

Terms & Conditions

1. Definitions

- 1.1. In these Conditions: "**Conditions**" are these terms and conditions of trading and any special terms and conditions mentioned on any written quotation or acceptance of the Customer's order.
- 1.2. "**Customer**" means the party identified as the Customer in these conditions to whom EarthSense may agree to supply Products in accordance with these conditions.
- 1.3. "**Contract**" is the contract for the purchase and sale of the products.
- 1.4. "**Quotation**" or "**quote**" is a tender made by EarthSense whether oral or in writing.
- 1.5. "**EarthSense**" means EarthSense Systems Limited, company registration number 10272221 trading as EarthSense Limited, registered address: Space Park Leicester, 92 Corporation Road, Leicester, LE4 5SP, UK or any subsidiary or associated company.
- 1.6. "**Misuse**" means misuse and/or use which is outside the scope of the use intended by EarthSense including without limitation one or more of the following:
 - 1.6.1. Using third-party supplied solar panels and/or other non-recommended non-OEM Earthsense equipment not provided by EarthSense as part of any installation, unless specifically advised by EarthSense engineers.
 - 1.6.2. Storing the Zephyr® for long periods of time and in conditions not recommended by EarthSense. Recommended storage is defined as follows:
 - Ensure storage is within our recommended temperature range between -20°C to +45°C and within 15-85% humidity.
 - Sufficiently protected from water and dust ingress.
 - If stored for periods longer than 3 months the Zephyr® should be placed on mains power for a period of 3-5 hours.
 - 1.6.3. Operating the Zephyr® outside it's recommended technical specification as described in the EarthSense Zephyr® Technical Specification.
 - 1.6.4. Disassembly of hardware or removal of protective covers, including head units in any way, unless under the express supervision by EarthSense engineers.
 - 1.6.5. Replacing / removal of pre-installed SIM or SD card without express permission of EarthSense or supervision by Earthsense engineers.
 - 1.6.6. Drop or other shock damage which breaks and damages any internal contents.
 - 1.6.7. Improper installation / failure to install in accordance with correct EarthSense recommendations (for example but without limitation as to specification and connection of pipes, hoses, forced airflow, use upside-down, use in an outer box).
 - 1.6.8. Return shipping not in EarthSense original or EarthSense-recommended packaging (being OEM replacement original packaging if original packaging cannot be located).
 - 1.6.9. Utilising third party power which is outside of EarthSense-recommended voltage, current or amperage tolerances.
 - 1.6.10. Utilising power supply units that have not supplied with the Zephyr® unless permission has been provided by EarthSense engineers.
 - 1.6.11. Improper installation of power cables and Zephyr® power connector.
 - 1.6.12. Improper connection of the Zephyr® power connector cap on the head unit.
 - 1.6.13. Storage of the Zephyr® that is not in accordance with pre installation storage and End of Life storage parameters.
- 1.7. "**Products**" means products and/or services including but not limited to hardware (e.g., "Zephyr®"), licence of software and data (e.g., "MappAir®" and "MyAir®"), provision of consultancy services (including Third Party Products) to be provided by EarthSense to the Customer in accordance with these terms and conditions.
- 1.8. "**Software Licence**" means the software license under the terms of which a right to use software and/or data Products is provided to the Customer.
- 1.9. "**Third Party Product**" or "**Third Party Data**" means all hardware, software or data owned by or licensed to the Customer directly or indirectly sourced from a third-party owner (whether or not supplied by EarthSense) and which comprises part of the Products.
- 1.10. "**Estimated Times**" means the timescale provided on the delivery date specified by EarthSense.

