

## **GENERAL TERMS AND CONDITIONS Polariks B.V.**

### **1. INTRODUCTION**

1.1 In these General Terms and Conditions, the terms below shall have the following meaning: - Polariks: the private limited company Polariks B.V., with its registered office in Aalsmeer and registered with the Chamber of Commerce under number 81247028. - Data: all (crop) data of the Customer stored on or exchanged through the Platform. - Data lines: the transfer of Data between two independent communications channels (such as computers and sensors). - Customer: the natural person or legal entity that concludes Agreements with Polariks. - Site: any individual greenhouse or growing environment of a Customer with its own postcode/address. - Zone: any individual greenhouse or growing environment of a Customer within a Site. - Agreement: any agreement, including a Proposal accepted by the Customer, which has been concluded between Polariks and the Customer regarding the use of the Platform and/or the purchase/sale of Hardware. - General Terms and Conditions: these general terms and conditions and terms and conditions of sale, as applied by Polariks. - Parties: Polariks and Customer collectively. - Hardware: the hardware described in the Proposal that the Customer purchases from Polariks. - Software: the (browser-based) software modules developed by Polariks that are part of the Platform. - Applications: the software applications developed by Polariks or by third parties, which are offered to Customers through the Platform. - Proposal: the quote accepted by the Customer, in which the Customer has made its choices regarding the services offered by Polariks per Site known. - Platform: an (internet) platform developed by Polariks for the horticultural and agricultural sector with which (i) up-to-date (measurement) date and crop data can be retrieved from various data sources (both Hardware and Software) and through which

Platform Applications are offered.

1.2 The General Terms and Conditions shall apply in full to the Agreement and to the agreements concluded for the performance of or in conjunction with the Agreement.

1.3 If the Agreement includes provisions that are contrary to the content of the General Terms and Conditions, the relevant provision in the Agreement shall prevail.

1.4 Derogations from and additions to these General Terms and Conditions shall only be valid if the parties have agreed on these derogations and additions in writing.

1.5 The applicability of any purchase or other terms and conditions of the Customer is expressly rejected.

### **2. LOGIN AND USE OF THE PLATFORM**

2.1 Each individual user who has been authorised by the Customer must identify him or herself separately by entering a username and password. The Customer must ensure that its users will handle the password with which they have been provided with care and in confidence and that they will not share their login details with third parties.

2.2 The (software) features, services and Hardware that Polariks provides the Customer shall be dependent on the services chosen by the Customer per Site. The Customer shall set out its choices for each Site in the Proposal. During the term of the Agreement, the Customer shall at any time be entitled to upgrade the selected services for each Site to a more comprehensive service model. Downgrading a selected service model during the term of the Agreement is not possible, and can only be done within the context of an extension of the Agreement.

2.3 The following conditions and restrictions shall apply in respect of access to the Platform and the use of the Software and Applications by the Customer, however, shall also apply to any upgrades and modifications to the Software: a) Polariks shall grant the Customer a non-exclusive, revocable and non-transferable licence for the use of the Software as set out in the Proposal; b) the

Customer shall be prohibited from copying, altering, decompiling, reverse engineering, disassembling or adapting the Software and/or Applications or creating derivative works from the Software or parts thereof; c) The Customer shall be entitled to grant an unlimited number of users (such as employees and external consultants of the Customer) access to the Platform on the condition that such access is granted solely for the purposes of the Customer's business operations. The Customer shall in respect of Polariks guarantee that those users who are connected on its instruction will comply with the conditions and restrictions as laid down in the Agreement; d) the installation and the proper maintenance of the hardware/software required for the Software and/or Applications is at the Customer's expense and risk and the Customer's responsibility; and e) the copyright and all other intellectual property rights relating to the Platform (including the Software) and the Applications shall be exclusively due to Polariks or to its licensors. No element of the Agreement shall lead to the full or partial transfer of any such rights. f) If a Customer makes use of an Application, the Customer shall be bound by the terms of use agreed with the relevant third party. The Customer shall recognise that Polariks shall not become a party to those agreements.

