



TERMS AND CONDITIONS

These Terms and Conditions (these “T&Cs”) apply to any sale or license by Addium, Inc. or Addium GmbH (each separately and collectively “Addium”) of Products (as defined herein). In addition, these T&Cs are attached to and incorporated by reference into any order form or purchase order between Addium and the Customer (the “Order Form”). Customer and Addium are individually referred to herein as a “Party” and together the “Parties”. Capitalized terms used but not defined herein shall have the meaning assigned to them in the Order Form.

1. Certain Definitions.

- a. “AROYA GO” means Addium’s proprietary hosted product and software solution made available through Addium’s online platform, as may be modified, enhanced and/or updated from time to time and associated hardware.
- b. “AQUALAB” means Addium’s proprietary water activity meter, moisture analyzer, and/or isotherm generator.
- c. “Customer” means the person or legal entity purchasing or licensing the Products and identified on any Order Form.
- d. “Customer Data” has the meaning set forth in the applicable Terms of Use.
- e. “POMETA” refers to Addium’s proprietary software application for imaging data for analysis.
- f. “Products” means Addium’s generally available products, including equipment, software, hardware, AROYA GO, Subscription Services, and any related Addium documentation provided therewith by Addium, that are made available for sale by Addium or an authorized Addium distributor.
- g. “Software” means each, and any, of Addium’s proprietary products which includes AQUALAB, AROYA, AROYAGO, SKALA and POMETA, as may be modified, enhanced, and/or updated from time to time.
- h. “Subscription Services” means Addium’s proprietary hosted products and software solutions made available through a software-as-a-service platform, as may be modified, enhanced and/or updated from time to time.
- i. “Terms of Use” means, as applicable, (i) the terms and conditions set forth in the Addium Subscription Agreement, which are applicable to Addium Subscription Services, and which are located at <https://addium.io/en/company/subscription-agreement> and which govern use of the Subscription Services or (ii) the terms and conditions set forth in the AROYA GO SOFTWARE LICENSE AGREEMENT, which are applicable to AROYA , and which are located at <https://aroyago.io/license-agreement/>.

2. **Sale and Purchase.** The Products sold to Customer are described in an applicable Order Form between the Parties. These T&Cs and the Order Form, together with the Terms of Use applicable to the Subscription Services or Software, as applicable, and any other applicable online terms or Purchase Orders (as defined below), comprise the “Agreement” between Addium and Customer, and will govern the rights and obligations of Addium and Customer. In addition, after purchasing Products under an Order Form, Customer may purchase additional Products from Addium by submitting a written purchase order to Addium (each, a “Purchase Order”). If Customer does not customarily use purchase orders to purchase goods and services, then Customer and Addium will use additional Order Forms for subsequent purchases of Products. The terms of the Agreement will apply to any Purchase Order and supersede any conflicting terms on any Purchase Order. Without limiting the foregoing, any Purchase Order issued by Customer to Addium is solely for the purpose of requesting delivery dates and quantities, specifying the ship-to and bill-to addresses, specifying the identity of Products purchased along with the term of any applicable subscription, and specifying the applicable price for each Product; all other terms on any Purchase Order will have no force or effect. All Order Forms and Purchase Orders are subject to acceptance by Addium, at its discretion (which acceptance may be evidenced by Addium’s shipment of hardware Products or issuance by Addium of an invitation to create an account, as applicable, under the Purchase Order, or Addium’s written notice to Customer that it has accepted the Purchase Order). If the

Purchase Order for hardware Products exceeds Addium's inventory, Addium may allocate available inventory at its discretion, without liability to Customer or any third party.