2. Order Acceptance

- 2.1. All orders placed with EarthSense by the Customer for Products shall constitute an offer to EarthSense, under these conditions, subject to availability of the products and to acceptance of the order by EarthSense's authorised representative. EarthSense shall confirm order acceptance via e mail or other suitable means.
- 2.2. All orders are accepted, and Products supplied subject to these express terms and conditions only and in the case of software and/or data products on the terms of the Software Licence. No amendment to these terms and conditions will be valid unless confirmed in writing on or after the date hereof by EarthSense's authorised representative.
- 2.3. Furthermore, purchase orders are accepted on the strict understanding that they are on Earthsense's standard terms and conditions of sale attached notwithstanding anything to the contrary in or attached as part of supplied client Purchase Orders
- 2.4. Customer agrees to have all their contact details held for the purpose of processing this order. You can request removal of other personal data as outlined in our privacy policy which can be found at our website.
- 2.5. It is agreed that these terms and conditions prevail over the Customer's terms and conditions of purchase unless EarthSense amends these latter terms and conditions in writing and signed by EarthSense's authorised representative to expressly agree that the Customer's Terms and Conditions will prevail. In any event software and data Products are only provided on the terms of the Software Licence and on no other terms.
- 2.6. EarthSense's employees or agents are not authorised to make any representations concerning the Products unless confirmed by EarthSense in writing. In entering into the contract, the Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).
- 2.7. Any advice or recommendation given by EarthSense or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by EarthSense is followed or acted upon entirely at the Customer's own risk and, accordingly, EarthSense shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.8. Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by EarthSense shall be subject to correction without any liability on the part of EarthSense.

3. Independent Contractor

- 3.1. The relationship between the Supplier and Customer is that of Independent Contractor. Neither party is the agent of each other, and neither party has any authority to make any contract or enter into any obligation directly or indirectly in the name of the other party, without that party's prior written consent for express purposes connected with the performance of these conditions.

4. Dispatch

- 4.1. Any time quoted for dispatch or delivery is to be treated as an estimate only. It is the responsibility of the customer to ensure any import duty is paid in full. In no event shall EarthSense be liable for any loss or damages or penalty, direct or indirect, for delay in dispatch or delivery.
- 4.2. Time for delivery shall not be of the essence.
- 4.3. All deliveries made to an address outside the UK will be subject to shipping and delivery charges, unless expressly agreed otherwise by an EarthSense representative.
- 4.4. EarthSense shall not be responsible for loss or damage resulting from delay or failure to notify the Customer of any delay. Changed specifications or instructions may result in changes to Estimated Times.
- 4.5. The Products may be delivered in instalments. Each delivery shall constitute a separate contract and failure by EarthSense to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 4.6. The place for delivery of the Products will be notified to EarthSense by the Customer prior to dispatch of the Products. If the Customer fails to take delivery of the Products, fails to pay import duties, or fails to give EarthSense adequate delivery instructions at the time stated for delivery then EarthSense may store the Products until actual delivery and charge the Customer for the costs (including insurance) of storage and re-delivery; or sell the Products at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Customer for the excess over sums owing by the Customer or charge the Customer for any shortfall.
- 4.7. Risk shall pass to the Customer at the time the Products are despatched by EarthSense. EarthSense accepts no liability for loss or damage caused by the carrier.
- 4.8. If Products have not been received, the Customer must notify EarthSense within 7 days of the date of the invoice. If proof of delivery is required, this must be requested within 14 days of the date of the invoice.
- 4.9. Any subscriptions associated with hardware delivery shall commence on the date of dispatch from EarthSense facilities, except those that are delivered to an address outside the UK for use outside the UK. Subscriptions in this case, will be subject to a start date 14 calendar days after dispatch from EarthSense facilities in the UK, unless expressly agreed otherwise with an EarthSense representative.

