

# Standard Terms and Conditions

## 1. Definitions

The following terms shall, when used capitalized herein, have the following meanings:

- "Company" shall mean the legal entity within the Company Group that is party to a Contract with Customer.
- "Company Group" shall mean Eye-Grain ApS (Danish limited company no. 34709726), TOXI-Scrub ApS (Danish company no. 42415316), Indra Holding ApS (Danish limited company no. 42415286), Eye-Grain Corp., a Delaware corporation, or any other legal entity owned by, or under common control with either of these companies.
- "Contract" shall mean any sales and/or supply contract (which shall include Order Confirmations and Proforma Invoices) for Products (as defined herein, including services) between Company and Customer.
- "Customer" shall mean the legal entity or the individual to whom Company issues a Price Quote or Offer, or with whom Company enters into a Contract.
- "Customized" shall mean Products (as defined herein) which are made to order or otherwise pursuant to special requirements from the Customer.
- "Documentation" shall mean all installation and operation manuals, technical drawings, user guides and any other materials created or provided by Company related to Products.
- "IP" shall mean all intellectual property rights which Company claims, or which can result from, the design or manufacture, or the manner of providing, of any Product provided or offered by Company.
- "Order" shall mean an offer for the purchase of Products, which is submitted by a Customer to Company.
- "Order Confirmation" shall mean Company's acceptance of an Order from the Customer, whereby a Contract is formed.
- "Party" or "Parties" shall mean either of Company and Customer, or both.
- "Products" shall mean all goods and/or services, which are provided, or are to be provided, by Company to a Customer pursuant to a Contract, or a Quote.
- "Proforma Invoice" shall mean Company's acceptance of an Order from the Customer, whereby a Contract is formed.
- "Quote" shall mean an offer for the delivery of Products issued by an authorized officer of Company.
- "Terms" shall mean these Standard Terms and Conditions.

## 2. Applicability

- 2.1. These Terms shall apply to the supply of all Products ordered or purchased by a Customer from a company in the Company Group, the selling company herein called "the Company". These Terms shall apply along with any Quotes issued by Company, and any Contract between the Parties.
- 2.2. In case of any discrepancy or inconsistency between the Quote and/or the Contract on the one side, and these Terms on the other side, the Contract shall prevail.

## 3. Quotes

- 3.1. Quotes are binding only if issued by an authorized officer of Company, and only for the period of time specified in the Quote. If no time is specified, a Quote is good for two (2) months from the date of issuance.

## 4. Orders

- 4.1 All Orders placed by a Customer are subject to acceptance by Company. Orders may not be cancelled or rescheduled without Company's written consent. All Orders must identify the Products, unit quantities, part numbers, applicable prices and requested delivery dates of the Products being purchased. Unless otherwise agreed, all materials will be shipped no later than one year from the date that Company accepts the purchase order. Company may designate certain Products as non-cancelable, non-returnable ("NCNR") and the sale of such Products shall be subject to any special terms and conditions contained in Company's Order Confirmation, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

## 5. Documentation

- 5.1. Documentation will be provided by Company, in the format, language, and to the extent as determined by Company in its sole discretion.
- 5.2. The Customer shall not use Documentation for any purpose other than that for which it was intended by Company, and if no such intent has been communicated then only for Customer's own use for the installation and operation of the specific Products purchased by Customer. In no event is Customer entitled to produce or distribute copies of Documentation to any third party without the express, written consent of Company, exception here from is the installation manual, which can be shared with the installation company.

## 6. Intellectual Property (IP)

- 6.1. Company reserves all rights to all IP associated with Products and Documentation. Unless otherwise agreed to in a Contract, Customer is granted a non-exclusive, non-transferable, royalty-free, perpetual license to use hardware Products and Documentation for the purposes set forth in these Terms or the Contract.
- 6.2. All Company's user software may be subject to license fees in accordance with the Contract. In the event that no license fees are specified in a Quote or Contract, Company may charge, and Customer shall pay, Company's standard license fees for software in question, as determined by

Company from time to time, for a period not to exceed three years after the effective date of the Contract. Company may in its sole discretion offer to extend a license beyond the three years at no cost to Customer.

- 6.3. In no event shall Customer have any exclusive rights regarding IP related to Products or Documentation, including Customized Products or Documentation related to Customized Products, which Documentation Company shall be entitled to own, use, sell, license or otherwise transfer and make profit from in any manner it may choose.

