable conditions than originally foreseen. Such cases shall include (but not limited to):
- a. The Sample(s) have been mixed with foreign materials or substances (not specified by Customer);
 - b. The quality of the Sample(s) has been degraded;
- In such cases AgroCares shall then be entitled, at its discretion, to terminate or suspend the relevant Agreement, without prejudice to the other rights that AgroCares has.
- 20.8 AgroCares reserve the right to refuse to accept or to rescind acceptance of any Sample which, is likely to pose any unreasonable risk in handling and/or analysis. Customer represents and warrants that any Sample containing any hazardous substance which is to be delivered to AgroCares will be packaged, labelled, transported, and delivered in accordance with the Applicable Law. AgroCares will hold Customer responsible for any injury or illness that results from the handling of materials that are not clearly labelled as being of a hazardous nature. Customer shall bear associated costs including, but not limited to: identification of Sample content; and damage incurred by AgroCares or its designated subcontractor as a result of improper packaging, labelling or omission of documents, return or disposal of Samples.
- 20.9 By providing the Samples to AgroCares for the purpose of carrying out Analytical Services or having Analytical Services carried out, Customer grants AgroCares and/or an Affiliated Company engaged for this purpose the right to dispose of the Samples in such a way that it/they is/are able to carry out the

Analytical Services fully and optimally and to comply with the Applicable Law. This may imply that the Samples will (have to) be destroyed if they are no longer needed for the Analytical Services.

- 20.10 After the test results are reported, AgroCares will retain the Samples for a month (30 days,) after which the Samples will be destroyed. Samples can be returned to Customer upon request at Customer cost.

Obligations of AgroCares

- 20.11 Before Analytical Services are commenced there shall be an Agreement that it acceptable both to AgroCares and Customer.
- 20.12 AgroCares applies the appropriate methods or procedures that are capable of meeting Customers' requirements. AgroCares shall inform Customer when the method requested by Customer is considered to be inappropriate or out of date. When Customer does not specify the method to be used , AgroCares selects an appropriate method and will inform customer of the method chosen. After the analytical measurements AgroCares relises the report of analytical analysis. The form and content of the report will be agreed upon between the Parties.
- 20.13 AgroCares shall inform Customer of any deviation from the Agreement in advance. AgroCares coordinates Customer acceptance of deviations by providing an attachment to the Agreement stating the deviation(s). Deviations from methods for Analytical Services shall only occur if the deviation has been documented, technically justified, authorized and accepted by Customer. Deviations requested by Customer shall not impact the integrity of the AgroCares Laboratory or the validity of the results.
- 20.14 When Customer requests a statement of conformity to a specification or standard for the test or calibration (e.g. pass/fail, in-tolerance/out-of-tolerance) the specification or standard, and the decision rule shall be clearly defined by AgroCares. Unless inherent in the requested specification or standard, the decision rule selected by AgroCares shall be communicated to, and agreed with, Customer.
- 20.15 Samples are generally analysed on a "first come, first served" basis. AgroCares or its designated sub-contractor will aim to complete most of the analyses on average within 5 days from receipt of the Sample(s), although, this may be affected by other factors including instrument availability, type of analyses requested, etc. Requests for urgent analysis will not be considered. While every effort is made to achieve the turn-around times for the conduct of Analytical Services, no warranty or guarantee is given that such turn-around times will be achieved in any particular instance, and all delivery timings that AgroCares may provide to Customer in relation to the conduct of Analytical Services are estimates and not commitments.
- 20.16 AgroCares may perform a repeated analysis (i.e. a re-analysis on a Sample already delivered or taking a new Sample) either at the request of Customer or if AgroCares is obliged to do so. The costs associated with carrying out a repeated analysis (which may or may not be the result of an objection by a Customer) are for the account of Customer unless:
- a. The results of the repeated analysis do not match those of the first analysis; or
 - b. AgroCares has stated in writing that Customer's objection is well-founded and therefore requires a repeated analysis.
- 20.17 Performing a repeated analysis is subject to the provision that it is actually still possible to perform it (without significantly affecting the quality of the results of the re-analysis) and AgroCares (still) has sufficient original sample material available. If and in so far as the costs for a repeated analysis are not to be borne by Customer but it is no longer possible to carry out a repeated analysis in accordance with the provisions of this Article 20 the Parties shall consult with each other in order to resolve the situation.
- 20.18 While every care is taken to ensure that the results from analysis are as accurate as possible, it is important to note that the analysis relates to the Sample received by AgroCares at its Laboratory, and is representative only of that Sample. No warranty is given by AgroCares that the results from analysis relate to any part of a field or growing area not covered by the Sample received and accordingly AgroCares liability in connection with such analysis is hereby excluded.
- 20.19 AgroCares is responsible for the management of all information generated in the analysis of the Samples on the understanding that any data, test results or other information published by Customer (in accordance with the provisions of Article 10.4 of these Terms and Conditions of Sale) are entirely at the expense and risk of Customer.
- 20.20 By submitting an order for the supply and delivery of the Analytical Services, Customer acknowledges AgroCares's right to collect and use data generated from the Analytical Services and any Personal Data (together, Data). Customer acknowledges, and by submitting an order consent to, the processing and disclosure by AgroCares of personal or financial data relating to Customer relevant to any credit which

may from time to time be afforded by AgroCares to credit reference agencies, banks and credit insurers, and that such organisations may process the data provided, or relevant to any other matter which AgroCares considers reasonable including, without limitation, any commercial relationship which AgroCares has with any third party.

- 20.21 AgroCares assures that only suitable externally provided products and services that affect the Analytical Services are used, when such products and services:
- a) are intended for incorporation into the AgroCares Laboratory's own activities;
 - b) are provided, in part or in full, directly to customer by the AgroCares Laboratory, as received from the external provider;
 - c) are used to support the operation of the AgroCares Laboratory.
- 20.22 AgroCares shall (as far as possible) perform its Services in accordance with the applicable statutory regulations, accreditation regulations and reasonable written requirements of Customer.

21. MAINTENANCE AND SUPPORT FOR SCANNER AND LAB-IN-A-BOX

- 21.1 AgroCares shall provide reasonable support to customer to assist him in the use of the Products and the Services. Such support may be provided through an online helpdesk or telephonically during local AgroCares office hours (which may be amended from time to time).
- 21.2 AgroCares may perform maintenance work with respect to the Software, as specified in the Agreement. This maintenance includes fixing errors and introducing new versions of the Software.
- 21.3 Any maintenance work shall take place at the premises of Customer or by means of remote assistance, during AgroCares' local office hours.
- 21.4 Customer shall inform AgroCares of any errors known to it in detail. Upon receipt of Customer's notification concerning an error, AgroCares will make efforts to repair such error and/or introduce improvements and new versions to fix the error. AgroCares may, in its sole discretion, choose to install temporary solutions in the Software to correct errors discovered.
- 21.5 Customer shall provide AgroCares any necessary cooperation needed for maintenance work, this includes ensuring that a reliable infrastructure and network facilities are in place, ceasing use of the Software and performing backing ups of all data.

22. TRAINING

- 22.1 AgroCares may provide training to Customer's employees about the use of the Products and the Services. AgroCares and Customer will decide on the topics and dates for the training.
- 22.2 In the event that AgroCares provides training at the premises of Customer, Customer shall guarantee that proper resources are available to AgroCares.
- 22.3 If AgroCares provides and/or produces documentation, training materials or other training resources, Customer shall bear all related costs. These costs shall be calculated in addition to the costs for the training as agreed by the Parties.