5. Cancellation and Rescheduling

- 5.1. Subject to clause 9.2, any request by the Customer for cancellation of any order or for the rescheduling of any deliveries or installation will only be considered by EarthSense if made at least 12 hours before dispatch of the Products or 3 days prior to the agreed installation date and shall be subject to acceptance by EarthSense at EarthSense's sole discretion, and subject to a reasonable administration charge therefor by EarthSense. The Customer hereby agrees to indemnify EarthSense against all loss, costs (including the cost of labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and its cancellation or rescheduling.
- 5.2. EarthSense may cancel the Contract with the Customer by giving written notice if:
- 5.2.1. Any invoices for the sale of EarthSense's Products are overdue for payment;
- 5.2.2. The manufacturer of the Products advises EarthSense of an increase in the price of the Products;
- 5.2.3. In the event ongoing subscription service fees are not ordered within 7 days of the end of the previous subscription period
- 5.2.4. For reasons beyond the control of EarthSense it is unable to effect delivery following the manufacturer's termination of the Products or there is an insufficient supply of Products from the manufacturer;
- 5.2.5. On the giving of such notice of cancellation, EarthSense shall repay to the Customer any sums paid in respect of the price of the Products. EarthSense shall not be liable for any loss or damage arising from such cancellation.
- 5.2.6. Once any installation or field work dates have been agreed with the client, either in writing or verbally, changes or cancellations will be charged in line with the following:
- Cancelling 1 day prior to agreed installation date - 100% fieldwork charge and all associated travel and subsistence at cost + 10% service charge
 - Cancelling 2 days prior to agreed installation date - 75% fieldwork charge and all associated travel and subsistence at cost + 10% service charge
 - Cancelling 3 days prior to agreed installation date - 50% fieldwork charge and all associated travel and subsistence at cost + 10% service charge

6. Pricing

- 6.1. Catalogues, price lists and other advertising literature or material as used by EarthSense are intended only as an indication as to the price and range of Products offered and no prices, descriptions or other particulars contained therein shall be binding on EarthSense.
- 6.2. All prices are given by EarthSense at the time of the order on an Ex-Works basis and the Customer is liable to pay for import duties, transportation and shipping (if outside the UK), packing and insurance.
- 6.3. All quoted or listed prices are based on the cost to EarthSense of supplying the Products to the Customer. If before delivery of the Products there occurs any increase in any way of such costs in respect of Products which have not yet been delivered, the price payable may be subject to amendment without notice at EarthSense's discretion.
- 6.4. All prices are exclusive of Value Added Tax, import duties and any similar taxes. All such taxes are payable by the Customer and will be supplied in accordance with UK legislation in force at the tax point date.
- 6.5. The Customer shall pay EarthSense's invoices without any deduction or set off. EarthSense may recover the price notwithstanding that delivery may not have taken place and property in the Products has not passed to the Customer. The time of payment shall be of the essence.
- 6.6. Quotations may be withdrawn at any time prior to acceptance of order and shall automatically be taken to have lapsed after 7 days from the date of any Tender.

7. Payment Terms

- 7.1. Invoices will be raised and dated by EarthSense on the date of the order of the Products. Unless otherwise specifically requested and agreed, invoices will be payable within 30 calendar days of the invoice date. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 2% per annum above the base rate for the time being of Royal Bank of Scotland plc. EarthSense retains the right to charge such interest cost which it may incur, and interest shall accrue on a daily basis and be payable on demand after as well as before judgment.
- 7.2. If the Customer has a credit account with EarthSense, the credit limit as determined from time to time by EarthSense shall not be exceeded without the written consent of EarthSense's authorised representative. Credit terms may be withdrawn at the discretion of EarthSense.
- 7.3. If the Customer has a credit account with EarthSense Ltd, invoices must be paid within 30 days of the invoice date. Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 2% per annum above the base rate for the time being of RBS. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgement.
- 7.4. EarthSense Limited reserve the right to terminate credit account payment terms with immediate effect when it deems this reasonable to do so.
- 7.5. Payment in full is required prior to any goods or services being released for delivery outside UK mainland, unless otherwise agreed with the customer or client representative, for example EarthSense distributor acting on behalf of the customer.

8. Sales Taxes

- 8.1. EarthSense will invoice with VAT at the applicable rate unless the customer requests and provides sufficient information for zero or European VAT supply. EarthSense will not refund VAT after the completion of the sale.
- 8.2. All import duties will be paid for by the customer.
- 8.3. All shipping costs for deliveries outside the UK will be paid for by the customer or customer representative
- 8.4. Any and all currency transfer and bank transfer payments and charges are to be covered by the customer when payment for goods and services is being made.