## **7. Testing of Products**

- 7.1. Company will perform testing/quality control of Products prior to delivery, in a place, time, manner, and to the extent deemed appropriate by Company in its sole discretion, and when applicable, in accordance with ISO 9001 standards.
- 7.2. The Customer may be present at the testing of Products purchased by Customer, at Customer's own cost. Company will provide Customer with no less than ten (10) Danish business days' notice (unless a shorter notice has been separately agreed to) of the time for such testing. Company assumes no responsibility for the safety of any of Customer's personnel present at any testing/quality control.

## **8. Prices and Payment Terms – Retention of Title**

- 8.1. Prices for Products set forth in a Quote or Contract are exclusive of VAT and other sales taxes, customs duties, and costs of packaging, freight, insurance and other costs related to shipping and import and delivery.
- 8.2. Where a Quote or Contract does not state the price of Products, the prices shall be those set forth in Company's price list, as in effect at the time when the Quote or Contract is issued/executed.
- 8.3. Terms of payment shall be settled in the Order Confirmation, Proforma Invoice or the. Payment is settled by bank/wire transfer to Company's bank account or as stated on the Order Confirmation/Proforma Invoice/Contract. Each Party pays bank fees from its own bank associated with sending and receiving bank transfers.
- 8.4. Each bank transfer payment from the Customer shall include notice of the invoice number for which payment is made.
- 8.5. Payment received after the date when they become due shall be assessed an interest charge at the rate of 1.5% (one and a half percent) per month for each month the invoice remains outstanding after the due date.
- 8.6. Payments will be applied in the following order:
- (i) Against any outstanding interest or cost of collection.
  - (ii) Against the principal due under any outstanding invoice, in order of issuance (applied to most aged balances first).
- 8.7. Time shall be of the essence with respect to all payments and any payment failure or delay shall constitute material breach of Contract which shall entitle Company to terminate all Contracts with Customer and claim damages.

- 8.8. Payment of any agreed-to commission to a Customer acting as an agent for the sale of Products to a third party will only be due for payment when the third party has entered into a Contract for the commissioned Product and actually paid the full purchase price therefor, unless otherwise agreed in writing.
- 8.9 The following fees will apply to any Order/Order Confirmation/Contract: Bank Fee EUR 55,00, Handling and Packaging Fee as specified on the Order Confirmation, as this depends on the size of the Order. The following documents can be ordered against a fee: ATR Certificate Fee EUR 52,00 Certificate of Origin EUR 101,00. For Original stamped and signed documents (invoice, packaging list, freight documents etc.) and cost of freight a fee will apply. Such documents must be ordered along with the order.
- 8.10 **Retention of Title – Risk of Loss:** The following provisions shall apply to Company's retention of title and the passing of risk of loss: The Product shall remain Company's property until the full purchase price, including transportation costs, interest and cost of collection, and any other amounts to which Company is entitled pursuant to the Parties' contractual relationship, have been paid in full. The risk of loss shall pass when the Product is Delivered. These provisions shall be construed as and shall function as a security agreement, and Company shall be entitled to execute and file a security interest filing to perfect the retention of title/security agreement under the applicable laws in the Customer's jurisdiction, and Customer shall be obligated to execute any form or document required for such filing and its perfection.

## 9. Terms of Delivery

- 9.1. Products are delivered Ex Works (INCOTERMS 2020) Company's offices in Denmark.
- 9.2. Where a Quote or Contract specifies another delivery term, this shall be construed according to INCOTERMS 2020.

## 10. Time of Delivery

- 10.1. Company will use reasonable business efforts to ensure delivery within the time specified in a Contract.
- 10.2. Company will use reasonable efforts to accommodate the Customer's requests for delivery prior to the delivery date set forth in the Contract, provided that the Customer pay any additional costs, as determined by Company, associated with early delivery. Where reasonably possible, Company will notify the Customer of such additional costs prior to making arrangements for early delivery and provide the Customer with an opportunity to either accept such costs for early delivery, or decline, in which event the delivery date will be as set forth in the Contract.
- 10.3. Customer shall take delivery within no more than seven (7) Danish business days from the date when Company notifies the Customer that Products are ready for delivery. Where Customer does not take delivery within the time specified in such notice or otherwise in the Contract, this shall constitute material breach of contract, and Company shall, in addition to remedies available under the applicable law, be entitled to store the Products at the Customer's cost; or, if and when Company deems such storage to be commercially impracticable, then to sell the Products to a third party at a price determined by Company in its sole discretion, and claim damages.