3. **Fees and Payment.** All fees for the Products and any other related payment or reimbursement obligations (collectively, the "Fees") will be payable in accordance with the terms set forth in the applicable Order Form or Purchase Order; provided that if no terms are included in the Order Form or Purchase Order, payment for any: (a) hardware or Software Products is due cash in advance; and (b) subscriptions to Subscription Services are due and payable annually in advance. All amounts expressed herein are in legal tender of the United States unless expressly provided otherwise in the Order Form or Purchase Order. All Fees and other amounts due hereunder not paid when due will accrue interest daily at the lesser of an annual rate of twenty-four percent (24%) on the unpaid balance or if not allowed, then the highest rate permissible by applicable law, and Customer shall be responsible for Addium's costs and expenses of collection, including court costs and reasonable attorney's fees. If Customer believes that Addium has billed Customer incorrectly, Customer must contact Addium no later than one hundred and twenty (120) days after the date of the applicable invoice, otherwise Customer will be deemed to have waived any objection. Except as otherwise set forth herein, all Fees are noncancelable, and all payments made are nonrefundable. In addition, all Fees shall be paid by Customer to Addium in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law). Fees do not include any direct or indirect local, state, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use, or withholding taxes. Customer is responsible for paying all taxes associated with its purchases hereunder. If Addium has a legal obligation to pay or collect taxes for which Customer is responsible under this Section, the appropriate amount will be invoiced to and paid by Customer.

4. **Deferred Payment Terms for Hardware Products.** The terms of this Section apply when Customer does not pay in full for hardware Products prior to shipment by Addium of those hardware Products. Until Addium has received payment in full for all hardware Products: a) Addium shall retain a security interest in the hardware Products and Customer shall sign and deliver to Addium any document necessary or advisable to secure and/or perfect this security interest as Addium may request, in Addium's sole and absolute discretion; b) Customer is responsible for, and shall bear the entire risk of loss of, any theft, damage or destruction of those hardware Products occurring during the period from delivery of the hardware Products at Customer's site until irrevocable payment for such hardware Products has been made in full to Addium. This includes damage from any cause whatsoever including, without limitation, misuse, accident (e.g., accidental physical impact, exposure to contaminants, etc.), neglect, abuse, alteration, or unauthorized repair or modification. No loss, theft, damage or destruction of the hardware Products as described in this Section will relieve Customer of the obligation to pay any Fees or to comply with any other obligation under the Agreement; and c) Customer will insure the hardware Products against all hazards (including loss, theft, damage or destruction) in form, amounts and coverages satisfactory to Addium, in its sole and absolute discretion, in an amount not less than the full replacement value of the hardware Products. Upon request, Customer shall furnish to Addium a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section and shall designate Addium as loss payee and/or additional insured. In addition to any other rights or remedies set forth in the Agreement, if Customer fails to pay all Fees when due, then upon thirty (30) days' prior written notice, if Customer has not made all applicable payments of Fees due to Addium, then Addium may take any of the following actions: (i) enter Customer's premises and without any court order or other process of law, repossess and remove the hardware Products, either with or without additional notice to Customer, and Customer hereby waives any trespass or right of action for damages by reason of such entry or removal; (ii) require Customer, at its expense, to return the hardware Products in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place as Addium may specify; and (iii) accelerate all future Fees due under all Purchase Orders and Order Forms such that all Fees become due and payable immediately. Customer shall be liable to Addium for the fair market value of any hardware Products, determined as of the date of the applicable Purchase Order or Order Form, unless Customer returns the hardware Products to Addium within ten (10) business days after receipt of a demand by Addium in accordance with Section 4.

5. **Shipment and Delivery.** Customer is responsible for all shipping charges. Addium will ship all hardware Products to Customer's address set forth on the Order Form or Purchase Order. In the absence of specific shipping instructions, Addium will ship the hardware Products by a method Addium selects in its sole and absolute discretion. Addium will deliver the hardware Products F.O.B. Origin per the UCC, and title to and risk of loss of the hardware Products will pass to Customer upon such delivery by Addium. Any stated delivery dates are approximate. Hardware Products will be conclusively deemed accepted by Customer unless a written notice setting out the rejected hardware Products and the reason for the rejection is sent to Addium within ten (10) days of delivery of the hardware Products. In such case, Customer will place rejected hardware Products in safe storage at a reasonably accessible location for inspection by Addium. No delay, loss or damage to the Products will limit, affect or impair Customer's payment or other obligations included in the Agreement. Access to the Subscription Services or Software will be delivered by issuance of an invitation to create an account at the email address provided by Customer. Subject to the Agreement, Addium will use commercially reasonable efforts to promptly fill (by full or partial shipment or issuance of an invitation to create

