

Background

These are the terms and conditions (“T&C”) on which Argos.io Pty Ltd t/as SigSense (“SigSense”, “we”, “us” and “our”) supplies products (“Products”) its customers (“you” and “your”).

Products may include the supply of Consumable (e.g, batteries) and Non-Consumable (including, but not limited to, dataloggers, cables, accessories, sensors, antennae).

These terms do not apply to the following, which have differing terms and conditions that apply:

- Eagle.io SaaS platform
- M2M Data plans and Sims

We reserve the right to update these T&C from time to time. Updated T&C will be displayed in the Dear Portal and/or via a link provided with any Quotation, the Agreement (as defined below) includes the T&C as in force at the time an Order is made. You agree to check that site from time to time and acknowledge and agree that you have been made aware of such updates and agree to be bound by them.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

Words used in this Agreement have the following meanings:

Agreement means these Terms and Conditions of Sale, associated quotation, or information on the DEAR portal.

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, QLD Australia.

Captis Installer Training means the MIoT online Captis Installer Training available for registration via the SigSense website <https://sigsense.com.au/become-a-captis-certified-installer>.

Confidential Information means information that is by its nature confidential including but not limited to information relating to the personnel, policies, practices, clientele, intellectual property, suppliers or business strategies of either party and information relating to the terms of this Agreement, but does not include information already known to the receiving party at the time of disclosure by the other party or information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement.

Customer means the person or company with a user profile in the DEAR Portal, or the Customer referenced in an executed Quote.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment, loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Force Majeure Event means an unforeseen event beyond the control of the affected party, including an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot,

natural disaster, health epidemic, hacking, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, ransomware or other malicious code.

Indemnified means SigSense and its directors, employees, contractors and agents.

Insolvency Event means circumstances in which a Party takes any corporate action or any steps are taken or legal proceedings are started for its winding-up, dissolution, or liquidation, for the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or seeking or being granted protection from its creditors, under any applicable legislation.

Intellectual Property means all industrial and intellectual property rights including, without limitation, patents, trade marks, copyrights, right to extract information from databases, design rights, trade secrets, rights of confidence, and all forms of protection of a similar nature or having similar effect to any of them which may subsist anywhere in the world (whether or not any of them are registered and including applications and the right to make applications for registration of any of them).

LID or Local Intelligence Device means a data logger and telemetry device approved for use under the NSW Non-urban Water Metering Framework.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Personnel means an employee, contractor or agent of the Customer.

Product Warranty Document if applicable to a Product, means the relevant document located at <https://sigsense.com.au/legal>.

Products means the products available to be ordered via the SigSense DEAR Portal, or offered by Quotation.

RSRP is the Reference Signal Receive Power, measured at the installation site of the Captis Device.

SigSense DEAR Portal means the online ordering system made available by SigSense which can be accessed online through <https://sigsense.dearportal.com/>.

Website means the website located at <https://sigsense.com.au/> and any of its subdomains.

1.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- all currency amounts are in Australian dollars;
- “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
- if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;

- (f) a person includes the person's executors, administrators and permitted novatees and assignees;
- (g) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and
- (h) if any part of the Agreement is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Agreement will not apply but the other parts of the Agreement will not be affected.

- (ii) By providing written acceptance of a Quotation in an approved form.

An order includes agreement with these terms, and the specifics of either the DEAR Portal, or Quotation.

- (b) SigSense will:
 - (i) use its reasonable endeavours to supply the Products according to the Customers' orders;
 - (ii) fulfil all orders as speedily as practicable and in accordance with the Customers reasonable requests.

2. General obligations

2.1 The Customers general obligations

- (a) must not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- (b) is solely responsible for the installation and ensuring the environment in which the Products are installed is suitable, taking into consideration the contents of the relevant Product Warranty Document;
- (c) acknowledges and agrees SigSense or their suppliers may provide firmware updates from time to time and that updated designated as Critical will be required to be applied to the products to maintain Warranty conditions, and that SigSense neither produces these updates nor is it responsible for any fault, loss or damage associated with these updates;
- (d) acknowledges while the Products are made available consistent with prevailing industry standards in a manner that endeavours to minimise errors and interruptions, the Approved Services and therefore anticipated operations associated with the Products may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by SigSense or its suppliers, or because of other causes beyond SigSense's reasonable control; and
- (e) subject to Non-excludable Conditions, SigSense and its suppliers do not warrant that use of the Product or the Approved Service will be uninterrupted or error free;
- (f) must not be a party whether directly or indirectly to the doing of any act, matter, omission or thing whereby the goodwill of the business of SigSense or of the Products or the Intellectual Property relating to the Products may be endangered, jeopardised or prejudicially affected in any manner whatsoever; and
- (g) acknowledges the Captis Devices ship with an embedded Sim, locked to the Telstra network.
- (h) Customer acknowledges that the supply of the Products depends on the availability from the supplier and we cannot guarantee any particular delivery date.