## 11. Service by Telephone and the “iGRAIN Service Center”

- 11.1. Company provides reasonable assistance by phone free of charge for questions regarding the maintenance or operation of the Products. Phone service is available during Danish business hours and otherwise to an extent and in a manner determined by Company in its discretion. Free assistance by phone does not include online assistance via the “iGRAIN Service Center”.
- 11.2. Company provides online assistance via the “iGRAIN Service Centre” regarding the installation, function, maintenance or operation of the Products. The extent and nature of the online service available to the Customer is subject to the Contract or separate service agreements.

## 12. Limited Warranty

- 12.1. Products are manufactured in accordance with Company's ISO-9001 procedures.
- 12.2. Company grants to Customer a twelve (12) months limited warranty from the date of commissioning, maximum eighteen (18) months from shipment that Products are (exhaustive list):
- (i) free from material defects in workmanship and materials;
  - (ii) meet general industry standards; and
  - (iii) meet Company's ISO-9001 certification standards.
- 12.3. THE LIMITED WARRANTY SET FORTH HEREIN IS EXCLUSIVE TO CUSTOMER, EXPRESSES COMPANY'S ONLY LIABILITY, AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY. SPECIFICALLY, COMPANY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM THE COURSE OF DEALING OR USAGE OF TRADE.
- 12.4. Specifically, the limited warranty does not cover, and Company has no liability, for defects and damage resulting from the following (non-exhaustive list):
- 12.4.1. Installation, operation, and maintenance of Products, which does not comply with Company's instructions, as provided in Product Documentation or otherwise.
  - 12.4.2. Installation, operation, and maintenance of Products non-compliant with normal industry standards, unless such non-compliance was specifically authorized in writing by Company.
  - 12.4.3. Exposure of iGRAIN® Moisture, CO<sub>2</sub> and O<sub>2</sub>, and/or All-In-One sensor products to fumigants, including, but not limited to, phosphine.
  - 12.4.4. Service and repairs of Products performed by anyone other than Company, or providers explicitly authorized by Company.
  - 12.4.5. Tampering, misuse, corrosion, insects, Acts of God, rusting, staining, connection to incompatible power supply or voltage, normal wear and tear of parts, or modifications or alterations to Products not performed or explicitly authorized by Company.

### 13. Procedure and Remedies for Warranty Claims

- 13.1. Claims for coverage under the limited warranty must be submitted in writing to Company within thirty (30) calendar days of Customer's discovery of the defect for which Customer claims coverage, otherwise the Customer forfeits any claims and remedies for such defects. Customer shall await and strictly follow Company's instructions regarding the handling of each warranty claim before taking any action or commencing any remedial measures of any kind; otherwise, Customer shall forfeit all rights and claims related to the limited warranty pursuant to Sections 12 and 13 of these Terms.
- 13.2. Customer shall, at Company's request, ship to Company any defective parts for which Customer claims coverage. Shipping cost to return goods to Company for warranty claims are always to be covered by the Customer and cost to return goods from Company to Customer is covered by Company.
- 13.3. Upon the receipt of a claim under the limited warranty, Eye Grain will assess the defect and determine, in its sole discretion, whether the defect is covered under the limited warranty, and if is, then to apply one or more of the following remedial measures in Company's sole discretion:
- 13.3.1. Repair of the defective part, at Company's or a supplier/manufacturer's facility and thereupon return to the Customer for reinstallation. In such cases, Customer shall notify Company and/or the manufacturer in question prior to shipment of the defective part and shall not ship until Company/the manufacturer has acknowledged receipt of such notification.
  - 13.3.2. Provide a replacement part.
  - 13.3.3. Provide on-site repair of the defective part by a Company technician or a service provider appointed by Company.
- 13.4. The cost of the foregoing remedial measures shall be covered by Company.
- 13.5. Where the Customer request on-site repairs not covered under the limited warranty, Company will use reasonable business efforts to offer such repairs in a cost-efficient and speedy manner, such offer for the Customer to accept or decline.

### 14. Limited Warranty on Repaired or Replaced Parts

- 14.1. Company grants to Customer a twelve (12) month limited warranty from the date of the Customer's receipt of repaired or replaced parts that such parts are (exhaustive list):
- (i) free from material defects in workmanship and materials; and
  - (ii) meet general industry standards.
- 14.2. The limited warranty on repaired/replaced parts covers the specific parts or service only.
- 14.3. The terms and conditions for the limited warranty for Products, as set forth herein above, shall otherwise apply with respect to repaired/replaced parts.
- 14.4. Notwithstanding the foregoing, Company shall be entitled to payment at its regular service and repair/replacement parts prices for any claims for warranty parts/services which Company determine to be exempt from warranty coverage, as per the terms of the limited warranty set forth

herein above, unless the claimed service/parts are covered by a separate service agreement between Customer and Company.