an account, as applicable) Customer's purchase of Products; each partial shipment or issuance of an invitation to create an account, as applicable, will be deemed a separate sale and/or license and may be invoiced upon such shipment or issuance.

6. Warranty; Provision of Data to Third Parties; General Waiver.

a. Addium's standard Limited Warranty for the hardware Products, and Customer's exclusive remedies for breach thereof, are specific to each Software, unless there is no warranty. Warranty information, where applicable is set forth at <https://addium.io/warranty/>. Such Limited Warranties, may be updated or amended at any time, in Addium's sole and absolute discretion. Similarly, any warranties for the Subscription Services or Software, and Customer's exclusive remedies for breach thereof, are set forth in the applicable Terms of Use.

b. Addium does not provide any warranties, promises, or guarantees with respect to any Customer Data or other information or data generated by or as part of the Products ("Other Data") that is provided or made available to any third party by Customer or its officers, directors, managers, employees, agents, contractors, subcontractors, representatives, successors, or assigns ("Customer Parties") or by Addium as instructed or authorized by Customer or Customer Parties ("Shared Data"). Addium explicitly disclaims any liability with respect to any actions, inactions, decisions, or results occurring, existing, or generated in whole or in part in reliance or based on such Customer Data or Other Data. Customer agrees to indemnify, defend, and hold Addium and its Affiliates, and their officers, directors, employees, and agents harmless from any demands, actions, causes of action, claims, liabilities, losses, damages, or costs (including reasonable attorneys' fees) that may arise from or relate to the Shared Data. Customer is advised that Shared Data may contain Customer's confidential information or trade secrets and Customer's authorization to share data with third-parties is at Customer's sole risk.

c. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THE AGREEMENT, THE PRODUCTS, SUBSCRIPTION SERVICES, SOFTWARE, AND SUPPORT ARE BEING PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ADDIUM MAKES NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE PRODUCTS OR SUPPORT WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF HARMFUL COMPONENTS; ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT; ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; OR ANY WARRANTY THAT THE PRODUCTS OR SUBSCRIPTION SERVICES OR AROYA GO WILL BE COMPATIBLE WITH HARDWARE OR SOFTWARE OFFERED, PROVIDED, OR CREATED BY THIRD PARTIES. CUSTOMER ACKNOWLEDGES THAT NO STATEMENT OR REPRESENTATION OF ANY PERSON REGARDING THE QUALITY OR CONDITION OF THE PRODUCTS HAS INDUCED CUSTOMER TO PURCHASE THE PRODUCTS, AND THAT NO SUCH STATEMENTS OR REPRESENTATIONS HAVE BEEN MADE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT.