2.4 If, based on the Agreement, the Customer is entitled to integration of one or more external applications, hardware or external data sources or other sources by means of an API link to be developed by an external supplier on the Customer's instruction, the Customer is authorised to import Data from the external source into the Platform, using the API. In order to establish such an integration between the Platform and the external source, Polariks is willing to, at the Customer's first request, provide all the technical information that is required to develop the relevant API and establish the integration. The development and subsequent use of the API shall be entirely for the account and risk of the Customer.

### **3. SALE AND DELIVERY OF HARDWARE**

3.1 If the Parties to the Agreement have agreed that the Customer shall also purchase Hardware from Polariks, the terms and conditions as set out in this paragraph 3 shall apply.

3.2 The Customer shall be required to carry out the installation of the Hardware and any associated work (including but not limited to data migration to subsequent IT systems) at its own expense and risk.

3.3 Polariks shall guarantee that, upon delivery, the Hardware to be supplied by Polariks is suitable for normal use and meets the specifications as agreed 1/5 between the Parties in writing. Delivery of the third party-software selected by the Customer shall be entirely at the expense and risk of the Customer.

3.4 Polariks shall deliver the Hardware or instruct the Hardware to be delivered at a place or places designated by the Customer (Incoterms 2020: EXW). EXW). In such cases, Polariks shall inform the Customer – in a timely fashion ahead of the delivery, if possible – of the time at which it or the carrier it has engaged intends to deliver the Hardware. The delivery times provided by Polariks shall be indicative at all times.

3.5 The Customer shall ensure that the Site meets any requirements for the Hardware that Polariks may specify (if any), including but not limited to the temperature, humidity and the technical environmental requirements.

3.6 The Customer shall bear the risk of loss or damage to the Hardware from the moment the Hardware has been delivered. The Customer must ensure appropriate insurance for this risk.

3.7 If the Customer refuses Hardware to be delivered by Polariks, does not pick up the Hardware at an agreed pick up time, provides incorrect information regarding the delivery address and/or delivery of the Hardware is not possible due to other reasons attributable to the Customer, Polariks shall be entitled to store the Hardware for the risk of the Customer. Any costs for the (external) storage

of Hardware shall be at the expense of the Customer. If the relevant Hardware has not been picked up by the Customer or delivered to the Customer within three (3) months, Polariks shall similarly be entitled to transfer or sell the Hardware to third parties. The foregoing shall not prejudice any outstanding payment obligations of the Customer and shall not entitle the Customer to crediting of amounts already paid for the Hardware.

3.8 The Customer must inspect the Hardware delivered for any damage or other defects as soon as possible, however in any case within seven (7) days, after delivery. Insofar as there is any visible damage on the exterior, such as transport damage, the Customer must notify Polariks of this within seventy-two (72) hours after delivery. If the Customer detects any damage or other defects, the Customer must notify Polariks in writing without delay. The Customer's notification to Polariks must sufficiently set out the existing damage or defects and must include sufficient evidence for Polariks to be able to assess the validity of the report. 3.9 If the Customer does not report any damage or defect(s) to Polariks within the period referred to in the foregoing paragraph, the Hardware shall be deemed to have been delivered without any damage or defects.

3.10 All Hardware delivered to the Customer by Polariks shall remain the property of Polariks until the Customer has paid the full amount due. The Customer shall not be entitled to resell or pledge, or in any other way encumber, any of the goods subject to the retention of title.

3.11 The Customer shall inform Polariks without delay if a third party wishes to establish or assert rights on or seize the Hardware covered by the retention of title clause as referred to in the foregoing paragraph. In such cases, the Customer shall grant Polariks (or third parties designated by Polariks) unconditional and irrevocable permission to enter all those places where the property of Polariks is located and to retrieve those goods.

