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## Purchase Order Terms and Conditions

January 2020 Version

Unless an executed, written agreement exists between Indigo Ag, Inc., ("INDIGO") and the seller ("Seller") identified on the face of these Purchase Order Terms and Conditions ("PO") regarding the goods and services covered by this PO, this PO and any attachments are the sole agreement between INDIGO and Seller regarding the goods or services listed in this PO.

**1. ACCEPTANCE.** This PO is expressly conditioned on Seller's acceptance of all the terms and conditions set forth herein. INDIGO expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller's quotation, proposal, acknowledgment or other document, whether or not such additions, deletions, or differences materially alter this PO. This PO may be issued in addition to other duly signed INDIGO agreements, exhibits and schedules incorporated therein ("Agreement") made with respect to the subject matter of this PO. In the event of an inconsistency or conflict between the provisions of any Agreement and this PO, the inconsistency or conflict shall be resolved by giving precedence in the following order: (a) the agreement; (b) the provisions appearing on the front and reverse side of this PO or attached by INDIGO thereto, and (c) other provisions when attached and agreed to in writing by INDIGO.

**2. PERFORMANCE.** Time is of the essence in the performance of this PO and if the goods are not delivered or the services not provided in the manner and at the times specified, INDIGO reserves the right without liability and in addition to its other rights and remedies to take either or both of the following actions:

- (a) direct expedited delivery of the goods or performance of services, with any difference in cost caused by such change paid by Seller and/or (b) purchase substitute goods and charge Seller with any loss or additional costs INDIGO incurs. Seller shall promptly advise INDIGO of any delay in performance, including notice with regard to any goods placed under backorder. Seller's performance is not deemed completed until the goods or services have been accepted by INDIGO. Title and risk of loss for the goods pass upon acceptance by INDIGO. INDIGO shall be the sole and exclusive owner of such goods or any work product from services provided, and Seller assigns and transfers to INDIGO all of its worldwide rights, title and interest in, such deliverables, goods, or work product of services, including all associated intellectual property rights.

**3. INSPECTION.** All goods and services purchased hereunder shall be subject to inspection by INDIGO at all reasonable times and places notwithstanding the terms of payment, and in any event, prior to final acceptance. No inspection made prior to final acceptance shall relieve Seller from responsibility for failure to meet the requirements of this PO. In the event the goods or services do not meet the applicable specifications and instructions, Seller will promptly re-perform the nonconforming services or provide replacement goods satisfactory to INDIGO at Seller's sole expense. If Seller is unable to accomplish the foregoing, INDIGO may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith.

**4. PAYMENT.** Invoices shall contain the following information: PO number, part numbers description of services, prices/fees, extended totals, shipping location, delivery requirements (need by/due date) and attach all supporting documentation, if any. To the extent applicable, all invoices shall include any tax amounts and shall be listed separately. INDIGO shall not be liable for any other fees or taxes except as listed in this PO. Invoices submitted hereunder will be paid Net 60 days after receipt of a correct invoice or acceptance of goods or services by INDIGO, whichever occurs later. Payment is subject to INDIGO's acceptance of the goods or services. Any adjustments in Seller's invoices due to late performance, rejections or other failure to comply with the requirements of this PO may be made by INDIGO before payment. Payment shall not constitute final acceptance. INDIGO may offset against any payment hereunder any amount owed to INDIGO by Seller.

**5. CHANGES.** INDIGO may, by written notice to Seller make changes to any one or more of the following: (a) specifications for goods or services, (b) quantity and (c) place and/or time of performance. For any reason, INDIGO may also direct Seller to suspend in whole or in part the provision of goods or the performance of services hereunder permanently or for such period of time as may be determined by INDIGO to be necessary or desirable. If any such change or suspension causes an increase or decrease in the cost or time required for the provision of goods or services hereunder, an adjustment may be made in the price or delivery schedule, or both, and the PO shall be modified in accordance with Section 22. Any claim for adjustment by Seller shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the notice of change.