7. **Limitation of Liability.** IN NO EVENT SHALL ADDIUM BE LIABLE, REGARDLESS OF THE FORM OF ACTION, FOR ANY LOSS OF PROFITS, GOODWILL, OTHER INTANGIBLE LOSSES, SUCH AS CORRUPTION OF DATA, INTERRUPTION OF USE, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR DAMAGES RESULTING FROM CUSTOMER'S USE OF (OR INABILITY TO ACCESS OR USE) ANY PRODUCT OR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER, WHETHER OR NOT FORESEEABLE, EVEN IF CUSTOMER OR ADDIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, IN RELATION TO THE SERVICES PERFORMED HEREUNDER. IN NO EVENT SHALL ADDIUM'S TOTAL LIABILITY UNDER THIS AGREEMENT OR WITH RESPECT TO THE PRODUCTS OR MATTERS RELATED THERETO EXCEED THE FEES ACTUALLY PAID BY CUSTOMER DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THIS SECTION 7 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8. **Support.** Addium will provide Customer (a) with telephone support for all Products and Software except AROYA GO Products between the hours of 8:00 a.m. and 5:00 p.m. Pacific Standard Time, Monday through Friday, except for holidays, and (b) with support via digital assets, including videos and FAQs, for AROYA GO Products; in addition, Addium may, in its sole discretion, provide other support services to Customer in connection with Customer's use of the Products (collectively, "Support"). Support may be provided remotely or, with respect to certain Software Products, on site at Customer locations, provided that any visit by Addium personnel to Customer locations shall be coordinated in advance between the Parties in good faith. Support, if any, is provided hereunder "as-is," without warranty of any kind, and Addium specifically disclaims all responsibility for any liabilities, claims or damages that result from any on-site visits or other activities for the provision of Support. Further, Customer agrees to defend, indemnify, and hold Addium harmless from any liabilities, claims or damages resulting from any personal injury (including death) or property damage resulting from any on-site visits for the provision of Support by Addium personnel or agents.

9. **Confidentiality.** During the term of this Agreement, the Parties may have access to confidential, proprietary and/or trade secret information, and documentation related thereto, belonging to the other Party, including, without limitation, information about the terms of this Agreement; a Party's business operations, methods and practices; past, present and prospective employees; information of a personal nature, etc. (such information is collectively referred to herein as "Confidential Information"). The Parties acknowledge that Confidential Information is owned by the Party disclosing such Confidential Information and shall continue to be owned, solely, by the disclosing Party. During the term of the relationship, and surviving termination hereof (regardless of the circumstances surrounding termination), the Parties agree not to use, communicate, reveal or otherwise make available Confidential Information for any purpose whatsoever, nor will a Party divulge (or cause to be divulged) any Confidential Information to any person, partnership, corporation or entity except to a Party's advisors or as may be reasonably required to carry out the purposes of this Agreement. Upon termination of this Agreement (if requested) and any other time that a Party may so request, the receiving Party shall immediately deliver to the requesting Party all Confidential Information (and all copies thereof), which that Party may then possess or have under its control. The above restrictions apply to all Confidential Information regardless of the format in which it is created or maintained (hard copy, electronic, or otherwise), or where it is maintained. Confidential Information shall not include information that a Party possessed prior to its association with the other Parties under this Agreement, information that is within the public domain, information that has previously become or is generally known, information that has been rightfully received by the receiving Party from a third person (other than via this Agreement), or information that has been independently developed by the receiving Party. Notwithstanding the foregoing, (a) a Party may disclose Confidential Information in response to a governmental or court order or as otherwise required by law, provided that the disclosing Party gives the other party prior notice (to the extent allowed by law) so that the party who owns the Confidential Information may seek a protective order and (b) Addium may share Confidential Information of Customer with any third party as instructed or authorized by Customer or Customer Parties.