3.12 The Customer itself shall be responsible for the installation and configuration of the Hardware delivered by Polariks after delivery. The Customer must follow all directions provided by Polariks as well as any instructions or documentation provided alongside the Hardware rigorously.

3.13 The Customer shall accept that the Hardware will only include features and other properties as identified by the Customer at the time of delivery. The Hardware supplied by Polariks is subject exclusively to the warranty issued by the manufacturer. Any information regarding the manufacturer warranty is available from Polariks on request.

3.14 The warranty shall under no circumstances apply to damage or defects (1) resulting from improper use, (2) which are not related to the defective nature of the materials used and/or manufacturing, (3) which have arisen as a result of improper storage of the Hardware or (4) which are the result of climatic or other external effects.

3.15 If the event of a breach of manufacturer warranty, a 'carry-in warranty' shall apply and the Customer shall be required to return the defective Hardware to the relevant manufacturer at its own expense and risk. Any further warranty shall not be provided by Polariks.

#### **4. SUPPORT, MAINTENANCE AND DEVELOPMENT OF THE PLATFORM AND SOFTWARE**

4.1 The Customer shall be entitled to use the latest version of the Software. As long as the Customer pays Polariks the fee agreed upon in the Agreement, new versions ('updates') of the Software shall be automatically made available to the Customer at no additional cost. Upgrades of the Software or related new or existing applications will only be made available to the Client against payment.

4.2 Polariks shall provide no guarantee that the Software will operate without interruption, errors or other defects or that all errors and defects will always be corrected.

4.3 Polariks shall endeavour to ensure the

optimal availability of and access to the Platform. In the event of reduced availability of the Platform, Polariks shall endeavour to restore availability of the Platform in the shortest time possible.

4.4 Polariks may, without prior notice, temporarily or permanently block or disable access to the Platform and/or Applications available on the Platform or restrict the use thereof, insofar as this is reasonably required from time to time: a) in order to carry out preventive or regular maintenance or upgrade activities; b) in the event of an actual or suspected security breach; and/or c) in the event of another emergency; all of which shall not entitle the Customer to claim damages from Polariks. Polariks will make every effort to limit these measures to a minimum and will make every effort to inform the Client in a timely manner.

4.5 Any defects in the Software that do not partially or completely impair the operation of the Software but merely reduce or hinder its performance shall be investigated by Polariks. Polariks shall provide a solution in the subsequent version of the Software.

4.6 In the case of defects in the Software that make regular use of the Software impossible, Polariks shall endeavour to remedy those defects within the shortest possible time. If the defect is so complex that remedying it in the short term is not possible, Polariks will offer a work-around to enable the Client to continue working with the Software.

## **5. USE AND STORAGE OF DATA & FAIR USE**

5.1 All Customer Data that is stored and processed through the Platform shall be stored on an Google Cloud Web Services server by Polariks. The Customer shall be entitled to export its Data from the Platform and/or grant third parties access to that Data at any time.

5.2 Polariks shall not be required to verify the Data retrieved from the Customer and/or third parties for completeness and/or accuracy. Polariks shall process the Data as it is provided by the Customer and/or third

parties. Polariks shall never be liable for any errors and/or omissions in the relevant Data, nor shall 2/5 Polariks be liable for the consequences of decisions made by the Customer on the basis of that Data.

5.3 Polariks shall likewise not be required to verify its authority to receive Data from Polariks and/or third parties and whether it is authorised to process that Data and share that Data with the Customer. The Customer shall indemnify Polariks against all third-party claims relating to the unauthorised receipt or unauthorised processing or provision of Data by Polariks.

5.4 The Parties agree that Polariks shall be entitled to retain the Data, in an anonymised form, and use it for its own purposes (including, but not limited to, using the Data as basis to formulate market insights or to optimise the Platform and/or the Software). Polariks shall not be entitled to share non-anonymised Data with third parties, other than by mutual consultation and following prior agreement of the Customer.