**6. WARRANTY.** Seller expressly represents and warrants that the goods or services provided under this PO shall be (a) performed in accordance with INDIGO's specifications and instructions, and (b) merchantable, non-infringing, free from defects and fit and sufficient for the purpose intended. Seller further represents and warrants that: (i) the services will be performed with the highest degree of skill and judgment exercised by recognized professionals performing the same or similar services, (ii) Seller has the right to enter into this PO and perform its obligations hereunder without the consent of any third party; (iii) Seller will comply with (x) INDIGO's policies and procedures communicated to Seller from time to time, (y) INDIGO's security requirements communicated to Seller from time to time and (z) any third-party obligations or requirements applicable to the conduct of INDIGO's business; (iv) the provision by Seller of any goods or services does not and will not constitute an infringement of any intellectual property right, violation of any nondisclosure obligation or any other proprietary right infringement or violation of any third party; (v) to the extent applicable, Seller will not use any open source software in the provision of goods or services without the express written consent of INDIGO, any software used or provided by Seller in connection with this PO will not contain any malware, and/or other malicious or disabling code or mechanisms, and Seller will use only those software programs installed on any computer provided by INDIGO. The foregoing warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of the goods or services shall not constitute a waiver of any breach of

foregoing warranties. In the event of any breach of the foregoing warranty, Seller shall at its own expense and at INDIGO's option either: (a) provide replacement goods satisfactory to INDIGO, (b) re- perform the nonconforming services to the satisfaction of INDIGO, or (c) refund to INDIGO the total amount paid for such goods or services. Seller shall extend all warranties it receives from its suppliers to INDIGO.

**7. CONFIDENTIAL INFORMATION.** The provisions of this Section 7 shall apply, unless an executed, written confidentiality agreement exists between INDIGO and Seller. INDIGO and Seller acknowledge that in their course of dealings, Seller may acquire from INDIGO confidential and proprietary information about INDIGO, its business activities and operations, its employees, customers, consumers, trade secrets or any other information which by its sense or nature should reasonably be considered confidential (the "Confidential Information"). The Confidential Information of INDIGO shall only be disclosed to Seller's employees, agents or consultants with a need to know and who are under a written obligation to keep the information confidential. Seller shall not disclose the Confidential Information to any third parties. Seller shall use the same degree of care but no less than a reasonable degree of care that it uses with regard to its own confidential information to prevent the disclosure of INDIGO Confidential Information. Seller agrees to notify INDIGO in writing of any actual or suspected breach of this section, including, without limitation, any misuse, misappropriation or unauthorized disclosure of INDIGO Confidential Information. To the extent that the Seller receives any consumer information, it shall: (i) collect, use, disclose, protect and keep confidential all such consumer information in accordance with all applicable state and federal privacy laws, rules and regulations and (ii) have, for so long as it retains any such consumer information, adequate administrative, technical and physical safeguards to ensure the security and confidentiality of all such consumer information protects against any anticipated threats to the security or integrity of all such consumer information and protect against unauthorized access to or use of all such consumer information.

**8. TERMINATION.** INDIGO may terminate this PO in whole or in part at any time and without cause. Upon notice of termination, Seller shall inform INDIGO of the extent to which it has completed its performance under this PO as of the date of the notice and collect and deliver to INDIGO any goods or Work Product, as defined in Section 11, which then exists. INDIGO will pay Seller for goods or services accepted and performed through the date of notice of termination provided that INDIGO will not be obligated to pay more than the payment due had Seller completed or provided the goods or services. INDIGO will have no further payment obligation in connection with any termination.

**9. INDEMNIFICATION.** Seller shall indemnify, defend and hold INDIGO, its officers, directors, shareholders, affiliates, employees, representatives, agents, customers and consumers harmless from and against any and all demands, actions, losses, liabilities, costs, claims, damages, judgments, settlements and expenses (including attorneys' fees and costs) arising out of or related to this PO including but not limited to any personal injury claims by Seller's employees, the provision of goods or services under this PO, or Seller's

breach of any term or provision of this PO, including any claims that any such goods or services infringe any patent, copyright, trademark, trade secret or any other proprietary right of any third party.