10. **Indemnification.** Addium shall defend any third-party action, suit or proceeding brought against Customer alleging that the Products infringe any of such third party's patents or copyrights that are registered in the United States as of the Effective Date (each, a "Claim"), and shall indemnify Customer against any losses, damages, costs, expenses and judgments awarded against Customer in a final, non-appealable judgment arising out of any Claim. The foregoing obligation is conditioned on and subject to Customer: (a) promptly giving written notice of the Claim to Addium; (b) giving Addium sole control of the defense and settlement of the Claim (provided that Addium may not settle any Claim without Customer's reasonable consent); and (c) providing to Addium, at Addium's cost, all reasonable assistance. Addium is not responsible for any settlement it does not approve in writing. Addium will not be required to indemnify Customer in the event a Claim arises out of or relates to any (i) modification of the Product by Customer or at Customer's direction, or any violation by Customer of the obligations under the Agreement; (ii) use of the Product in combination with any other product or service not provided by Addium; (iii) use of the Product in a manner not otherwise contemplated by the Agreement or the documentation; or (iv) where Customer continues the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement. If Customer is enjoined from using a Product or Addium reasonably believes it will be enjoined, Addium will have the right, in its sole and absolute discretion, and in lieu of indemnification, to (i) obtain for Customer the right to continue use of the Product or (ii) replace or modify the Product so that it is no longer infringing. If neither of the foregoing options is reasonably available to Addium, then Addium may elect to refund a pro rata portion of the amount received from or on behalf of Customer for the applicable Product depreciated on a straight line basis over a five (5) year period for hardware Products or refund the portion of a subscription paid but not used for Subscription Services licensed on a subscription basis, provided that in each case, Customer ceases all use of such Product and, at Addium's option, returns the Product to Addium. This Section 10 states Addium's sole and exclusive obligation, and Customer's sole and exclusive remedy, to the maximum extent permitted under applicable law, for any Claim or other third-party claims of infringement on intellectual property rights.

11. **Compliance with Laws and Export Control.** Customer will conduct its business operations in accordance with all applicable local, state, federal and international laws, ordinances, codes and regulations, including, without limitation, all laws and regulations which may prohibit or require a license for the export or retransfer of certain products and technical data to specified countries, entities and persons. Customer also represents that it is not named on any U.S. government denied-party list. Customer shall not permit Users to access or use the Subscription Services or any other Product in a U.S.-embargoed country (e.g., Cuba, Iran, North Korea, Sudan, Syria, etc.). Customer hereby gives written assurance that it will comply with all applicable law, including applicable export control laws and regulations.

12. **Return Policy.** Return policies are Software and Product specific. Customer may return AROYA GO Products solely pursuant to the Terms of Use and Addium's AROYA GO "Return Policy" available at: <https://aroyago.io/return-policy/>, which are subject to change at any time in Addium's sole discretion.

13. **General Provisions.** The Agreement shall be governed by and construed under the laws of the State of Washington without regard to the conflicts of laws provisions thereof. All disputes arising out of or in relation to the Agreement shall be submitted to the exclusive jurisdiction of the state and federal courts located in Whitman County, Washington state, and the Parties hereto each agree to submit themselves to the exclusive jurisdiction of such courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded with respect to any purchases made under the Agreement. Customer may not assign or transfer any of its rights or obligations under the Agreement or any Order Form or Purchase Order, whether by operation of law or otherwise, including in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or stock (including a sale of substantially all of its business operations where the Products are installed or the Subscription Services or Software are provided), without Addium's prior written consent, which may be withheld or given in Addium's sole discretion. In addition, Customer may not resell any Products or Support without Addium's express written consent. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors, and permitted assigns. The Agreement, comprised of these T&Cs, the Order Form(s) and Purchase Order(s), the applicable Terms of Use and any applicable online terms, constitutes the entire agreement between the Parties with respect to the Products and their use by Customer, to the exclusion of any pre-printed or contrary terms of any unsigned (by both Parties) Purchase Order (or similar document) and supersedes and cancels any prior agreements, proposals, discussions, understandings, negotiations or representations between the Parties relating to the subject matter of the Agreement, and all past dealing or industry custom. The Agreement will not be modified or waived, except by a mutual signed writing, provided that Addium may update the Terms of Use or any other applicable online terms from time to time at its sole discretion. The Parties are independent contractors. The Agreement does not create any partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. Addium will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond Addium's reasonable control. All notices under the Agreement must be in writing and will be deemed given (i) when personally delivered, (ii) one day after being sent by overnight courier, or (iii) upon receipt, if sent by certified or registered mail, return receipt requested. No Party will be deemed to have waived any provision of the Agreement or the exercise of any rights held under the Agreement unless such waiver is made expressly and in writing. Waiver by any Party of a breach or violation of any provision of the Agreement will not constitute a waiver of any other subsequent breach or violation. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to applicable law, the provision will be deemed null and void, and the remaining provisions of the Agreement will remain in effect. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. There shall be no third-party beneficiaries to the Agreement. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. The word "including" or any variation thereof means "including", "without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. The Agreement, including any Order Forms or Orders, may be signed in one or more counterparts, which together will form a single agreement. The Agreement may be signed electronically. Each Party represents and warrants to the other Party that (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the applicable law of the jurisdiction of its incorporation or organization; (ii) it has the full right, power, and authority to enter into and perform its obligations under the Agreement; (iii) the execution of the Agreement by its representative whose signature is set forth at the end of the Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (iv) when executed and delivered by both Parties, the Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