5.5 A fair use policy shall apply in respect of the processing of Data through the Platform and Data lines by the Customer. If, for example, Polariks finds that the Customer is not using an API (as referred to in Article 2.4 of these Terms and Conditions) in the context of the data exchange with the Platform or if the Customer, in the opinion of Polariks, is using the API overly frequently or is exchanging an excessive amount of Data via the API and/or a Data line, Polariks shall be entitled to disable access to the API, the Data line and/or the Platform or to put in place other protective measures, without being required to provide compensation.

## **6. USAGE FEE AND HARDWARE**

6.1 All prices for the services and/or Hardware supplied by Polariks shall not include sales tax (VAT) and other levies which have been or are imposed by the government. Unless otherwise agreed, all prices shall always be in euros and the Customer must make all payments in euros.

6.2 Polariks shall be entitled to pass on any changes to the factors that affect Polariks pricing, including purchase prices, foreign exchange rates, import and export duties, insurance rates, freight rates, other levies or taxes and increases in the CPB price index, to the Customer.

6.3 The usage fee for services to be provided under the Agreement by Polariks per Site shall be set out in the Proposal and depends inter alia on the service model, the number of connected Sites and the number of Data lines used by the Customer.

6.4 If the Customer uses more Data lines than the number of Data lines included in the service model chosen by the Customer, the Customer shall be owed an additional rate per Data line. The amount of the rate shall be set out in the Proposal and the total fee due shall be charged to the Customer at the end of each contract year based on post-calculation.

6.5 Polariks shall send the Customer an invoice, stipulating the method of payment, each year in accordance with the provisions of the Proposal, unless otherwise agreed in writing. The invoice shall be an advance payment of the services to be purchased per Site. The usage fee for the first year of the contract shall be due at the start of the Agreement, regardless of whether the Hardware has already been installed. If the Customer wishes to purchase additional Hardware and/or upgrade the selected service model or add a Site during the term of the Agreement, the Customer will receive an additional invoice.

6.6 Unless otherwise agreed in the Proposal, payment for the Hardware shall be due once the Hardware has been available to the carrier by Polariks.

6.7 If Polariks's performance under the Agreement has to be increased as a result of the Customer's additional requirements, this may involve additional work that will qualify for compensation. If Polariks considers to have to perform additional work, it shall inform the Customer as soon as possible, providing an indication of the additional costs expected.

Polariks shall not carry out additional work without prior instructions from the Customer to that effect.

6.8 The Client is obliged to pay Polariks's invoices within 14 days of receipt thereof. If the Customer does not pay the amounts due within the agreed time frame, the Customer shall be liable for the statutory commercial interest on the outstanding amount.

6.9 If Polariks has good reason to fear that the Customer will fail in the fulfilment of its (payment) obligations, Polariks shall be entitled to repossess the Hardware supplied subject to a retention of title clause as referred to in Article 3.10 and 3.11 of these Terms and Conditions. In this context, the Customer shall grant Polariks free access to its grounds and/or premises at each Site in order to enable Polariks to exercise its rights. After repossession, the Customer shall be credited with the market value, which shall in any case not exceed the original purchase price less the costs associated with the repossession.

6.10 The Customer shall not be entitled to retention, settlement or suspension of payment with any claim on Polariks.

## **7. TERMINATION OF THE AGREEMENT**

7.1 The Agreement shall be concluded for a fixed term. The term of the Agreement shall be laid down in the Proposal. At the end of the agreed term, the Agreement is automatically and tacitly extended for the same term, unless one of the Parties terminates it, in writing, no later than two months before the expiry of the term.

7.2 Each Party shall be entitled to terminate the Agreement with immediate effect, without the other Party being entitled to compensation whatever the legal basis, by way of a written notification to the other Party, if the other Party; a) is declared bankrupt; b) has applied for a moratorium; c) has failed to perform an essential obligation under the Agreement and that Party has not remedied its shortcoming, following the other Party having sent it a written notice of default, affording it a period of 30 (thirty) days to fulfil

its obligations; or d) has decided to wind up or if that Party has actually terminated or made significant changes to its business operations or is continuing those operations in a different legal form.

