

# TERMS AND CONDITIONS GO AND GROW FARM SOLUTIONS B.V.

December 2020



1. **DEFINITIONS AND SCOPE:** Capitalised terms used in these terms and conditions of sale of services and goods ("**Terms and Conditions**") have the following meaning:

<b>Agreement</b>	the agreement for the provision of Services and sale of Goods that comes into effect pursuant to clause 3 (c) of these Terms and Conditions, and which includes the terms and conditions set out below.
<b>Buyer</b>	the purchaser of Services of Go&Grow Farm Solutions B.V. and/or the purchaser of Goods from Go&Grow Farm Solutions B.V.
<b>Delivery Date</b>	date(s) of delivery specified in the Agreement.
<b>Delivery Place</b>	place of delivery specified in the Agreement.
<b>Go&amp;Grow Farm Solutions B.V.</b>	the Go&Grow Farm Solutions B.V. entity, with its registered office and principal place of business in Barendrecht, listed in the Commercial Register of the Chamber of Commerce under file number 80587534.
<b>Order</b>	the purchase order submitted by Buyer to Go&Grow Farm Solutions B.V. in written form.
<b>Offers</b>	All offers are non-binding, unless explicitly stated otherwise.
<b>Party</b>	Go&Grow Farm Solutions B.V. or Buyer.
<b>Parties</b>	both Go&Grow Farm Solutions B.V. and Buyer.
<b>Price</b>	price, fee, compensation and expense conditions.
<b>Services</b>	the services provided by Go&Grow Farm Solutions B.V. consisting of inter alia giving technical, mechanical, strategic and sales advice about cultivating fruits and vegetables, including the Deliverables.
<b>Deliverables</b>	deliverables of any kind, whether tangible or intangible, provided by Go&Grow Farm Solutions B.V. to Buyer in connection with or as a part of the Services.
<b>Goods</b>	the goods sold by Go&Grow Farm Solutions B.V. to Buyer.



6. **CHANGES:** Go&Grow Farm Solutions B.V. reserves the right to alter, modify, or redesign its Goods and Deliverables, including its packaging, without any obligation to replace previous deliveries to Buyer. In all cases, Go&Grow Farm Solutions B.V. shall consult the Buyer before carrying out such a change.



7. **PRICE AND PAYMENT:**

- (a) The Price and currencies are set out in Go&Grow Farm Solutions B.V.'s confirmation and are exclusive of any applicable sales tax, value added tax or any equivalent tax ("VAT"), which shall be invoiced to and paid by the Buyer in line with agreed delivery term as stipulated in clause 5 (a).
- (b) Buyer shall pay the invoice of the Goods and Deliverables before delivery of the Goods and Deliverables. Unless agreed otherwise in the Agreement the Buyer shall pay invoices of Services within fourteen (14) days of receipt of an invoice from Go&Grow Farm Solutions B.V., in full and cleared funds to the bank account nominated by Go&Grow Farm Solutions B.V.
- (c) If the Buyer fails to make a payment due under the Agreement by the due date then, without limiting any other rights or remedies of Go&Grow Farm Solutions B.V., Go&Grow Farm Solutions B.V. shall have the right to suspend further deliveries of Services and Goods until full payment has been made and the Buyer shall pay interest on the overdue amount at the statutory interest rate from the due date until actual payment of the overdue amount.
- (d) The Buyer shall make all payments due under the Agreement without any deduction by way of set-off or counterclaim. No disputes between the Buyer and Go&Grow Farm Solutions B.V. about quality or any other claims submitted by the Buyer shall give the Buyer the right to suspend payment or to set off any amount against any unpaid invoices of Go&Grow Farm Solutions B.V.
- (e) Any complaint with respect to the invoice must be notified to Go&Grow Farm Solutions B.V. within thirty (30) days after the date of invoice. Thereafter Buyer shall be deemed to have approved the invoice.



2. **APPLICABILITY:**

These Terms and Conditions apply to all Offers, sale and delivery of Services and/or Goods by Go&Grow Farm Solutions B.V. Go&Grow Farm Solutions B.V. explicitly rejects all other terms and conditions submitted by Buyer.