9. Retention of Title and Risk

- 9.1. When all prices, taxes, and charges due in respect of all of the Products and any Products supplied previously to the Customer have been paid in full, title to hardware Products only may pass to the Customer if expressly agreed in writing by EarthSense. Software and data Products will remain subject to the terms of the Software Licence.
- 9.2. Notwithstanding despatch and the passing of risk in the Products to the Customer pursuant to Clause 9.1, or any other provision of these conditions, the property of the hardware Products shall not pass to the Customer until EarthSense has received cash or cleared funds payment of the price of the Products and all of the Products agreed to be sold by EarthSense to the Customer for which payment is then due.
- 9.3. Until such time as and unless the property in the hardware Products passes to the Customer, the Customer shall hold the hardware Products as EarthSense's fiduciary agent and bailee, and shall keep the Products properly stored, protected and insured and identified (by way of identifying sticker identifying the Product as EarthSense's property. Until that time the Customer shall be entitled to use the products in the ordinary course of its business.
- 9.4. Until such time as and unless the property in the Products passes to the Customer (and provided the Products are still in existence), EarthSense shall be entitled at any time to require the Products be delivered to EarthSense and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 9.5. The Customer's power of sale or right to use such Products shall immediately cease if an Administrative receiver is appointed over all or any part of its assets or if it adjudicated bankrupt or enters liquidation whether compulsory or voluntary, or if the Customer makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of the Insolvency Act 1986.
- 9.6. On termination of the Company's power of sale or right to use the Products the Customer will immediately hold the Products to the order of EarthSense.
- 9.7. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of EarthSense, but if the Customer does so, all monies owing by the Customer to EarthSense shall (without prejudice to any other right or remedy of EarthSense) forthwith become due and payable.
- 9.8. EarthSense reserves the right to cease supplies of Products to the Customer at any time. On such cessation of supplies, EarthSense reserves the right to withdraw any credit facility such that the whole of the Customer's account becomes due for payment forthwith.

10. Specification of Products

- 10.1. EarthSense will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data and will not be responsible for any loss or damage resulting from curtailment or cessation of supply following such variation. EarthSense will use its reasonable endeavours to advise the Customer of any such impending variation as soon as it receives any such notice thereof from the manufacturer.
- 10.2. Unless otherwise agreed, the Products are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted, or modified. EarthSense reserves the right to increase its quoted or listed price, or to charge accordingly in respect of any orders accepted for Products of non-standard specifications and in no circumstances will it consider cancellation of such orders or the return of such orders.

11. Proprietary Rights in Software/Data

- 11.1. The Customer hereby acknowledges that any proprietary rights in any EarthSense software, any data or Third Party Product supplied hereunder or derived from use of the Products including but not limited to any title or ownership rights, patentable rights, copyright and rights in data confidential information or trade secrets, shall at all times and for all purposes be assigned to vest in and remain for all purposes vested in EarthSense or in the case of Third Party Products the Third Party Product owner, although they shall be licensed back to the Customer under the terms of the Software Licence.
- 11.2. The Customer hereby acknowledges that it is its sole responsibility to comply with any terms and conditions of licence attaching to EarthSense Products or Third-Party Product supplied and delivered by EarthSense (including if so, required the execution and return of a Third-Party Product licence). The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a software/data licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify EarthSense in respect of any costs, charges or expenses incurred by EarthSense at the suit of a Third-Party Product owner as a result of any breach by the Customer of such.
- 11.3. For avoidance of doubt any data generated by the Zephyr can be used by the Customer during the Term of and subject to the terms of the Licence Agreement and for the avoidance of doubt EarthSense retains the rights to use the anonymised Zephyr data to improve its data products.
- 11.4. NO TITLE OR OWNERSHIP OF SOFTWARE/DATA PRODUCTS OR ANY THIRD-PARTY PRODUCT LICENCED TO THE CUSTOMER UNDER THIS AGREEMENT IS TRANSFERRED TO THE CUSTOMER UNDER ANY CIRCUMSTANCES.