THE BELOW PROVISIONS ALSO APPLY TO CUSTOMERS WITH THEIR SEAT OR RESIDENCE IN EUROPE

Capitalized terms used but not defined herein shall have the meaning assigned to them in the T&C.

§ 1 Scope of Application; Form

These Additional General Terms and Conditions of Sale (ATCS) apply in conjunction with the T&C above to all of Addium's business relationships with Customers with their seat or residence in Europe. To the extent these ATCS apply, they prevail over the T&C above. The ATCS shall, however, apply only if Customer is an entrepreneur, a legal entity under public law, or a special fund under public law.

For sales to other consumers with their residence in Europe, the applicable statutory laws apply.

§ 2 Prices and Terms of Payment

(1) Customer is in default upon expiry of the payment period as set forth in Section 3 of the T&C. Contrary to Section 3, sentence 3 of the T&C, during the period of default, interest shall be charged on the Fees at the rate of **five percent (5%)** per annum. Addium reserves the right to claim further damages upon default. Addium's statutory claim to commercial maturity interest against Customer remains unaffected.

(2) Contrary to Section 3, sentence 6 of the T&C, Customer has rights of set-off or retention only to the extent that its claim has been legally established or is undisputed. In the event of a defective Product, Customer's counter-rights shall remain unaffected, in particular pursuant to § 4 para. 6 sentence 2 of these ATCS.

§ 3 Reservation of Title

(1) Contrary to Section 4 of the T&C, Addium reserves title to the Products sold until it receives full payment of all Fees.

(2) Customer may not pledge the Products to third parties nor assign them as security prior to Addium receiving full payment of the Fees. Customer must inform Addium immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties seize the Products belonging to Addium (e.g. seizures).

(3) If Customer breaches the T&C or ATCS, in particular if Customer fails to make full payment of the Fees, Addium may withdraw from the respective Agreement in accordance with applicable statutory provisions and/or demand the return of the Products based on a reservation of title. The demand for the return of the Products does not constitute a declaration of withdrawal; instead, Addium may merely demand the return of the Products and reserve the right to withdraw from the respective Agreement. If Customer does not pay the Fees, Addium may assert these rights only if Addium has previously provided Customer with a reasonable deadline for payment without success or if setting such a deadline is superfluous.

§ 4 Claims for Defects by Customer

The provisions of this Section 4 replace in their entirety Section 6 and Section 7 of the T&C.

(1) Statutory provisions shall apply to Customer upon material defects and defects of title (including incorrect and insufficient delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. In all cases, statutory provisions shall remain unaffected for Customer's claim arising from separately issued guarantees, in particular, on Addium's part.

(2) The basis of Addium's liability for defects is primarily the respective Agreement regarding the quality and intended use of the Products (including accessories and instructions). All product descriptions and Addium's specifications that are the subject of the respective Agreement, or that were made public by Addium (in particular in catalogs or on Addium's website) at the time of conclusion of the respective Agreement is deemed to be an agreement on quality. If the quality has not been agreed, it shall be determined in accordance with applicable statutory provisions whether a defect exists. Public statements made by Addium or on its behalf, in particular in advertising or on the label of the Products, shall take precedence over statements made by other third parties.