7.3 If the Agreement is terminated: a) the provisions intended by their very nature to remain in effect following termination shall remain in force between the Parties; and b) the access of the Customer (or that of one or more of the Customer's Sites) to the Platform, including individual user accounts created on the Customer's behalf, shall be disabled; c) the right of use in respect of the Software shall end; d) the Customer shall be entitled to export its Data from the Platform within 30 days after termination of the Agreement, after which period Polariks shall be entitled to delete the Data. e) Polariks shall no longer be required to facilitate the use of the Applications.

7.4 If, at the time of termination as referred to in Article 7.2, the Customer has already received performances under the Agreement, such performances and the related payment obligation cannot be undone, unless the Customer proves that Polariks is in default in relation to the essential part of those performances. Amounts Polariks invoiced before the termination in relation to goods it had already delivered or services it had already provided properly in the performance of the Agreement shall continue to be owed in full, subject to the provisions of the preceding sentence, which amounts will be immediately due and payable at the time of the termination. 3/5

## **8. INTELLECTUAL PROPERTY**

8.1 Unless otherwise agreed upon in writing, all intellectual property rights of the Software, Applications, websites, data files, equipment or other materials, such as analyses, designs, documentation, reports, quotations, as well as preliminary materials thereof, that have been developed or made available to the Customer under the Agreement, shall rest solely with Polariks, its licensors or its suppliers. The

Customer shall only obtain the right of use expressly granted by these General Terms and Conditions and by law.

8.2 The Customer shall not be permitted to remove or modify any markings regarding confidentiality or relevant copyright, trade marks, trade names or any other intellectual property right from the software, websites, data files, equipment or materials.

## **9. DELIVERY DEADLINES**

9.1 All (delivery) deadlines and (completion) dates referred to by Polariks or that have been agreed upon have been determined to the best of its knowledge based on the information available to it when the Agreement was concluded. The interim (delivery) dates referred to by Polariks or agreed upon between the Parties shall always be target dates and shall not bind Polariks and shall be indicative in nature. Polariks shall endeavour to comply with the (delivery) deadlines and final (completion) dates as much as possible.

9.2 Exceeding the (final) delivery deadline or (completion) date cited by Polariks or agreed upon between the Parties on a single occasion shall not place Polariks in default. In any case, therefore, including in the event the Parties have expressly agreed upon a final (delivery) deadline or (completion) date in writing, Polariks shall only be default due to the delivery period being exceeded after the Customer has given Polariks notice of default in writing. The notice of default must describe the failure as comprehensively and in as much detail as possible to give Polariks the opportunity to respond adequately.

## **10. LIABILITY**

10.1 Polariks's liability due to attributable failure to comply with the Agreement or in any other respect, expressly including any failure to comply with a warranty obligation agreed with the Customer, shall be limited to compensation of direct damage incurred up to the total of the usage fees (ex. VAT) paid over the previous 12-month period. In respect of the Hardware, liability shall in all cases be

limited to the fulfilment of applicable warranty obligations.

10.2 Direct damage shall exclusively mean: a) the reasonable costs the Customer would have to incur to have Polariks's performance comply with the Agreement; b) reasonable costs incurred to determine the cause and extent of the damage, provided that the assessment must relate to direct damage within the meaning of the terms and conditions and the costs have been incurred with the prior approval of Polariks; c) reasonable costs incurred to prevent or reduce damage, to the extent that the Customer is able to demonstrate that the costs were reasonably required, both in terms of magnitude and necessity, to avert or mitigate the immediate imminent danger of direct damage within the meaning of the Agreement and would not have been incurred if the immediate imminent danger had not materialised.

10.3 Polariks's liability for all other types of loss, such as indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruptions, loss as a result of claims from the Customer's customers, loss arising from the use of third-party items, materials or software the Customer has prescribed to Polariks and loss arising from the engagement of suppliers prescribed to Polariks by the Customer shall be excluded. Likewise, Polariks shall bear no liability in relation to the corruption, destruction or loss of Data.