12. Acceptance / Return of Products / End of Life

- 12.1. The Customer shall inspect the Products on delivery and unless the Customer notifies any defects in writing within 7 days of delivery and unless Customer gives EarthSense an opportunity to inspect the Products within a reasonable time following delivery and before any use is made of the Products, the Products shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage and the Customer shall be deemed to have accepted the Products.
- 12.2. After acceptance the Customer shall not be entitled to reject Products, which are not in accordance with the Contract. In no event shall the Customer be entitled to reject the Products on the basis of any defect or failure, which is so slight that it would be unreasonable for the Customer to reject the Products.
- 12.3. The Customer shall notify EarthSense of any shortage of quantity or damage to the Products or any alleged failure to comply with its description within 2 working days of receipt of the Products.
- 12.4. Returns must be made subject to the following:
 - 12.4.1. prior authority having been obtained from EarthSense which will be given at EarthSense's sole discretion;
 - 12.4.2. within 30 days of the date of the invoice;
 - 12.4.3. the Products must be properly packed and in original packaging;
 - 12.4.4. the Products must be in a saleable condition;
 - 12.4.5. the Products must be accompanied by a packing list;
 - 12.4.6. the Product is still covered by warranty (see section 12).
- 12.5. EarthSense reserves the right to reject any returned Products which do not comply with the conditions set out in clause 12.4. and will be returned to the Customer freight collect. EarthSense shall specifically not accept the returned Products unless it includes the original packaging.
- 12.6. If EarthSense nevertheless agrees to accept any Products returned which are not in a saleable condition, EarthSense reserves the right to charge the cost to the Customer of bringing the Products into a saleable condition.
- 12.7. If EarthSense agrees to accept return of the Products, the Customer shall be liable to pay to EarthSense a handling charge of 15% of the invoice price. The Products shall also be returned carriage paid. Subject to clause 13 of these Conditions, the liability of EarthSense is strictly limited to the replacement, repair or credit to the invoiced value of the defective Products at the discretion of EarthSense.
- 12.8. The Customer agrees not to contact solicit or deal with any subcontractor, end-manufacturer or supplier to EarthSense of any Products or any parts or components of any Products for a period of 12 months from the supply of any Products by EarthSense.

- 12.9. The Customer agrees to comply with the conditions defined under Misuse.
- 12.10. The Customer agrees to return all hardware to EarthSense at the end of the service period for End of Life recycling and disposal if the Customer does not intend on continuing.
- 12.11. As part of being a responsible, ethical producer of portable batteries EarthSense will offer a retrieval service at no cost for deployed Zephyrs to enable recycling or disposal of batteries in an environmentally safe manner at end of life / subscription. The EarthSense battery Producer Registration number is BPRN08328.

13. Warranty

- 13.1. EarthSense warrants that it has in the case of hardware Products good title to and in the case of software and data Products is entitled to licence to supply all software and data Products on the terms of the Software Products to the Customer.
- 13.2. If any part of the hardware Products should prove defective in materials or workmanship under normal operation or service, such Products will be repaired or replaced only in accordance with any warranty cover or terms as provided by the manufacturer of the Products PROVIDED THAT no unauthorised modifications to the Product or to the system of which the Product forms part have taken place or that the Product has been damaged by the Customer. EarthSense is not responsible for the cost of labour or other expenses incurred in repairing defective or non-conforming parts. EarthSense accept no liability in respect of, nor does the warranty in this clause extend to, any damaged or malfunctioning Product which does not operate as intended as a result in whole or in part to any Misuse. Where title has not passed and/or where a claim is brought by any third party against EarthSense the Customer agrees to fully indemnify and hold harmless EarthSense against all and any loss, damage claims and/or expense incurred by EarthSense as a result of or in connection with any Misuse.
- 13.3. All software Products supplied hereunder are supplied "as is" and the sole obligation of EarthSense in connection with the supply of software Products is to use all reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned in the event that such software Product should fail to conform to product description PROVIDED ALWAYS THAT the Customer notifies EarthSense of any such non-conformity within 90 days of the date of delivery of the applicable software Product. Specifically, EarthSense gives no express warranty in relation to the Products date compliance and cannot accept any liability in relation to any losses, costs, or expenses, which arise through any difficulty, caused over date changes.
- 13.4. If the Products are rejected by the Customer as not being in accordance with the Customer's order pursuant to clause 13.2 or 13.3, EarthSense will only accept the return of such Products provided that it receives written notification thereof giving detailed reasons for rejection. EarthSense will not consider any claim for compensation, indemnity, or refund under liability, if any, has been established or agreed with the manufacturer and where applicable the insurance company. Under no circumstances shall the invoiced Products be deducted or set off by the Customer until EarthSense has passed a corresponding credit note.
- 13.5. Notwithstanding anything to the contrary in this Agreement, it is acknowledged and accepted by the Customer that: Where the Product is a modelled dataset e.g., "MappAir" EarthSense cannot and does not represent, warrant, or guarantee the accuracy, completeness or usefulness of the Product, its indications, or outputs; the Product is developed using information compiled and provided by third parties which is not guaranteed as to accuracy, completeness or otherwise;
- 13.6. EarthSense cannot and does not represent or provide any warranty, guarantee or other assurance that product: is accurate, reliable, complete or up-to-date; will meet the present or future requirements of Customer; will be delivered or perform without interruption, fault, or error; or will be free from viruses, worms, trojan horses or other malware or corruptions (which by their nature may evade reasonable steps to detect or manage). Except for the warranties provided in clause 13.1 and 11, EarthSense does not provide any warranties, guarantees or representations, and all conditions, warranties, representations, and other terms expressed or implied by statute, common law or otherwise in connection with this Agreement and in relation to which EarthSense might otherwise be liable or responsible are hereby excluded to the fullest extent permitted by law.
- 13.7. EXCEPT AS SPECIFICALLY SET OUT IN THIS CLAUSE 12, EARTHSENSE DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM ANY PREVIOUS COURSE OF DEALING, USAGE OR TRADE PRACTICE.