3. Orders for Products

3.1 Orders

- (a) All orders must be placed via:
 - (i) the SigSense DEAR Portal.

4. Delivery and Risk

- (a) The Products will be supplied to Customers in Australia only.
- (b) The Products will be supplied to the Customer in SigSense's standard packaging and delivered by SigSense to the Customer at the point of delivery as specified in DEAR by the Customer or nominated on the Quotation.
- (c) Risk in the Products passes to the Customer at the time that the Products are delivered to the Customers nominated point of delivery.
- (d) The Customer must inspect the Products and any included configuration immediately at the point of delivery, and within 5 working days after inspection, give written notice to SigSense of any inconsistency with the order.
- (e) If the Customer fails to give the notice in accordance with clause 4(d), the Products will be deemed to have been accepted.

4.2 Timing

- (a) For items held in stock, SigSense will endeavour to process orders within 2 business days from payment, and provision of configuration information (if required).
- (b) For items not held in stock, we will advise back-order times on a case-by-case basis at the time of quotation (or via the DEAR Portal).
- (c) SigSense offers no warranty on delivery times and shall not be liable for any loss or damage (whether direct or indirect) arising from late delivery.

5. Returns

- (a) If the Customer claims that particular Products are not in accordance with the order and notifies SigSense within the time specified in clause 4(d), SigSense will:
 - (i) accept the return of these Products and replace these Products;
 - (ii) accept for credit the return of these Products; or
 - (iii) dispute the Customers claim and provide reasons for the dispute.
- (b) Subject to clause 5(a), SigSense is not obliged to accept for credit the return of Products by the Customer unless SigSense authorises their return.

6. Pricing and Payment

- (a) The price at which the Products are invoiced to the Customer are set out in:
 - (i) the DEAR Portal, or
 - (ii) shown on a quote exclusive of GST, or
 - (iii) On a valid price list that we have provided to you. A valid price list is one that:
 - (A) Has not been revoked or superseded by a new price list issued by SigSense.
 - (B) Has not expired.
- (b) Unless other arrangements have been made in advance, payment for the Products is due at the time of order, and in any other case (e.g. backorder) the Customer must pay for the Products prior to shipment (we will contact you when shipment is planned).
- (c) In the case that we offer terms of credit, SigSense reserves the right to charge interest (calculated on a daily basis) on any unpaid amounts at an annual rate of 13.25%, and claim both interest and the costs of debt collection as liquidated damages in any debt recovery proceedings.

7. Technical Support

- (a) SigSense will make available online training or other resource material to the Customer for the Products from time to time as deemed appropriate, at SigSense's cost.

8. Title

Ownership of the Products remains with SigSense until they are received by the Customer and full payment has been received.

9. Marketing

The Customer agrees that SigSense may use Customer's logo for marketing purposes, and the use of its company name in a brief project summary on the eagle.io website, unless directed otherwise. Confidential project details will never be disclosed.

10. Intellectual Property

- (a) Intellectual Property in the Products and the marketing material remain with SigSense or its suppliers at all times.
- (b) The Customer must not directly or indirectly:
 - (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Product's firmware;
 - (ii) reverse engineer or disassemble the Products other than is reasonably necessary for the installation of the Product;
 - (iii) remove any proprietary notices or labels on the Product;
 - (iv) use the Product or any part of it for the purpose of building a competitive product or service; or

- (v) assist anyone in doing any of the above.

11. Warranties

Warranties for individual products, if they exist, and their associated limitations are described <https://www.sigsense.com.au/legal>

12. Liability

12.1 Implied Conditions

SigSense expressly excludes all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

12.2 Limitation of Liability

Subject to the Non-excludable Conditions, SigSense excludes all other liability for any costs, loss or damage, suffered or incurred directly or indirectly by the Customer in connection with this Agreement, including:

- (a) the Products or the SigSense DEAR Portal being inaccessible to the Customer for any reason;
- (b) any loss or damage arising from a remote firmware update which SigSense is obligated to make;
- (c) the effect of an Event of Force Majeure;
- (d) a delay in delivery; or
- (e) failure of or interruption in any third-party component including, a network failure, a power failure or a failure of a software service.