8. **INTELLECTUAL PROPERTY AND CONFIDENTIALITY:**

- (a) All rights to Intellectual Property in the Services or Goods are and remain the property of Go&Grow Farm Solutions B.V. and Buyer agrees that it will not make use of or acquire any right in such Intellectual Property in any way.
- (b) All data or information (together: "**Confidential Information**") obtained by Buyer shall remain the property of Go&Grow Farm Solutions B.V. Buyer shall maintain in confidence and safeguard all Confidential Information, which shall be used only for conducting business with Go&Grow Farm Solutions B.V. as contemplated by this Agreement.
- (c) Buyer will not divulge Confidential Information to any third party.
- (d) Upon completion or termination of this Agreement or upon request of Go&Grow Farm Solutions B.V., Buyer shall return or destroy all materials other than Goods incorporating any such Confidential Information, and, notify Go&Grow Farm Solutions B.V. in writing that it has done so.



3. **ORDER:**

- (a) The Buyer shall submit an Order for the Services and/or Goods.
- (b) Each Order shall only be deemed to be accepted by Go&Grow Farm Solutions B.V. after written confirmation by e-mail by Go&Grow Farm Solutions B.V.
- (c) Upon acceptance of the Order by Go&Grow Farm Solutions B.V. the Agreement comes into effect.
- (d) Go&Grow Farm Solutions B.V. does not operate a sale or return policy. Go&Grow Farm Solutions B.V. may cancel any Order (or part of an Order) should manufacture be prevented or substantially delayed for any reason.



4. **PERFORMANCE OF SERVICES:** Go&Grow Farm Solutions B.V. shall use its reasonable endeavors to complete its obligations under the Agreement. Go&Grow Farm Solutions B.V. cannot accept any responsibility for the achievement of any result in connection with the Agreement.



9. **FORCE MAJEURE:** Neither Party shall be liable for any delays or non-performance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including but not limited to fire, flood, hurricane, earthquake, other elements of nature, epidemic, war, national emergency, terrorism, riots, rebellions, revolutions, other civil disorders, actions of military authorities or embargo.



5. **DELIVERY, TITLE AND RISK OF LOSS OF GOODS AND DELIVERABLES:**

- (a) Unless agreed by Go&Grow Farm Solutions B.V. in writing, Go&Grow Farm Solutions B.V. shall deliver the Goods and Deliverables in accordance with the delivery term Ex Works, as interpreted under the ICC INCOTERMS 2020
- (b) The risk of loss or damage will pass to Buyer on completion of delivery, in accordance with the delivery term Ex Works.
- (c) Title in the Goods and Deliverables will remain vested in Go&Grow Farm Solutions B.V. until payment in full by Buyer of all amounts invoiced and due to Go&Grow Farm Solutions B.V.
- (d) Unless expressly stated otherwise in the Agreement the Delivery Date is an estimate. In no event shall Go&Grow Farm Solutions B.V. be liable for any delay in delivery. Delay in delivery of any Services and Goods shall not relieve Buyer of its obligation to accept their delivery.
- (e) If the Buyer fails to take delivery of an order on the Delivery Date Go&Grow Farm Solutions B.V. may in its sole discretion elect to store the Goods until delivery takes place or sell the Goods to a third party. If Go&Grow Farm Solutions B.V. chooses to store the Goods, then Go&Grow Farm Solutions B.V. may charge the Buyer for all related costs and expenses of storage and transportation, including insurance.



10. **INSPECTION AND REJECTION:**

- (a) Buyer will promptly provide written notice to Go&Grow Farm Solutions B.V. of any breach of any term of the Agreement of which Buyer becomes aware (or should reasonably have been aware) and will afford Go&Grow Farm Solutions B.V. a reasonable opportunity to correct the breach. Failure to do so will preclude Buyer from bringing a claim in respect of any loss, which may be related to such breach.
- (b) Notwithstanding Section 13(a) any claims relating to Services or Goods must be notified to Go&Grow Farm Solutions B.V. within twenty-four (24) hours after Buyer becoming aware of such claim but in no event later than fourteen (14) days after delivery of the Services and/or Goods to Buyer. Failure by Buyer to notify within the time set out in the preceding sentence will constitute a waiver by Buyer of such claim.



