



## **TERMS AND CONDITIONS**

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## 1 TERMS AND CONDITIONS

These Terms and Conditions only apply to sales of items made directly between GridSmart Limited and the end user. By placing an order with GridSmart Limited you are bound by these terms unless agreed otherwise in writing.

### 1.1 Introduction and Status

These Terms and Conditions only apply to sales of items made directly between GridSmart Limited and the end user (Buyer). By placing an order with us you are bound by these terms unless agreed otherwise in writing.

### 1.2 Business Model

Acceptance of the referenced quotation and submission of a purchase order issued by the Customer ("Purchase Order") constitutes acceptance of these Terms and Conditions and supersedes any and all other terms, conditions, limitations or clauses.

In case of conflict the terms of this contract shall take precedence.

Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of Buyer's acceptance of these Terms and Conditions

## 2 DEFINITIONS

"The company", "our", "us" and "we" refers to the seller (GridSmart Limited) whose trading style appears on your order and invoice. "The customer", "the purchaser", "you" and "your" refers to the original company, organisation or individual who purchases goods and/or services directly from us or anyone acting for or on behalf of any such purchaser. "Consumer" refers to any person who is acting for purposes which are outside his trade, business or profession. In all cases, for 'he' read 'he or she'. "The site" and "our site" refers to our GridSmart Limited websites and systems. "Parties" refers to all and any representatives of either the Company, Customer or the Consumer.

In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Business Day"</b>	means any day other than a Saturday, Sunday or bank holiday;
<b>"Commencement Date"</b>	means the commencement date for the Contract;
<b>"Confidential Information"</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement;

<b>“Contract”</b>	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
<b>“Contract Price”</b>	means the price stated in the Contract payable for the Goods;
<b>“Customer”</b>	means the person or organisation who accepts a quotation or offer of the Supplier for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by the Supplier;
<b>“Delivery Date”</b>	means the date on which the Goods are to be delivered as stipulated in the Customer’s order and accepted by the Supplier;
<b>“Goods”</b>	means the goods which the Supplier is to supply in accordance with these Terms and Conditions;
<b>“Month”</b>	means a calendar month;
<b>“Services”</b>	means the Services to be provided to the Customer;
<b>“Supplier”</b>	means a company and includes all employees and agents of the company.

### **3 GENERAL**

These conditions are in place of and exclude all other representations, warranties and conditions except as implied by statute and in particular the purchaser acknowledges that he has relied solely upon his own inspection and skill and judgment and not by reason of any representation by the company. In the absence of a written order from the purchaser, the company's internal order will constitute the basis of the agreement. Unless expressly accepted in writing by the company any variations of or additions to these conditions in a purchaser's order or order form will be deemed to be inapplicable. GridSmart Limited may, from time to time, change some or all of the terms of this Agreement. The terms which will apply to you are those which appear on our website on the date which you order from us (your 'order'). You should print out and retain a copy of those terms at the time at which you send us your order.

## **4 THE ORDER**

Descriptive and clerical errors are subject to correction. Orders must be placed by the issue of a valid purchase order or other written communication. GridSmart Limited reserve the right not to accept any customer order. GridSmart Limited will treat your order as an offer to buy and except for retail or mail order sales GridSmart Limited will send you an email to confirm receipt of your offer. This e-mail this does not mean that your offer has been accepted. Certain products and offers may only be available to qualifying customers, for example in particular geographical areas.

## **5 PRICES & QUOTATIONS**

All prices quoted on our site exclude carriage costs, which will be added to your order during the procurement process. UK VAT, where applicable, will be added to the price of the products at the appropriate rate. Unless explicitly requested, method of carriage will be at our discretion. Any costs omitted or corrections on your invoice will be invoiced / credited later. Please notify us promptly if you are not billed the correct amount and we will correct the error. All advertised/advised/published pricing is subject to change at any time without notice due to market/currency fluctuations and other factors. If a price has risen, GridSmart Limited will advise before proceeding with an order if you have specified a different price on your order. All quotations are subject to withdrawal or reasonable variation by the company at any time prior to firm acceptance of an order. No order given to the company based upon a quotation shall be binding upon the company until accepted by the company in writing. The company reserves the right to correct any error or omission or quotation or invoice without prior notice.

## **6 PAYMENT**

GridSmart Limited accepts payment by bank transfer, cheque and banker's draft. GridSmart Limited reserves the right not to dispatch goods until your funds have cleared. You shall pay all costs, charges and expenses incurred by us in recovering any debt. If a payment is made by cheque, which is returned unpaid, you shall be liable for all reasonable costs incurred as a result.

No payment will be deemed to have been received until GridSmart Limited has received cleared funds.

All sums payable to GridSmart Limited under the Contract will become due immediately upon termination of the Contract.

All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.

GridSmart Limited may appropriate any payment made by the Buyer to GridSmart Limited to such of the invoices for the Works as GridSmart Limited thinks fit, despite any purported appropriation by the Buyer.

