

GENERAL TERMS AND CONDITIONS

Dacom



Article 1 - General, Definitions and Applicability

1.1 These general terms and conditions apply to all quotations, assignments and contracts between the user of these general terms and conditions, the private limited liability company under Dutch law Dacom, and its contracting party.

1.2 In the context of these general terms and conditions, the following terms have the meanings given to them below:

- *Dacom*: Crop-R B.V., a private limited liability company under Dutch law, established in Groningen and operating under the name Dacom Farm Intelligence and/or Dacom B.V., a private limited liability company under Dutch law, established in Emmen;

- *Customer*: the contracting party of Dacom;

- *Software*: all computer programs and online advisory services or parts thereof, including updates, extensions, improvements and adaptations.

- *Hardware*: all computer equipment and peripheral equipments, and all measuring equipment, including soil sensors, weather stations, etc.;

- *Services and advice*: all information, advice and data related to the agricultural business operations and/or activities of the customer, made available by or on behalf of Dacom to the customer by using the software and/or hardware mentioned in this article, the internet, a combination of these, or in any other way;

- *License*: the right to use, install improved versions and repair the software, granted to the customer by Dacom;

1.3 If the customer has already entered into a contract with Dacom before on the basis of these general terms and conditions, these general terms and conditions will be deemed to have been tacitly agreed upon in later contracts.

1.4 In case any stipulation of these general terms and conditions is void or becomes void, all other stipulations in these terms and conditions will remain in full force and the contractor and awardee of the contract will hold consultations to agree upon new stipulations to replace those that are void or have been declared void. In doing so they will observe the aim and purpose of the original stipulations as far as possible.

Article 2 - Quotations and Agreements

2.1 All quotations made by Dacom are free of any commitments, unless explicitly mentioned otherwise. If the quotation is based on information provided by the customer, Dacom has the right to assume that this information is correct.

2.2 The contract is entered into as soon as Dacom has received the acceptance of the quotation or an online license has been subscribed to. By accepting the quotation, the customer renounces the applicability of its own general terms and conditions. If the customer wishes to amend or make reservations to the quotation, the contract is entered into only after Dacom has declared to the customer in writing that it agrees to these reservations or amendments.

2.3 Changes to or deviations from the contract or these general terms and conditions can only be agreed upon in writing.

2.4 Dacom is only bound to statements made by its employees or by acts, of a juridical nature or otherwise, performed by its employees in so far as these employees have explicitly been declared authorized in advance, or if Dacom confirms the relevant act or statement afterwards in writing.

Article 3 - Prices and Payment

3.1 All prices mentioned are excluding VAT, unless stated otherwise.

3.2 Credit card or payment details can be given to an external payment processor.

3.3 The prices mentioned on the website or in the quotation apply only as long as they are visible on the website or the quotation is valid. If delivery takes place more than three months after the date of the quotation, Dacom has the right to pass on interim price increases.

3.4 Dacom has the right to demand sufficient security for the payment obligations of the customer. Refusal by the customer to provide such security gives Dacom the right to terminate the contract, which does not create any liability on the part of Dacom, without prejudice to the rights of Dacom to reimbursement of costs and lost profits.

3.5 In case of payment after the due date of the term agreed upon, or in case the customer goes bankrupt, applies for a suspension of payments order, is allowed to participate in a legal debts management scheme, if an application for a curatorship order has been filed, if any property or claims of the customer have been attached, or if the customer dies, is at the point of being wound up or dissolved, the full price will be payable immediately and in full.

3.6 Payment must be made in full and without setoff within fourteen days of the invoice date to the bank account of Dacom mentioned. In case of overdue payment or incomplete payment, the customer is in default without any further notice of default being required. In such case, Dacom is entitled to charge a monthly interest of 1% on the invoiced amount from the due date until full payment has taken place. From the moment of default all costs incurred by Dacom relating to the extrajudicial collection are payable by the customer, amounting to at least 15% of the sum payable.

Article 4 - Delivery and Retention of Title

4.1 Delivery will take place to a location to be agreed upon with the customer. Delivery dates mentioned by Dacom are never binding, unless explicitly agreed upon otherwise. In the latter case, exceeding of the delivery date can only create liability on the part of Dacom if the customer has given it written notice of default, providing Dacom the opportunity to meet its obligations within a reasonable term.

4.2 The risk in the items delivered will pass to the customer at the time of the delivery.

4.3 All items delivered or to be delivered remain the property of Dacom as long as the claims Dacom has against the customer on the basis of this agreement or on any other basis, including claims in respect of fines, interest and costs, have not been paid in full. As long as the situation described in the preceding sentence exists, the customer is not entitled to alienate or encumber the items or make them available to third parties in any other way. The customer is obliged to declare immediately and at its own initiative to third parties to which alienation or encumbrance may apply that it is not entitled to alienate or encumber the items or make these available.

4.4 If the customer fails to meet any obligation it has against Dacom, Dacom will be entitled to take back the items without any notice of default being required. For that purpose, the customer authorizes Dacom to enter all premises where these items can be found.

4.5 As soon as the customer has met all its obligations against Dacom, Dacom grants the customer the ownership of the items delivered.