## **15. Limitation of Remedies**

15.1. THE FOREGOING SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY WARRANTY CLAIMS, WHETHER FOR PRODUCT DEFECTS OR REPAIRS/REPLACEMENT PARTS.

## **16. Limitation of Liability**

16.1. Other than what explicitly follows from the limited warranty set forth in these Terms, Company shall have no liability toward Customer for defective Products and/or delays with respect to the delivery or performance of any Product, act, omission, service or any other obligation, unless caused intentionally by Company. In no event shall Company be liable to Customer for any claim based on gross negligence, negligence, or unintentional acts, omissions or other conduct by Company, or for any claim resulting from or substantially caused by the use of any Product other than for its specific, intended use and/or used in any manner not fully compliant with Company's Product instructions and documentation.

16.2. Further, Company shall in no event be liable to Customer for any special, indirect, or consequential damages, which shall include, but not be limited to, loss of or default under contracts, lost revenues or profits, promotional or manufacturing costs, business interruption costs, loss of data, injury to reputation, punitive damages, or intellectual property infringement, arising out of or in connection with any Offer, Price Quote, or Contract for Products.

16.3. Furthermore, Company's liability shall in no event exceed the lesser of EITHER: (i) value of the Contract for the specific Products which give rise to any claim of breach of contract, damages, restitution, abatement, costs or any other remedy, by Customer toward Company; OR (ii) in the event of a product liability claim, the maximum coverage under Company's product liability insurance as in effect from time to time, a copy of which may be requested by Customer upon the issuance of an Order Confirmation.

## **17. Force Majeure**

17.1. Company's liability shall be limited in the event of Force Majeure as follows: Company shall not be responsible for any non-compliance with, and Company may choose to suspend performance of, any of its obligations towards the Customer to the extent that non-compliance is caused by events beyond Company's reasonable control and which Company could not reasonably have foreseen or avoided, including but not limited to industrial disputes, fire, war, pandemics or similar severe outbreaks of contagious diseases, confiscation, restrictions imposed by authorities, transport hindrances, power restrictions, thunderstorms/lightning, flooding, precipitation, embargos on imports or exports, product or component shortages at suppliers/subcontractors, and failure in delivery on the part of suppliers/subcontractors caused by events as mentioned above. Upon the cessation of any force majeure circumstance preventing or suspending performance of Company's obligations, Company shall be entitled within reasonable time thereafter to perform the obligation so suspended, and Customer shall not be entitled to terminate or cancel the suspended Order and

shall not be entitled to damages or any other compensation for such suspension or failure of performance.

## 18. Data Processing Policy - General Data Protection Regulation (GDPR)

- 18.1. **Explicit Consent to Data Processing Policy:** By submitting an Order, Customer, and any individual acting on Customer's behalf, explicitly accepts Company's Data Processing Policy, as set forth in the Terms, as amended from time to time, including the following:
- 18.2. **Processing of Customer Data – Consent to Receive Marketing Communications:** Company will consider all information received from a Customer in the course of doing business with Customer to constitute business related information of relevance to Company's business and the ongoing business relationship with the Customer. This includes names of representatives of Customer (directors, officers, employees, other representatives), phone numbers, office, mailing and email addresses, purchase and payment history and any other such information (hereinafter, jointly "Customer Data"). As such, Company will store all Customer Data and update Customer Data with any new information received, and will keep such Customer Data for at least five (5) years after the latest transaction with Customer. Customer agrees and consents to such storage of Customer Data and to Company's use for its business, legal, accounting, and/or marketing purposes, including that Company may use contact information to send marketing to Customer and/or any individual acting on Customer's behalf.
- 18.3. **Personal Data:** To the extent that Customer Data includes information about private individuals, which is subject to the EU General Data Protection Regulation (GDPR) and the Danish Data Protection Act, (including names, home addresses, personal email addresses and personal telephone numbers) (such information hereinafter jointly "Personal Data"), Company will only store and process such Personal Data in accordance with the GDPR and the Data Protection Act.
- 18.4. **Requests for Copies of Personal Data – Withdrawal of Consent:** Customer and any individual whose Personal Data is stored or processed by Company may request a copy thereof, which shall be provided, unless Company determines that such disclosure may conflict with other obligations, applicable law, or legitimate business interests of Company, which includes the protection of Company's trade secrets and confidential information. Further, any individual whose Personal Data is stored or processed by Company may at any time withdraw his/her consent to the processing of his/her Personal Data and to receiving marketing from Company. If Customer or any individual whose Personal Data is stored or processed by Company requests that Customer Data about private individuals be deleted from Company's storage, Company will do so unless it has a legitimate business, legal, accounting, marketing and/or other reasonable need to keep such Customer Data.
- 18.5. **Personal Data Deletion Policy:** If Customer or any individual whose Personal Data is stored or processed by Company requests that Personal Data be deleted, Company will do so unless it has a legitimate, legal basis for keeping such Personal Data for a longer period of time. Unless already deleted pursuant to a prior request or otherwise, Company will delete Personal Data no later than five (5) years after the receipt thereof, unless it has a legitimate, legal basis for keeping such Personal Data for a longer period of time, in which event Company will delete such Personal Data when the basis for keeping it is no longer present.