If any sum payable under the Contract, or any other agreement between the Buyer and GridSmart Limited, is not paid when due then, without prejudice to GridSmart Limited's other rights under the Contract, GridSmart Limited will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received by GridSmart Limited from the Buyer.

If any sum payable under the Contract is not paid when due then, without prejudice to GridSmart Limited's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum over the published Clydesdale Bank base rate from time to time notwithstanding anything contained in the Contract to the contrary.

In the event that there are withholding taxes imposed by the tax authorities in respect of payments due pursuant to the Contract, the Buyer shall be entitled to deduct and pay such withholding taxes to the said tax authorities on behalf of GridSmart Limited unless GridSmart Limited has previously provided the Buyer with evidence satisfactory to the said tax authorities in the form of certification from its auditors/tax authorities that GridSmart Limited is not subject to tax on the relevant income. If any withholding taxes are deducted and paid to such tax authorities then the Buyer will provide to GridSmart Limited within thirty days from the date of the Buyer's payment to the GridSmart Limited the tax credit documentation necessary for GridSmart Limited to receive a tax credit equal to the withholding tax. Where GridSmart Limited has made reasonable efforts to reclaim the withholding tax but is unable to do so (in whole or in part), the Buyer shall pay such an amount to GridSmart Limited such that the net amount, after deduction of the withholding taxes that GridSmart Limited has been unable to reclaim, is equal to the amount that GridSmart Limited would have received from the Buyer had such withholding requirement not been applicable.

## **7 ASSIGNMENT**

GridSmart Limited reserves the right to transfer any debt to us or other elements of our contract with you, or other liabilities in part or whole to a third party.

GridSmart Limited may assign, delegate, license, hold on trust or subcontract all or any part of its rights or obligations under the Contract.

The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or subcontract all or any of its rights or obligations under the Contract without GridSmart Limited's prior written consent.

## **8 CREDIT CHECKING & VALIDITY**

GridSmart Limited reserves the right to liaise with credit reference and other agencies with regard to your status and submit information accordingly and in line with relevant legislation.

## **9 RETENTION OF TITLE**

All goods remain the property of GridSmart Limited until such a time as they have been paid in full. You may not resell goods supplied until they have been paid for in full, unless the new purchaser is made aware that title remains with us until we have been paid in full.

## **10 RESELLING**

If goods are resold without our written permission such sale will invalidate any non-statutory returns policy that may be in force.

## **11 DELIVERY & ACCEPTANCE**

In most cases, unless agreed otherwise, GridSmart Limited dispatch using our preferred carrier. Standard UK Delivery is normally made within 5 working days but no absolute guarantee can be given of this or any other delivery times.

Where a premium service is requested (e.g. next day, AM delivery or Saturday) our liability extends only to a refund of the premium should the delivery not be attempted on time. Same-day dispatch is subject to the order being received earlier than that working day's 'cut off' time but this may vary with workload or around holiday periods, which you will be notified at the time of order. "Working day" is considered to be Monday to Friday, excluding holidays or any other day on which our offices are closed. Such services are discussed and agreed on a case by case basis with the customer.

Deliveries may be made any time between 9am and 6pm. Our standard delivery service covers most parts of mainland UK. It is essential that someone will be at the delivery address to receive and sign

for the goods. You must inspect goods supplied as soon as practicable after delivery and notify us within a reasonable period of time of delivery any alleged defect or failure to comply with the description of the goods. The goods are at your risk from the time of delivery and no liability will be accepted by us for damage or loss to the products after the time that the delivery document stating that the goods were received has been signed. Failing such notice you will be deemed to have accepted the products and it shall be conclusively presumed that the products are in accordance with the contract and free from any defect or damage, which would be apparent on examination.

## **12 TRANSIT DAMAGE**

Goods obviously damaged in transit must be notified to us within 48 hours of receipt. You are advised to keep all packaging, as that may be required in the event of a claim.

## **13 RETURNS**

This policy does not affect your statutory rights.

### **13.1 Returns Guarantee**

GridSmart Limited will give you 30 days to assess our products and if they are not to your liking, return it in good saleable condition and GridSmart Limited will give you your money back for the product. Before goods can be returned GridSmart Limited must issue a returns authorisation number in order that GridSmart Limited can track it accurately. Please ensure that your returns authorisation number is included with your returned item so that you can be credited appropriately. Items being returned should use a suitably packed, insured and traceable carriage method. Items need to be returned within ten (10) days after the returns authorisation number has been provided. Where the original purchase had the delivery charge waived ('Free Delivery'), you may be charged the delivery cost originally waived. GridSmart Limited reserves the right to charge a restocking fee on unused, unopened items returned and accepted by GridSmart Limited after the 30 day return period. For items that are returned open or with missing or damaged parts other than if faulty, GridSmart Limited reserve the right to charge a restocking fee or an amount to cover the cost of the damaged / missing item. Carriage costs will only be refunded in instances where the full product pack has been returned and GridSmart Limited determine the products are faulty. Please keep all the warranty information that accompanies your item as this may be needed should there be a fault. In the event of GridSmart Limited sending you a replacement for a damaged, defective or wrong item, you must return the damaged, defective or wrong item to us within 28 days of receipt of the replacement. GridSmart Limited reserve the right to charge the price of the replacement item to the payment card used for the original order if you do not return the original item as aforesaid.