14. Indemnities and Limits of Liability

- 14.1. EarthSense does not attempt to limit liability for personal injury or death caused by its negligence or the negligence of its employees or agents. Subject to the provisions of the Unfair Contract Terms Act 1977, otherwise all warranties, conditions, representations, or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 14.2. To the extent the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, EarthSense's entire aggregate liability for all claims shall be limited to damages of an amount equal to the price of the Products.
- 14.3. Except as stated in clauses 14.1 and 14.2 above, EarthSense disclaims and excludes all liability to the Customer in connection with these terms and conditions including the Customer's installation and use of the Products and in no event shall EarthSense be liable to the Customer for special, indirect, or consequential damage including but not limited to loss of profits including loss of profits arising from loss of data or in connection with the use of the Products. Subject to 14.1 EarthSense also excludes all liability for any issues, damage resulting from installation of the hardware Products, including but not limited to installation into vehicles or street furniture. All terms of any nature, express or implied, statutory, or otherwise, as to correspondence with any description or sample, fitness for purpose or merchantability, are hereby excluded.
- 14.4. The Customer shall indemnify and defend EarthSense and its employees in respect of any claims by third parties, which are occasioned by or arise from following the instructions of the Customer or its authorised representative.

15. Default

- 15.1. The Customer shall fully and effectively indemnify EarthSense against the total expense to EarthSense arising out of the Customer's breach or breaches of these conditions of sale. Such expense shall include (without limitation):
 - 15.1.1. all expenses incurred by EarthSense in sourcing and building the Products
 - 15.1.2. all court fees
 - 15.1.3. all amounts payable to EarthSense's professional advisers (payable on an indemnity basis) in pursuing claims against the Customer for breach or breaches of these conditions and for enforcing any judgement/s and/or order/s
 - 15.1.4. all amounts payable to EarthSense's insurers including increased premiums and/or debt recovery agents, in each case including anticipated sums payable by EarthSense only after payment of any sums from the Customer.

16. Force Majeure

- 16.1. EarthSense shall:
 - 16.1.1. in any event is not be liable for loss or damage for any cause beyond its control; and
 - 16.1.2. be entitled to cancel or rescind the contract if the performance of its obligations under the contract is in any way adversely affected by any cause whatsoever beyond EarthSense's control including (but not limited to) the delays or default of any sub-contractor, war, terrorism, strike, lock-out, trade disputes, flood, accident to plant or machinery, shortage of materials or labour.

17. Termination

- 17.1. This agreement may be terminated forthwith by notice in writing:
 - 17.1.1. By EarthSense if the Customer fails to pay any sums due hereunder by the due date notwithstanding the provisions for late payment as in clause 7.1.
 - 17.1.2. If either party fails to perform any of its obligations under this Agreement and such failure continues for a period of 14 days after written notice thereof, by the other party.

