



EarthBend

Statement of Privacy and Terms & Conditions

Statement of Privacy

EarthBend, LLC ("EarthBend" or "we") knows that you care how information about you is used and shared, that is why EarthBend is committed to protecting your private information. This Statement of Privacy applies to EarthBend.com, EarthBendDistribution.com and EarthBend, LLC and governs data collection and usage. For the purposes of this Statement of Privacy and Terms & Conditions, unless otherwise noted, all references to EarthBend include EarthBend.com, EarthBendDistribution.com and EarthBend, LLC. The EarthBend websites are e-commerce sites. By using the EarthBend websites, you consent to the data practices described in this statement.

What information does EarthBend collect?

- **Information You Give Us:** We receive and store any information you enter on our websites or give us in any other way. We do not collect any personally identifiable information about you, such as your name, address, telephone number or email ("Personal Information") unless you provide it. We use the information that you provide to respond to your requests and otherwise communicate with you
- **Automatic Information:** We receive and store certain types of information that is not personally identifying (e.g. type of Internet browser and computer operating system used, domain name of the website from which you came, number of visits, average time spent, pages viewed). This information is used by us to improve our website content, customer experiences and business practices
- **Cookies:** Like many websites, we use "cookies." Cookies are unique identifiers that we transfer to your device to enable our system to recognize your device and to provide you certain features. The Help feature on most browsers will tell you how to prevent your browser from accepting new cookies, how to have the browser notify you when you receive a new cookie, or how to disable cookies altogether.

How do we protect the information we collect?

EarthBend strives to protect your Personal Information and we take precautions that are consistent with industry practices to ensure the security of your Personal Information.

How do we use the information we collect?

When you provide us with Personal Information, we use it to respond to your inquiries, process your transactions, provide you with access to certain information or to generally support our business relationship. In some cases, EarthBend's websites contain links to other websites. EarthBend is not responsible for the privacy practices or the content of any websites other than its own.

How do we share the information we collect?

We do not sell, trade, or otherwise transfer to outside parties your Personal Information except to properly process and deliver your order. We only share your Personal Information with our affiliates, such as partners or subcontractors in order to support the uses mentioned above, so long as those affiliates agree to keep this information confidential. We will not provide any of your Personal Information to any outside company for marketing purposes. EarthBend will only disclose your Personal Information without your consent if we believe release is appropriate to comply with the law, enforce our site policies, or protect our rights, such as to collect monies owed or to seek legal remedies.

This document was last modified on July 6, 2017.

Control Over Your Information

To update your Personal Information, please contact customer service at 888.201.7075.

Your Consent

By using our sites, you are agreeing to the practices we have described.

Changes to Our Privacy Policy

If we decide to change our privacy policy, we will post those changes on our website, and/or update the privacy policy modification date below.

Contact Us

If you have any questions regarding this privacy policy, you may contact us using the information on our "Contact Us" page.

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About These Terms & Conditions

These are EarthBend, LLC's ("EarthBend's") Terms and Conditions and you should read them carefully as they apply to your use of EarthBend.com, EarthBendDistribution.com and any order you may place with EarthBend in any other manner. For the purposes of these Terms and Conditions, unless otherwise noted, all references to EarthBend include EarthBend.com, EarthBendDistribution.com and EarthBend, LLC. If placing an order online, you will be prompted to accept these Terms and Conditions during the ordering process, and you will be bound by the Terms and Conditions that were in place at the time of your use of the websites or when you placed your order, if such order was placed in any other manner. The most recent version of these Terms and Conditions are available at EarthBendDistribution.com. Your access to and use of EarthBend.com and EarthBendDistribution.com and your ability to place an order with EarthBend is subject exclusively to these Terms and Conditions, and by using these websites or placing an order, you are fully accepting the terms, conditions and disclaimers contained in this notice. If you do not accept these Terms and Conditions you must immediately stop using these websites and should refrain from placing an order. EarthBend reserves the right to change these Terms and Conditions at any time, and your continued use of the websites following any changes shall be deemed to be your acceptance of such changes. Only these terms and conditions apply to the sale of products by EarthBend. Any other terms and conditions will only apply if they have been expressly accepted by EarthBend.

Shipping

EarthBend understands that shipping charges can easily keep an organization in the red or the black when dealing with third-party solutions. That is why EarthBend does everything it can to keep your freight expenses as low as possible. Our general freight guidelines and exceptions are listed below for your reference. If you have questions regarding a potential freight charge, please reach out to an EarthBend team member for more specific information.