## 19. Governmental Rules and Requirements

19.1. Company does not warrant that Products comply with special governmental rules, regulations and requirements promulgated within the jurisdiction where the Customer resides or intends to put the Products to use, or puts the Products to use. Where Customer requests that Products comply with such requirements, the Customer bears the risk of any amendment to such governmental rules and/or requirements after the Contract is signed. In the event such governmental rules and/or requirements are amended after the Contract is signed, Company may at the request of Customer, but subject to price adjustments, make reasonable efforts to modify the Products accordingly. However, nothing herein shall be construed to obligate Company to make such modifications.

## 20. Confidentiality

20.1. All Documentation and other information and materials disclosed by Company to Customer in the Parties' course of dealing shall be considered confidential, unless such information is in the public domain.

## 21. Assignment

21.1. Customer is not entitled to assign or otherwise transfer any of his rights or obligations under the Contract or these Terms except with prior written consent from Company.

## 22. Entire Agreement

22.1. The Quote or Contract along with these Terms constitute the entire agreement between the Parties pertaining to the transaction in question and supersedes all prior proposals, oral or written, and all negotiations, conversations and discussions, prior to the execution of the Contract. Thus, only information and data included in the Contract and/or these Terms are binding on Company. All information and data contained in product brochures, price lists or any other documents are binding only to the extent that it is by reference expressly incorporated into the Contract.

## 23. Notices

23.1. All notices, demands, requests or other communications ("Notices") required or permitted by the Contract or these Terms shall be in writing, and transmitted by either express courier service, or emails. All such Notices shall be deemed duly served when personally delivered to the Party or to an officer or agent of that Party or four (4) calendar days after the Notice is handed over to the courier service, or twenty-four (24) hours after email has been sent and duly received. To deem any Notice duly served, such Notice shall be sent to the address that each Party specifies in the Contract, or as thereafter amended in writing, as the address for Notices to be given.

## 24. Severability

24.1. If any provision of these Terms or the Contract is unenforceable or invalid for any reason, the remaining provisions of these Terms or the Contract shall be unaffected by such holding, and shall remain in full force and effect.

## 25. Governing Law

25.1. These Terms and all Contracts between Company and Customer are governed by the laws of the Kingdom of Denmark, without regard to its choice of law rules, and with the further exception that the Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## 26. Disclaimer

26.1 To the extent that Products are intended for use as remotely accessible sensors or measuring devices, such Products provide estimates of risk. They do not provide, and should not be expected to provide, accurate measurements or determinations of actual conditions, including humidity levels and possible infestation, in the silo or the grain, and Company makes no representation or warranty as to the accuracy of sensor or measuring data. Company assumes no liability for any loss or damage resulting from reliance on any given sensor or measuring data and recommends regularly checking of all silos with physical inspection and sample testing for assessment of grain condition and safe storage time; and otherwise subject to the limitation of liability set forth in these Terms.

## 27. Jurisdiction

27.1. Any dispute arising out of or in connection with these Terms, and all Contracts between Company and Customer, including any disputes regarding the existence, validity or termination thereof, shall be subject to the exclusive jurisdiction of "Sø- og Handelsretten" (the Maritime- and Commercial Court) in Copenhagen, Denmark, and if that court does not have subject matter jurisdiction, then the courts of Denmark.