10.4 Polariks shall not be liable for damage or any other disadvantage arising as a result of the use of Applications developed by third parties. In such cases, the Customer shall be required to contact the provider of the relevant Application.

10.5 Apart from the cases referred to in this Article, Polariks shall not be liable for damages, irrespective of the basis on which a claim for damages would be based. The liability restrictions referred to in this Article shall be waived if and to the extent that the damage is the result of a deliberate act or

wilful recklessness on the part of Polariks or its management.

10.6 Unless compliance by Polariks has become permanently impossible, Polariks's liability as a result of an attributable failure to comply with an Agreement shall only arise if the Customer immediately gives Polariks a notice of default in writing, setting a reasonable period of time for the correction of the shortcoming and Polariks continues to fall short of the fulfilment of its obligations even after that deadline. The notice of default must describe the failure as comprehensively and in as much detail as possible to give Polariks the opportunity to respond adequately.

10.7 Any right to compensation shall at all times be conditional on the Customer reporting the damage to Polariks in writing as soon as possible following the occurrence thereof. Any claim for compensation directed at Polariks shall lapse twenty-four months after the claim has been brought.

## **11. FORCE MAJEURE**

11.1 Neither Party shall be required to fulfil any obligation if it has been prevented from doing so due to force majeure ('non-attributable failure'). Force majeure affecting Polariks shall inter alia mean: a) force majeure affecting Polariks's suppliers or licensors; b) failure to properly comply with supplier obligations that are prescribed for Polariks by the Customer; c) defective items, equipment, software or materials of third parties of which the use is prescribed for Polariks by the Customer; d) government measures; e) electricity cuts; f) disruption of internet, computer network or telecommunications facilities. Force majeure affecting the Customer shall in any case not mean liquidity or solvency problems.

11.2 If a force majeure situation should last longer than 90 days, each of the Parties shall be entitled to terminate the Agreement in writing. In that case, the performances already realised under the Agreement shall be settled proportionately, without the Parties thereafter being indebted to each other.

## **12. CONFIDENTIALITY**

12.1 Each Party shall treat the content of the Agreement and any confidential information that has been or will be exchanged in connection with the Agreement confidentially and shall refrain from disclosing such information either in full or in part.

12.2 Article 12.1 shall not apply: a) if disclosure is required by any law or regulation or an order or instruction to disclose is issued by an authority; b) if the confidential information was made disclosed on or after the date of the Agreement, other than as a result of an attributable breach of a Party or any unlawful conduct of which the relevant Party was aware or reasonably should have been aware that this conduct was unlawful at the time; or c) to the extent that disclosure has taken place in respect of professional consultants to the disclosing party, subject to an equivalent confidentiality obligation.

## **13. OTHER PROVISIONS**

13.1 All notifications or other communications pursuant to the Agreement shall take place in writing.

13.2 The Customer shall not be entitled to transfer the Agreement, nor any of its rights and/or obligations under the Agreement, without prior written consent from Polariks.

13.3 If, at any time, pursuant to the applicable laws or regulations, a provision of the Agreement is invalid, unenforceable or infeasible, the other provisions or parts thereof of the Agreement shall continue to apply. The Parties shall negotiate in good faith to replace the relevant provision with a provision that is enforceable and feasible and which deviates from the original provision as little as possible, given the purpose and scope of the Agreement.

13.4 The Agreement can only be amended if the relevant amendment has been agreed in writing and has been signed by the Parties.

## **14. APPLICABLE FORUM AND CHOICE OF FORUM**

14.1 The Agreement, and the agreements

concluded in the performance of or in conjunction to the Agreement, shall be governed by and be interpreted in accordance with Dutch law.

14.2 All disputes relating to the Agreement, or the agreements concluded in the performance of or in conjunction to the Agreement, shall exclusively be brought before the competent court of the District Court of Amsterdam. 5/5