(3) If the Products include digital elements or other digital content, Addium must provide and, if applicable, update, the digital content only if this is expressly set forth in a quality agreement in accordance with Section 4(2) of the ATCS. In this respect, Addium assumes no liability for public statements made by third parties.

(4) Addium is not liable for defects of which Customer is aware nor for Customer's gross negligence in terms of not being aware of such upon the conclusion of the respective Agreement. Furthermore, Customer may claim a defect only if it has complied with applicable inspection and notification requirements. If Products are to be installed, or are subject to further processing, Customer must perform an inspection immediately before and subsequent to such installation or processing; this includes, in particular, validating the data generated by the Products. If Customer discovers a defect at the time of delivery, inspection, or at any subsequent time, Customer must immediately inform Addium in text form (e.g. e-mail, fax, letter, etc.) and discontinue using the Product and/or all data generated by the Product until Customer and Addium have agreed in text form that it is safe to continue to use the Product. If Customer fails (i) to properly (including immediately) inspect the Products and/or (ii) to report defects, Addium's liability for the defect not reported, not reported in a timely manner, or not reported properly are excluded. If Products are to be assembled, mounted, or installed, this shall also apply if the defect became apparent only after the corresponding processing as a result of a breach of one of these obligations. In this case, Customer has no claims for reimbursement of corresponding costs ("removal and installation costs").

(5) If the Product is defective, Addium may initially choose, at its sole discretion, whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a non-defective Product (replacement delivery). If the type of subsequent performance chosen by Addium is unreasonable for Customer in the individual case, it may reject it. Addium's right to refuse subsequent performance remains unaffected.

(6) Addium may provide the subsequent performance owed subject to Customer paying the corresponding Fees. Customer, however, may retain a reasonable portion of the Fees in proportion to the defect.

(7) Customer shall provide Addium with the time and opportunity required for the owed subsequent performance, in particular, to provide Addium with the rejected Products for inspection purposes. If Addium has chosen a replacement delivery, Customer must return the defective Product to Addium at Addium's request. Customer may not, however, demand that Addium accept return of the defective Product. Subsequent performance does not include dismantling, removing, or disassembling the defective Product nor the installation or attachment of a non-defective Product if Addium was not originally required to perform these services. Customer's claims for reimbursement of corresponding costs ("Installation Costs") shall remain unaffected.

(8) Addium shall bear or reimburse Customer for the expenses necessary to inspect and to provide the subsequent performance, in particular for transport, travel, labor, and material costs, as well as for Installation Costs, in accordance with applicable statutory provisions and these ATCS, if a defect actually exists. Addium may, however, demand compensation from Customer for the costs incurred as a result of an unjustified request to remedy a defect if Customer knew, or should have known, that there was no defect.

(9) In urgent cases, e.g. if operational safety is jeopardized or to prevent unreasonably high damages, Customer may remedy the defect itself and demand compensation from Addium for the reasonable expenses it incurred for this purpose. Customer must notify Addium immediately, if possible in advance, of any such self-remedy. Customer, however, does not have a right of self-remedy if Addium could, or could have, refused a corresponding subsequent performance in accordance with applicable statutory provisions and these ATCS.

(10) If Customer sets a reasonable deadline for subsequent performance and Addium has not provided such performance within such period or such a deadline is superfluous, Customer may withdraw from the respective Agreement or reduce the Fees in accordance with applicable statutory provisions. If there is only a minor defect, however, Customer does not have a right of withdrawal.

(11) Customer's claims for damages or reimbursement of frustrated expenses exist only in accordance with the §§ 5 and 6, below, even if the Products are defective.

§ 5 Other Liability of Addium and Indemnification

(1) Unless otherwise set forth in these ATCS, Addium is liable for a breach of its contractual and non-contractual obligations in accordance with applicable statutory provisions.