- 17.1.3. If either party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or a reconstruction, or makes an arrangement with creditors or petitions for an administration order or has a Receiver or Manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, then without prejudice to any other rights or remedies available to it, the other party shall have the right to terminate this Agreement forthwith.
- 17.2. Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party.

18. Export and/or Re-export Limitations

- 18.1. Having regard to the current statutory or other United Kingdom government regulations in force from time to time and, in the case of Products manufactured in the United States of America, to the current export rules and regulations of the United States Department of Commerce in force from time to time and regardless of any disclosure made by the Customer to EarthSense of an ultimate destination for any Products, the customer will not export or re-export any Products without first obtaining all such written consents or authorisations as may be required by any applicable government regulations.

19. Contract

- 19.1. The headings in this Agreement are for ease of reference only and shall not affect its interpretation or construction.
- 19.2. No forbearance, delay, indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or any later breach.
- 19.3. The Customer agrees not to assign any of its rights herein without the prior written consent of EarthSense.
- 19.4. In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.
- 19.5. Neither party shall be liable to the other for any delay in failure to perform its obligations hereunder (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, accident, industrial dispute, or any cause beyond its reasonable control.
- 19.6. Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post and in the case of post will be deemed to have been given 2 working days after the date of posting. Documents or notices shall be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in the normal course of trading in writing by either party to the other for the purpose of receiving documents or notices after the date of this Agreement.
- 19.7. These terms and conditions shall be construed in accordance with English Law.

20. Additional Terms for Consumers Only

- 20.1. The terms of these conditions do not affect a consumer's statutory rights.
- 20.2. The following terms shall only apply to those persons who purchase products from EarthSense as a consumer as defined in the consumer protection (distance selling) regulations ("Regulations")
- 20.3. A consumer shall, subject to the terms set out in this clause 19, have the right to cancel a contract within 7 working days from the day after the date of the delivery of the products by EarthSense to the consumer providing that the consumer makes the request to EarthSense in writing. In the case of online purchases, a consumer has certain rights under the Distance Selling Regulations which are summarised here: <https://www.gov.uk/accepting-returns-and-giving-refunds>. No form of cancellation is required or stipulated and cancellation by email to Earthsense will suffice.
- 20.4. Should a consumer exercise their right to cancel pursuant to this clause, EarthSense will in accordance with the regulations, reimburse any payment made by the consumer for the products minus any carriage charges within 30 days of receiving the written notification of cancellation unless:
- 20.4.1. The consumer does not take reasonable care of the products whilst in their possession, either prior to or after cancellation. The consumer will be deemed not to have taken reasonable care of the Products if such Products are not kept packaged in their original boxes, with all disks, manuals, cables, and other items and that the external packaging is not altered in any way.
- 20.4.2. The Products contain software where the seal to the licence has been broken. Any Products returned by the consumer under this clause will be charged a processing fee of £10.00 plus VAT which represents EarthSense's direct costs for such a return.

21. Announcements and Publicity

- 21.1 By placing an order, you consent to EarthSense announcing any partnerships, projects, or collaborative work through various communication channels as part of our standard business practice.
- 21.2 Announcements may include basic project details, unless specifically requested otherwise. Please note that sensitive information such as contact details, order values, and addresses will never be disclosed without your explicit prior consent.
- 21.3 Before sharing any detailed project information via press releases, we adhere to established approval procedures. As part of this process, we may directly contact you for approval or share necessary information with our third-party press release agency, SandStar Communications Limited.
- 21.4 By accepting these terms and conditions, you understand and agree that standard press releases regarding our collaborative efforts and the products/services involved may be disseminated.
- 21.5 Should you wish to withdraw your consent at any time, please contact us directly or reach out to the responsible person at contactus@earthsense.co.uk.

22. Jurisdiction

- 22.1 The parties agree that this Order Form and the terms and conditions of the contract shall be governed by the laws of England and Wales and the Courts of England and Wales will have exclusive jurisdiction in the event of any disputes between the parties.