11. **AUXILIARY PERSON:** Go&Grow Farm Solutions B.V. is entitled to make use of auxiliary persons ("**hulpverleners**"), including independent (sub)contractors ("**Auxiliary person**"). Whenever an Auxiliary person is confronted with an extra-contractual claim (with regard to or following from the Agreement), it is stipulated on his behalf that the Auxiliary person can invoke the provisions regarding

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exclusion and limitation of liability stated in these Terms and Conditions.



12. **WARRANTY:** Go&Grow Farm Solutions B.V.'s goods are subject to a manufacturer's warranty, the period of this warranty can be found in the users manual.



13. **LIABILITY:**
- (a) Go&Grow Farm Solutions B.V. shall not be liable for any damages (including but not limited to (i) any consequential or indirect loss or (ii) loss of profits, revenues, business, crop damage, goodwill and/or anticipated savings) suffered by Buyer in connection with or following from the Agreement, unless caused by willful misconduct ("*opzet*") or gross negligence ("*bewuste roekeloosheid*") of Go&Grow Farm Solutions B.V.
- (b) Go&Grow Farm Solutions B.V. will not be liable for any loss or damages to the extent that the loss or damages were caused by Buyer's failure to exercise effective quality control or the failure to store, use or otherwise handle the Services and Goods as advised or in accordance with instructions provided by Go&Grow Farm Solutions B.V. or industry standards.
- (c) Go&Grow Farm Solutions B.V.'s total liability under or in relation to the Agreement shall be limited to the cap of Go&Grow Farm Solutions B.V.'s liability insurance.
- (d) Should the insurer not pay out under said liability insurance, Go&Grow Farm Solutions B.V.'s total liability is limited to EUR 15.000.
- (d) Nothing in the Agreement shall exclude, restrict or limit either Parties liability for any liability that cannot be legally excluded or limited under the applicable law.
- (e) In the event Buyer contracts with third parties in connection with the Agreement, Buyer warrants that it will impose the content of this Clause on that third party.



14. **INDEMNITY:** Buyer shall fully defend, indemnify and hold harmless Go&Grow Farm Solutions B.V. and (each of) its (respective) director(s), officers, employees, agents, successors and assignees from and against any and all third party claims, lawsuits, damages, liabilities, deficiencies, costs, losses, fines, penalties, legal fees and expenses resulting from or in connection with the Agreement. This Clause will survive any termination, cancellation, revocation or other cessation of the Agreement.



15. **TERM AND TERMINATION:**
- (a) Unless terminated sooner in accordance with these Terms and Conditions, the Agreement shall terminate once the Goods have been delivered.
- (b) The term of the Agreement with regard to the performance of Services will be specified in the Offer.
- (c) Go&Grow Farm Solutions B.V. is entitled to terminate the Agreement with regard to the performance of Services at any time and for any reason, taking into account a notice period of three (3) months.
- (d) Either party may terminate the Agreement by giving written notice to the other party if: (i) that other party materially breaches the Agreement (and is unable to remedy this material breach (where remediable) within ten (10) days of a notice requiring that party to remedy it); (ii) that other party becomes or is reasonably likely to become insolvent, enters into bankruptcy, individual voluntary arrangement, liquidation, winding up, receivership or administrative receivership, administration, a corporate voluntary arrangement or compromises any debts with creditors or has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this clause.
- (e) On termination of the Agreement for any reason the Buyer shall immediately pay to Go&Grow Farm Solutions B.V. all of Go&Grow Farm Solutions B.V.'s outstanding unpaid invoices and interest.
- (f) Termination of the Agreement for any reason shall not affect any rights or obligations that have accrued before termination.



16. **COSTS AND EXPENSES:** Each Party shall pay its own costs relating to the negotiation, preparation, execution and performance of the Agreement.



17. **MISCELLANEOUS:** If any part of the Agreement is found to be invalid, nullifiable or unenforceable for any reason, the rest of the Agreement will remain valid and enforceable.



18. **NOTICE:** All notices, consents and approvals under the Agreement must be delivered in writing to the receiving party's email.



19. **LAW AND DISPUTE RESOLUTION:** The Agreement and all disputes between Parties are governed by Dutch law, excluding the United Nations Convention on Contracts for the International Sale of Goods and any choice of law rules that direct the application of the Laws of any other jurisdiction. Any disputes arising in connection with the Agreement shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). The place of arbitration shall be Amsterdam, the Netherlands. Each Party consents and agrees to the jurisdiction and venue of this arbitral tribunal.