12.3 Non-excludable Condition

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, SigSense limits its liability for any breach to:

- (a) in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods; or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and
- (b) in the case of services: the re-supply of the services affected by the breach; or the payment of the cost of such re-supply of the services.

12.4 Consequential Loss

Subject to any Non-excludable Condition, neither party is liable to the other for any Consequential Loss.

13. Indemnity

The Customer indemnifies the Indemnified against any costs, loss or damage arising directly or indirectly from:

- (a) the Customers breach of the Agreement; or
- (b) the Customers failure to meet any of its obligations set out in clause 2.1.

14. Dispute Resolution

14.1 Mandatory mediation

- (a) A party claiming that a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute and the parties must submit themselves to the dispute resolution procedure set out in this clause 14.

- (b) Subject to clause 14.2, the parties agree that if a Dispute arises, a party may not commence any legal proceedings relating to the Dispute unless it has complied with the provisions of this clause.
- (c) If the parties cannot resolve the Dispute within 30 days of receiving a notice of the Dispute, then either party may (by giving notice in writing to the other party) require the Dispute to be referred for mediation. The mediation must be undertaken:
 - (i) in accordance with the Resolution Institute Mediation Rules;
 - (ii) at a location agreed by the parties and in the absence of agreement in Brisbane, Queensland; and
 - (iii) using a mediator agreed by the parties and in the absence of agreement, by a mediator nominated by the Resolution Institute.
- (d) Each party must pay its own internal and legal costs in relation to complying with this clause 14. The mediator's costs are to be shared equally.
- (e) If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

14.2 Not applicable to the collection of debts or injunctive relief

The parties acknowledge and agree this clause 14 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

15. Termination

15.1 Termination by Customer

Up until such time the Product has being Shipped, a customer may terminate this Agreement by convenience:

- (a) by providing SigSense with written notice, and
- (b) Paying a termination fee of 10% of the total Agreement value, or \$500, whichever is greater. The termination fee is ex-gst.

15.2 Termination by SigSense

SigSense is entitled to, by notice in writing to the Customer, terminate this Agreement with immediate effect if:

- (a) SigSense no longer has the right or ability to sell the Products for whatever reason.
- (b) the Customer makes a fraudulent statement or misrepresentation in relation to the Products or
- (c) the Customer does or intends to do anything that might or does bring harm or damage to the reputation of SigSense, its Products or its Intellectual Property.
- (d) The customer becomes insolvent or makes default in or commits a material breach of the Agreement.

15.3 Effect of Termination

- (a) On the termination of this Agreement for any reason, the Customer must immediately pay all outstanding and current accounts.

- (b) Termination of the Agreement does not affect any rights which have accrued to either party prior to the date of termination.

16. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) Notwithstanding any other provision of this clause 16, a party may disclose the terms of the Agreement to its related companies, solicitors, auditors, insurers and accountants.

17. General

17.1 Assignment

- (a) The Customer must not assign this Agreement or any of its rights or obligations under this Agreement without obtaining SigSense's prior written consent, such consent not to be unreasonably withheld.
- (b) SigSense may assign, novate or otherwise transfer any of its rights or obligations under any contract arising from this Agreement to a third party without notice to, or the prior consent of the Customer, and if SigSense requires, the Customer will sign any documents to give effect to an assignment, novation or transfer by SigSense under this clause.

17.2 Entire agreement

The Agreement sets out all the parties' rights and obligations relating to the subject matter of the Agreement, and it supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

17.3 Force majeure

If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement, other than an obligation to make payment for the Products, are suspended for the duration of and to the extent that they are affected by the Force Majeure.

17.4 Governing law

The Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts there.

17.5 Notices

The parties agree all notices, disclosures and other communications that are provided in accordance with this clause 17.5, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) must be sent to the email address set out in the Parties section of this Agreement; or
- (b) must be either delivered or posted by prepaid post to the address set out in the Parties section of this Agreement.

17.6 Survival

Clauses 14, 15.3, 16 and any other clause in the Agreement which is expressed to survive or by its nature survives, will survive termination or expiry of the Agreement for any reason.

17.7 Variations

This Agreement may only be varied by written agreement and signed by the parties.