Article 5 - Complaints

5.1 The customer must report defects in the performance to Dacom in writing within fourteen days after it has or could have reasonably discovered the defect, at the risk of forfeiting all rights and privileges available to it in relation to this defective condition.

5.2 Invoices will be considered undisputed and accepted if the customer does not dispute the invoice within fourteen days of the invoice date.

Article 6 - Liability and Force Majeure

6.1 Dacom is liable only for damage suffered by the customer that is the direct and exclusive result of negligence on the part of Dacom. All liability is limited to the amount to be paid out under the applicable insurance contract of Dacom, and in any case to the price payable by the customer under the relevant contract, up to a maximum of EUR 10,000.00. Any liability of Dacom for indirect damage, including consequential loss, trading loss, lost data, lost profits, lost saving or business interruption loss, by any cause whatsoever, is excluded.

6.2 Dacom is not liable for any damage caused by the willful misconduct or gross negligence of auxiliary persons involved in it.

6.3 The customer indemnifies Dacom of all claims by third parties arising from the performance of this agreement.

6.4 If Dacom is unable to perform or prepare to perform its obligations under this contract after it has been entered into through no fault of its own or due to an event outside its control, including but not limited to war, threat of war, civil war, terrorism, riots, acts of war, fire, water damages, floods, strikes, factory sit-ins, lockouts, import and export barriers, government measures, defects in machinery, power grid failures, all this within the company of Dacom and its suppliers, there is question of force majeure.

6.5 During the period in which Dacom is unable to perform its obligations due to force majeure, it will not be in default. If performance becomes impossible or if the impossibility to meet obligations lasts for more than three months as a result of force majeure, then both Dacom and the customer have the right to consider the contract terminated, without this resulting in a right to compensation or an obligation to pay damages. If Dacom has performed its obligations in part, it is however entitled to payment of the proportionate part of the price agreed upon, based on the work already performed and the costs incurred.

Article 7 - Data, Confidentiality and Processing of Personal Data

7.1 The parties are obliged to preserve the confidentiality of all business information they take note of in the performance of this contract in so far as this does not impede the proper performance of this contract. The parties must also impose this obligation on their staff members in full.

7.2 For the proper performance of the contract and all contracts ensuing from it, it is necessary for Dacom to collect, process and save personal data of the customer. All this will take place in accordance with the Dutch Personal Data Protection Act [*Wet bescherming persoonsgegevens*]. Dacom will not make any personal data available to third parties, unless it is obliged to do pursuant to the law, a court decision, an arbitration award or a binding opinion.

7.3 Dacom may use data, with the exception of personal data as defined in the Personal Data Protection Act, which Customer enters into the software application, for improvement of her software, hardware, services and advice, and use the data for external analysis purposes, whereby Dacom will anonymize such data.

Article 8 - Software

8.1 Dacom grants the customer a non-exclusive and non-transferable license to use the software and documentation. The customer accepts this license. The license is granted for a term of at least one year, commencing on the date it is provided and ending the same day of the next calendar year. The license is renewed tacitly for a term of one calendar year. Parties have at all times the right to cancel or change the license; When a license is changed a new license year is started and the outstanding amount of the running license year will be deducted as a discount on the new license year. This discount will be calculated on the actual paid amount and the maximum discount amounts the height of the costs of the new license year. When terminated the license is cancelled after the remaining of the license year. Cancellations or changes can be done in writing and for online licenses this can be notified online.

8.2 As mentioned in the contract or on the website, a periodic license fee is payable by the customer to Dacom in advance. The periodic license fee is charged annually using the payment methods available on the website or through an invoice. Dacom is entitled to increase the license fee. Dacom will always give an advance notification of raising fees.

8.3 Before the software can be used customers must sign up for an account. During the registration Dacom asks for your personal details, telephone number and e-mail address. We can also ask for additional details if necessary. When downloading our application we may collect additional information such as your Unique Device ID or IP address. Dacom has the final authority in providing accounts and retain the right to decline users without giving reasons.

8.4 The software is considered as delivered as soon as the access rights are made available to the customer.

8.5 The customer does not have the right to (including free downloads):

- use the software other than for its own business purposes
 - transfer the software to third parties, share the software e.g. by sharing log-in codes, or make it available to third parties in any way whatsoever;
 - to change, copy, reverse engineer, modify, extend or decompile the software.
- 8.6 Upon termination of the license, if present, the customer is obliged to remove all software supplied to it from all processing units present in the company.

8.7 In the case of breach of any stipulation in this article, the customer incurs a penalty not subject to mitigation of EUR 1,000.00 per breach or per day that this breach continues.

8.8 All copyrights and intellectual and industrial property rights relating to the software made available by Dacom rest with Dacom exclusively and will continue to rest with Dacom. The software remains the property of Dacom.

8.9 Dacom undertakes to the customer, to whom a license has been granted, to make an effort to repair any defects in the software, provided that such defects are reported to Dacom immediately. Repair does not include the recovery of any data lost. Defects that are the result of improper use, misuse or changes made to the software by the customer will not be repaired. Under the license agreement, the customer will be entitled to improved versions of the software, if and as soon as these are available. The right to repairs and improved versions exists only in so far as the customer has met its obligations arising from this and other contracts with Dacom.