### **13.2 Warranty**

GridSmart Limited warrants to the original purchaser that this product shall be free from significant defects in material and workmanship for 1 year beginning on the date of purchase as shown on your receipt or for the duration of the initial device licence period – whichever is the greater. Should the product need to be returned it must be sent directly back to the original place of purchase to be

processed. Proof of purchase must accompany the returned product. The product must be returned by signed delivery in suitable protective packaging. This warranty does not apply to product that has been subject to loss, abuse, misuse, negligence, tampering or has been modified in any way. In the event that loss or damage has occurred outside the warranty terms and conditions then a device replacement fee will be charged. Without prejudice to your rights GridSmart Limited may replace a defective product or issue a credit note against future purchases. No other warranties, express or implied are made. GridSmart Limited shall not be liable for any special, incidental or consequential damages whether or not the purpose for which you purchased the product was made known to GridSmart Limited, the retailer or otherwise. Your statutory rights are not affected in any way.

### **13.3 Goods Suitability**

It is your responsibility to ensure that the correct goods and correct model are ordered for your purposes. If in doubt, please contact GridSmart for advice.

## **14 LIMITATION OF LIABILITY**

It is your responsibility to ensure that your use of GridSmart products and services is lawful, thereby ensuring compliance with local and international law. To the fullest extent permissible by law, GridSmart Limited will not be liable for damages arising out of or in connection with the provision of products and/or services or the use of our systems and or software. Whilst this is a comprehensive limitation of liability applying to any and all losses, damages or costs of any kind including (without limitation) direct, indirect or consequential damages, loss of data, income or profit, loss of or damage to property and claims of third parties, GridSmart Limited does not limit our liability if death or personal injury results from our negligence.

You are responsible for ensuring that all your users are fully conversant with the operation of the device and the end user interface (Auspex) – GridSmart will arrange support and training insofar as is practicable at cost to the end user.

## **15 FORCE MAJEURE**

Whilst we will use our reasonable endeavours to complete our obligations under this agreement, GridSmart Limited will not be liable to you or be deemed to be in breach of this agreement if GridSmart Limited needs to cancel this agreement due to our inability to secure labour, materials or supplies or as a result of any act of God, war, strike or other labour dispute, fire, flood, drought, legislation, criminal damage, equipment or technical failures, including the unavailability of third party telecommunications, services, lines or other equipment, or other causes beyond our control.

## **16 GOVERNING LAW / JURISDICTION**

This Agreement will be governed by and construed in all respects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.



If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect. The Parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the illegal, invalid or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.

## **17 DEFINITIONS AND INTERPRETATION**

In these Terms and Conditions, the following expressions will have the following meanings unless inconsistent with the context:

“Business Day”, any day other than a Saturday or Sunday or a public or bank holiday in the country that Supplier is located.

“Confidential Information”, all information in respect of the business of GridSmart including, without prejudice to the generality of the foregoing, any ideas, business methods, prices, business, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by Supplier and information concerning Supplier’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of Supplier and of such persons and any other information which, if disclosed, will be liable to cause harm to Supplier.

“Contract”, any contract between Supplier and Buyer for the sale and purchase of the Goods or supply of the Services.

“Delivery Point”, the place where delivery of the Goods is to take place.

“Documentation”, in relation to any Works, any instructions or procedures, instruction manuals, user guides and other information which is or ought to be supplied by Supplier to Buyer including information recorded or stored by any means whatsoever on any media whatsoever (including in writing or other visible form; on tape or disc; by mechanical or electrical, electronic, magnetic or optical means; and whether or not such reproductions will result in a permanent record being made).

“Force Majeure”, any cause preventing Supplier from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of Supplier including, without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce of Supplier or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors.

“Goods”, any goods which Supplier supplies to Buyer (including any of them or any part of them) under a Contract including the Software.

“Intellectual Property Rights”, all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the UK, and all other countries in the world and together with all renewals and extensions.

“Liability”, any liability whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise in respect of any loss or damage howsoever caused and including without prejudice to the generality of the foregoing any liability of Supplier arising under any indemnity.

“Services”, any services, which Supplier provides to Buyer (including any part of them).

“Service Point”, the place at which the Services are to be performed.

“Software”, the Supplier’s Software and the Third-Party Software.

“Specification”, in relation to the Goods, the Supplier’s equipment design specification for the Goods or the equivalent third-party specification for Goods of third party origin; or in relation to the Services, the Supplier’s documents detailing the requirements of the Services. Any other specifications or documents describing the requirements of or the performance of the Works are only part of the Contract if referenced on the Supplier’s order acknowledgement.

“Supplier Software”, the Supplier’s software either specified in a Contract or supplied with the Goods.

“Terms and Conditions”, The standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Parties.

“Third Party Software”, software (other than the Supplier’s Software), which is specified in a Contract or supplied with the Goods. Goods or Services or both as the context may require.

The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.