**10. LIMITATION ON LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL INDIGO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS PO EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY INDIGO TO SELLER FOR THE APPLICABLE GOODS OR SERVICES PROVIDED UNDER THIS PO, NOR SHALL INDIGO BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**11. INTELLECTUAL PROPERTY AND DATA.** All records, software, files, data, reports, information, work product, notes, plans, strategies, intellectual property and other information provided by INDIGO or prepared or developed by or for INDIGO pursuant to this PO ("Work Product") shall be the property of INDIGO and shall constitute works made for hire under applicable law. Seller assigns all intellectual property rights in the Work Product to INDIGO and agrees to complete any documents requested by INDIGO to perfect its ownership in the Work Product. Seller waives all rights related to the Work Product. Seller grants to INDIGO an unlimited, nonexclusive license to use, copy, modify or create derivative works of any materials delivered to INDIGO which are developed prior to or outside of this PO. All materials, equipment and other information supplied to Seller by INDIGO shall remain the property of INDIGO and shall be returned to INDIGO when no longer needed by Seller in the provision of goods or services and in any event upon the expiration or earlier termination of this PO.

**12. RELATIONSHIP OF THE PARTIES.** Seller will employ personnel satisfactory to INDIGO. Seller must remove or cause to have removed any personnel who are considered unsatisfactory to INDIGO in the performance of services. Seller is an independent contractor, and nothing contained in this PO shall be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of supplier and customer. Seller shall be solely responsible for payment of all compensation and benefits owed to its employees as well as employment related taxes. Any agreements or commitments entered into by Seller shall not be binding on INDIGO and further INDIGO assumes no liability with respect to any agreements or commitments entered by Seller with its employees, agents, suppliers and the like.

**13. SUBCONTRACTS AND ASSIGNMENTS.** Seller agrees to obtain INDIGO's approval before subcontracting this PO or any portion thereof. This PO shall not be assigned or delegated by Seller without the prior written consent of INDIGO.

**14. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable federal, state, local and foreign laws, regulations and rules in its provision of the goods or services and has all third party, governmental consents, permits, approvals, licenses and authorizations

necessary to provide the applicable goods or services. Upon receipt of advance written notice from INDIGO, Seller will admit INDIGO's properly identified and authorized employees onto its premises for purposes of monitoring compliance with this PO, provided such admittance does not unreasonably interfere with Seller's work and is during normal business hours. Such access will be limited to records that relate to the goods or services and compliance with this PO. Copies of such related documents will be provided to INDIGO at its request.

**15. INSURANCE.** Seller shall secure and maintain insurance providing sufficient coverage to comply with its obligations and duty to indemnify as required under this PO through provision of the goods or services hereunder and for two (2) years thereafter. Within five (5) days of receipt of a request from INDIGO, Seller agrees to provide INDIGO with a certificate of insurance evidencing Seller's insurance coverage.

**16. PUBLICITY.** Without securing the prior written consent of INDIGO in each instance, Seller shall not use the name or logo of INDIGO in any news release, public announcement, advertisement, or other form of publicity, or disclose any of the terms or subject matter of this PO to any third party except as may be required to perform this PO.

**17. NON-WAIVER OF RIGHTS.** The failure of INDIGO to insist upon strict performance of any of the terms and conditions in this PO or to exercise any rights or remedies hereunder shall not be construed as a waiver of its rights to assert any of the same or any other terms and conditions under this PO.

**18. REMEDIES.** Any rights and remedies specified under this PO shall be cumulative, non-exclusive and in addition to any other rights and remedies available at law or in equity.

**19. SEVERABILITY.** If any term contained in this PO is held or finally determined to be invalid, illegal or unenforceable in any respect, in whole or in part, such term shall be severed from this PO, and the remaining terms contained herein shall continue in full force and effect.

**20. INTERPRETATION.** The captions and headings used in this PO are solely for the convenience of the parties and shall not be used in the interpretation of the text of this PO. Each party has read and agreed to the specific language of this PO. No conflict, ambiguity, or interpretation shall be construed against the drafter.

**21. GOVERNING LAW.** This PO shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions. Seller agrees that the state and federal courts in Massachusetts shall have exclusive jurisdiction and venue over any claims arising out of or related to this PO.

**22. ENTIRE AGREEMENT.** Except as specified herein, this PO, including all documents incorporated herein by reference, constitutes the entire agreement and understanding between the parties and shall supersede and replace any and all prior or contemporaneous agreements and understandings of any kind, whether written or oral,

relating to the subject matter hereof. No modification to this PO shall be valid unless agreed to in writing by INDIGO.

**23. SURVIVAL.** Both parties agree that any term or provision of this PO which by its nature is intended to survive the expiration or termination of this PO shall survive.