- All non-ground/expedited orders are charged freight.
- Minimum freight charge is \$15.00.
- Freight will be ZERO dollars for all non-physical items regardless of cost.
- Select Level EarthBend Partners receive free shipping on ground orders over \$1,500.00.
- Premier Level EarthBend Partners receive free shipping on ground orders over \$1,000.00.
- Elite Level EarthBend Partners receive free shipping on ground orders over \$500.00.
- Resellers paying by credit card are not eligible for free shipping benefits.
- Any order shipped FedEx Freight where EarthBend is invoiced, the cost of the freight will be invoiced to customer.
- All orders going to Canada, Hawaii and Alaska are charged freight.
- A minimum ICC order of \$1,700 is required to receive free ground shipping (including oversized items and premise cable).
- All orders that require special shipping or lift gates (Chatsworth, APC, Minuteman, etc.) are charged freight.
- All large flat panel displays are charged freight.
- Any order with product(s) that may have excessive weight will be charged freight. Excessive weight limits may vary by carrier, manufacturer, etc.
- Certain battery backup solutions that are too heavy to be delivered normally via UPS or FedEx are charged freight.

Payment Terms

In consideration for the extension of credit, you promise to pay for all purchases within the agreed terms of Net 30 days and agree to pay a service charge of 1.50% per month (18% annual percentage rate) on all past due balances. In the event any third parties are employed to collect any outstanding monies owed by you, you agree to pay reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all costs of litigation incurred.

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All payments must be made in U.S. dollars. For your convenience, EarthBend accepts Visa, MasterCard, Discover and American Express. Please read the information below regarding our payment term exceptions:

- You agree to payment terms of Net 30 days from the date of invoice if EarthBend has approved your credit.
- Payments made by credit card are subject to a 3% service charge and freight costs.
- Wire transfers or ACH payments may be subject to additional bank fees payable by you.
- Payments made after 30 days may be subject to a late fee service charge up to 1.50% of invoice value.
- If you pay with a Visa, MasterCard or Discover card AFTER your balance has been on terms, EarthBend will charge an additional 1% fee based off the total revenue when card is processed.

Returns

EarthBend offers a thirty (30) day return policy on most products sold. Manufacturer restrictions may apply. All returns must be accompanied by original invoice and an authorized RMA number. For defective product return shipments, manufacturers require that VAR be responsible for return freight charges. You may obtain additional details and any applicable updates from your dedicated technology consultant or by emailing insidesales@earthbend.com.

Pricing

Product availability, pricing, and fees are updated frequently, but at times we need to change the cost of the product, either up or down, and reserve the right to do so without any further notice. Pricing is not finalized until the date of shipment of the order.

Warranties & Limitation of Liability

You understand that EarthBend is not the manufacturer of any of the products sold by EarthBend and the only warranties offered are those of the manufacturer. Any warranties offered by the manufacturer shall be your exclusive remedy. However, EarthBend agrees to pass through any third party warranty that EarthBend receives from the manufacturer of the products to you, to the extent permitted by the manufacturer. The extent of any third party warranty details, terms and conditions, remedies and procedures may be expressly stated on, or packaged with, or otherwise accompanying the products.

EXCEPT AS OTHERWISE PROVIDED ABOVE, EARTHEND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESSED OR IMPLIED, RELATED TO ANY PRODUCTS SOLD THROUGH THIS WEBSITE OR ANY OTHER MANNER, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. IN NO EVENT SHALL EARTHEND BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES RELATING TO OR ARISING FROM ANY PRODUCT SOLD OR THIS WEBSITE, WHETHER OR NOT EITHER PARTY HAD OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. You hereby expressly waive any claim that you may have against EarthBend based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights with respect to any product sold by EarthBend and also waive any right to indemnification from EarthBend against any such claim made against you by another party.

Confidentiality

The information transmitted through these websites is intended solely for the individual or entity to which it is addressed and may contain confidential and/or privileged material. Any review, re-transmission, dissemination or other use of or taking action in reliance upon this information by persons or entities other than the intended recipient is prohibited.

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Trademarks

These websites contains many trademarks, trade names, service marks, copyrights, and/or logos of EarthBend and may also contain several protected marks of EarthBend's numerous affiliates. Such marks remain the property of their respective owners. By using these websites, you acknowledge such ownership and that you do not acquire, through use of these websites, any right, title, or interest in the marks. You agree that you will not change, modify, and/or exploit the marks, nor participate in any activity which modifies and/or exploits such marks. All rights to these marks are reserved. Any use of the marks without expressed written authorization is strictly prohibited.