8.10 If Dacom fails to repair the defects within a reasonable term, the customer has the right to terminate the license agreement.

8.11 Dacom retains the right to terminate or suspend an account at any time without explanation.

Article 9 - Hardware

9.1 Dacom will supply the hardware to the customer as specified in the contract. The hardware will be supplied to the location indicated by the customer. The risk of loss or damage of hardware is transferred to the customer at the time of delivery.

9.2 In so far as installation and/or assembly by Dacom has been agreed upon, the customer will make sure this can be done in a suitable environment, that all necessary measures have been taken and that all facilities are available to make installation and assembly possible. Failure to do so will not make Dacom liable for any delay in installation or assembly.

9.3 The installation and/or assembly will be considered as finished and delivered as soon as the hardware is put into operation, or as soon as it has been demonstrated to the customer that the hardware is working.

Article 10 – Warranty

The warranty period is 12 months after delivery of the hardware. Dacom retains the right to inspect all goods offered under warranty for damage or other defects. The rights under the warranty lapse if the defects or damage are wholly or in part caused by improper use or incorrect treatment, or if they are in any other way attributable to the customer. In all other cases Dacom will repair or replace the product free of charge. For products not manufactured by Dacom itself, the warranty conditions and warranty period of the manufacturer apply. All parts that are being replaced will become property of Dacom. Recovery of lost data is not covered under the warranty. The Return procedure (Article 11) will determine if warranty for the product is applicable.

Article 11 – Return procedure

11.1 Dacom has 2 types of returns:

11.1.1 Warranty handling: applicable to defective products within the warranty period and offered to Dacom. Dacom retains the right to inspect all goods offered under warranty for damage or other defects. After receipt of the product Dacom will determine soonest if warranty is applicable and how it can be repaired. The rights under the warranty lapse if the defects or damage are wholly or in part caused by improper use or incorrect treatment, or if they are in any other way attributable to the customer. If in case of inspection the product appears to have no defect at all and no problem is found, the customer will be charged € 75 for research and transportation costs.

11.1.2 Repair: is applicable to products, offered to Dacom for repair, which have become defective outside the warranty period. After receipt of the product Dacom will submit a quotation which must be signed for approval and returned by the customer. If no repair order is placed € 75 will be charged for research and transportation costs.

11.2 The return procedure is valid for all returns. For returns a return number must be requested during working days from 8.30 till 17.00 CET. You can contact us via +31 88 3226600 or service@dacom.nl. After registration of the return request an e mail will be sent with the return form and the return number. The return form must be attached to the outside of the packaging and must be clearly visible. Return shipments with incomplete or unclear filled out return forms will be refused.

11.2.1 Defective products can be returned to Dacom after a return number has been issued. Defective products sent without copy of the packing list or invoice will be treated as products which do not comply with the warranty. No rights can be derived from the warranty procedure as mentioned on the return form.

11.2.2 Products are returned at risk of the customer and must be transported in proper packaging. The customer is responsible and liable for damage and/or loss during transportation to Dacom. 11.2.3 Dacom will decide prior to shipping in which way goods are shipped to them. Costs of shipping repair goods are at the expense of the customer. Costs of shipping warranty goods are at the expense of Dacom.

11.3 Returns can be shipped to:

Dacom Farm Intelligence, Waanderweg 68, 7812 HZ Emmen, The Netherlands.

Article 12 - Services and Advice

12.1 The services and advice provided by Dacom to the customer are meant to support the (agricultural) activities of the customer. These services and advice depend on many calculation models and prognoses. Dacom will make an effort to provide these adequately and with the greatest care. Dacom cannot guarantee the correctness of its services and advice and is not liable for any damage, neither direct nor indirect, that may arise from these services and advice.

12.2 The services and advice apply at the time these are provided and for the duration stated only. In so far as services and advice are based on data provided or to be provided by the customer, the correctness and completeness of these data may be assumed. Dacom is not liable for any miscalculations that result from data provided by the customer.

Article 13 - Termination

13.1 The contract and the license agreement and maintenance agreement ensuing from it, if any, can be terminated by Dacom by means of a written statement and without juridical intervention if the customer is declared bankrupt or has itself filed for bankruptcy, has applied for a (preliminary) suspension of payments order, if an application for a debt restructuring scheme is filed or allowed by the Court, if the customer loses full or partial power of disposition of its assets due to an attachment, a curatorship order or in any other way, or if the customer dies, is dissolved or wound up.

13.2 The customer is liable for any damage suffered by Dacom as a result of dissolution, including but not limited to loss of profits and costs incurred in relation to the dissolution.

Article 14 - Applicable Law and Disputes

14.1 This contract is subject to Dutch law. The Vienna Sales Convention dated 11 April 1980 does not apply to this contract.

14.2 All disputes that may arise between the parties, that may ensue from this or any other contract or that are related to such will be resolved exclusively by the District Court of Groningen, the Netherlands, unless binding jurisdiction rules are in conflict with this choice. There is question of a dispute when either of the parties so declares.

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