(2) Addium is liable for damages – regardless of their legal bases – for intentional and grossly negligent acts or omissions. Addium is also liable for simple negligence, subject to statutory limitations of liability (e.g. insignificant breach of duty) for:

a) damages resulting from injury to life, body, or health; and

b) damages arising from the breach of a material contractual obligation (obligation whose fulfillment is essential for the proper execution of the agreement and on whose performance Customer regularly relies and may rely); in this case, however, Addium's liability is limited to compensation for foreseeable damages that typically occur.

(3) The limitations of liability resulting from (2), above apply also to third parties, and upon a breach of duty by persons (also in their favor) attributable to Addium in accordance with applicable statutory provisions. They shall not apply if a defect has been concealed fraudulently, if Addium has assumed a guarantee for the quality of the Products, or for Customer's claims under an applicable product liability statute.

(4) Customer may withdraw from or terminate the respective Agreement due to a breach of duty that does not constitute a defect only if Addium is responsible for such breach of duty. In all other respects, applicable statutory requirements and legal consequences apply.

(5) Contrary to Section 6(b) of the T&C, Addium is liable vis-à-vis Customer only for such damages as stated in these ATCS. Customer acknowledges that it has the duty to properly install the Product, validate the Other Data output, and verify the proper functioning of the Product prior to its use, in particular if Customer intends to share Customer Data or Other Data with a third party and/or Customer intends to use the Product or Customer Data or Other Data in a high risk environment, meaning putting customers' or third parties' valuable crops, plants, or other assets at risk. Customer agrees to indemnify, defend, and hold Addium and its Affiliates, and their officers, directors, employees, and agents harmless from any demands, actions, causes of action, claims, liabilities, losses, damages, or costs (including reasonable attorneys' fees) that may arise from or relate to the same to the extent Addium's actions or inactions are not the bases for such demand, action, cause of action, claim, liability, loss, damage, or cost.

(6) Customer may claim damages for the corruption or loss of Customer Data or Other Data only if Customer generates a sufficient (in particular, regular) backup of such Customer Data or Other Data. Any claims for loss of Customer Data or Other Data that arise in connection with an insufficient back up by Customer are limited to the amount that would have been incurred if Customer had generated and maintained a sufficient (in particular, regular) backup of any such Customer Data or Other Data.

§ 6 Return Policy

In addition to the AROYA GO Return Policy set forth in Section 12 of the T&C, Customer may exercise its rights under Section 4(10) of the ATCS. Contrary to as set forth in the Return Policy, returns are to be made to:

Addium GmbH
Wilhelmine-Reichard-Strasse 7
80935 Munich
GERMANY

* This address constitutes the business address of our headquarters in Germany. Purchases and other transactions are not available at this site.

§ 7 Statute of Limitations

(1) To the extent permitted by applicable law, the general limitation period for claims arising from material defects and defects of title is one (1) year from the date of delivery. If the parties have agreed to an acceptance, the limitation period shall begin as of the acceptance.

(2) The above limitation period applies also to contractual and non-contractual claims for Customer's damages based on a defect of the Products, unless the application of the applicable statutory limitation period would lead to a shorter limitation period in individual cases. Customer's claims for damages pursuant to § 5(2) sentence 1 and sentence 2 (a), above, and pursuant to applicable product liability statutes are time-barred exclusively in accordance with applicable statutory limitation periods.

§ 8 Choice of Law and Venue

(1) Contrary to the first sentence of Section 13 of the T&C, these ATCS and the contractual relationship between Addium and Customer are governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods.

(2) Addium is not prepared nor obligated to participate in any out of court dispute resolution process before an arbitration or mediation panel.

(3) Contrary to the second sentence of Section 13 of the T&C, to the extent permitted by applicable law, the exclusive venue for all disputes arising directly or indirectly from the contractual relationship is Addium's registered office in Munich, Germany. Addium may, however, bring an action at the place of performance of the delivery obligation in accordance with these ATCS or an overriding individual agreement or at Customer's general place of jurisdiction. Other statutory provisions, in particular, regarding exclusive jurisdiction, remain unaffected.