Prohibited Use

Any use of these websites for an illegal or objectionable purpose is strictly prohibited. By using these websites, you agree that you will not use these websites to engage in any activity that could be deemed illegal, harmful to others, or give rise to civil liability. Such activities include, but are not limited to: (i) activities involving the transmission of unlawful, threatening, harassing, obscene, sexually explicit, pornographic, hateful, profane, libelous, or defamatory information; (ii) activities involving the transmission of junk mail or spamming; (iii) activities involving the promotion or use of viruses; (iv) activities that violate any law, regulation or statute; and/or (v) activities that infringe upon any legally protected property right, etc. By using these sites, user agrees that any and all information transmitted to or with the use of this site cannot and shall not be deemed confidential or proprietary. EarthBend reserves the right to monitor transmissions and investigate any alleged prohibited use of these websites and to disclose any and all information relating to such prohibited use. EarthBend, its officers, directors, affiliates, employees, agents, partners, subsidiaries, and/or contractors shall not assume, and expressly disclaim, any and all liability relating to an individual's illegal or prohibited use of these websites. Any violation of this or any other section contained herein may result in termination of service and or any other action EarthBend determines appropriate under the circumstances.

Third-Party Relationships

These websites may contain links to other sites. These links are provided merely to assist the user. These sites are independent of EarthBend's sites, and EarthBend does not and cannot control the content and/or representations of such sites. The information presented via these links may not necessarily reflect those beliefs held by EarthBend. The inclusion of a link does not mean that EarthBend accepts or endorses any of the content contained in such site. You are responsible to protect yourself while associating with the linked site. EarthBend, and its officers, directors, affiliates, employees, agents, partners, subsidiaries and/or contractors disclaim any and all responsibility or liability for content contained on such linked sites and will not be held accountable for any damages, of any kind, incurred by those who visit such sites.

Modifications and Waiver

These websites may contain typographical errors or technical inaccuracies. EarthBend reserves the right to modify the content of these websites at any time without prior notice. EarthBend's failure to enforce any section of these terms and conditions shall not be construed as a waiver of such provision.

Severability

If one or more of the provisions contained in these terms and conditions are held to be unenforceable under applicable law, such provision shall be appropriately limited in its scope. If any such limitation is not feasible, such provision shall be excluded from these terms and conditions and the balance of these terms and conditions shall be enforceable.

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Force Majeure

Notwithstanding any other provision set forth in these terms and conditions, EarthBend shall not be liable for any failure or delay in its performance due to any cause beyond EarthBend's reasonable control, including, without limitation, any act of war or civil insurrection, national emergencies, acts of God, fire, explosion, vandalism, storm, earthquake, flood, embargo, riot, sabotage, industry-wide strikes, lockouts, work stoppages or other labor difficulties, industry-wide supplier failures, unavailability of materials, rights of way or governmental acts; provided, however, that EarthBend shall use its commercially reasonable efforts to correct promptly such failure or delay in performance to the extent consistent with then applicable law and regulatory requirements and appropriate in light of then existing circumstances.

Indemnification

By using EarthBend's websites and/or placing an order with EarthBend by any other manner, you hereby agree to indemnify, defend, and hold harmless, EarthBend, its officers, directors, affiliates, employees, contractors, subcontractors, agents, partners, and subsidiaries from and against all claims, actions, suits, demands, costs, and damages (including reasonable attorney's fees) asserted by any third party as a result of your use of these websites or resale of any of the products purchased from EarthBend. EarthBend has the right to control any defense pertaining to this section.

Relationship

Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, partnership, or fiduciary relationship between the parties, and neither party shall have the right or authority to act for or on behalf of the other Party.

Governing Law

These terms and conditions shall be governed by, construed, and enforced in accordance with the laws of the State of South Dakota, without regard to any choice of law principles.

Jurisdiction

By using these websites, you hereby agree and irrevocably consent to submit to the exclusive jurisdiction and venue of the courts of the State of South Dakota and of the United States of America located in the State of South Dakota for any and all claims arising from the use of these websites.

Entire Agreement

These terms and conditions constitute the full and entire understanding and agreement between the parties pertaining to the subject matter and supersede in their entirety any and all written or oral agreements previously existing between the parties with respect to the subject matter.

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