

# Eurostar Global Electronics Limited - Terms and Conditions of Sale

These terms and conditions (as amended under clause 7.8) ("Conditions") govern the sale of goods by Eurostar Global Electronics Limited, registered in England and Wales with no. 06046810 ("Eurostar") to the person/firm to who buys such goods ("Buyer"). These Conditions apply to the exclusion of any other terms that Buyer seeks to impose, or which are implied by trade, custom, practice or course of dealing.

**"Buyer has represented to Eurostar that it is contracting with Eurostar in the course of its trade and as such constitutes a business-to-business contract. If Buyer is not in fact contracting with Eurostar in the course of its trade, Buyer is directed to Eurostar's consumer website at [www.e247.com](http://www.e247.com)."**

**\*\*Note particularly clause 5 (Indemnities/Limitation of Liability).\*\***

## 1 Interpretation

In these Conditions: (i) **person** includes a natural person/corporate/unincorporated body; (ii) a reference to Eurostar/Buyer includes its personal representatives/successors/permitted assigns; (iii) a reference to a statute or statutory provision is a reference to such statute/statutory provision as amended or re-enacted and includes any subordinate legislation; (iv) any phrase introduced by the terms **including/include** shall be illustrative and shall not limit the sense of the preceding words; (v) a reference to writing/written includes e-mails but not fax; and (vi) the following definitions apply:

**"Applicable Law"**: the laws of England and Wales and any other mandatory laws/regulations/regulatory policies/guidelines/industry codes which apply to the manufacture/supply of the Goods. **"Business Day"**: Monday to Friday, excluding any public holidays in England and Wales.

**"Contract"**: each contract between Eurostar and Buyer for the supply of Goods under these Conditions.

**"Buyer Default"**: any act/omission of Buyer or failure by Buyer to perform any relevant obligation under a Contract.

**"Buyer's Specification"**: if applicable, Buyer's specification for the Goods contained in the Order for firmware, software, printed literature or accessories, such as a requirement for the inclusion of a specific language within the operating system of a mobile device or the inclusion of a region specific power supply/adaptor.

**"Credit Terms"**: payment to Eurostar's bank account: (i) in accordance with the credit terms set out in the Order (in full and in cleared funds); or (ii) if no credit terms are specified in the Order, in advance of despatch of the Goods to the Buyer.

**"Delivery Location"**: the delivery location in the Order/such other location as the parties agree in writing from time to time.

**"Due Date"**: in respect of a payment under a Contract, the date on which such payment is due pursuant to these Conditions.

**"Eurostar Warranty"**: Goods shall: (i) conform in all material respects with the Goods Spec, save that Eurostar reserves the right to amend the same where such change is required by any Applicable Law or as a result of a Sourcing Issue; and (ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

**"Force Majeure Event"**: an event beyond the reasonable control of Eurostar including strikes/other industrial disputes, failure of utility service/transport network, act of God/fire/flood/storm, war/riot/civil commotion, malicious damage, compliance with law/governmental rule/direction, accident, breakdown of machinery, or default of suppliers/subcontractors.

**"Goods"**: the goods set out in the Order (or any part of them).

**"Goods Spec"**: the specification for the Goods, set out by the applicable manufacturer or, if applicable, as set out in Eurostar's website/literature (and, where expressly agreed in writing by Eurostar, Buyer's Specification for the Goods).

**"Insolvency Event"**: (a) Buyer suspends/threatens to suspend payment of its debts/its inability to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 208 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies, (b) Buyer starts negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for letters into any arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for/in connection with the winding up of Buyer; (d) Buyer is the subject of a bankruptcy petition/order; (e) a creditor/nominee of Buyer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole/part of its assets which is not discharged within 14 days; (f) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over Buyer; (g) a floating charge holder over the assets of Buyer becomes entitled to appoint/has appointed an administrator; (h) a person becomes entitled to appoint a receiver over the assets of Buyer or a receiver is appointed over the assets of Buyer; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.

**"IPR"**: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for or renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. **"Manufacturer Warranty"** any end user warranty/guarantee as may be afforded by the manufacturer of the Goods.

**"Order"**: Buyer's order for the supply of Goods, as provided electronically via Eurostar's electronic web ordering portal or Buyer's acceptance of Eurostar's quotation.

**"Sourcing Issue"**: any of the following: (i) changes to the manufacturer's specification; and/or (ii) an inability of Eurostar to source particular materials/resources (including personnel) on terms similar or identical to those available at the Start Date (excluding exchange rate fluctuations/increases in taxes/duties).

## 2 Basis of Contract

**2.1** Each Order constitutes an offer by Buyer to purchase Goods which shall only be deemed accepted when Eurostar issues written acceptance, on which date a Contract shall come into existence ("**Start Date**"). Following such acceptance: (i) Buyer may not cancel the Contract other than under clause 6.1; and (ii) Eurostar may only cancel a Contract under clause 6.

**2.2** A quotation given by Eurostar is not an offer and is only valid for 3 Business Days from its date of issue.

## 3 Goods

**3.1** Eurostar shall supply the Goods to Buyer pursuant to each Contract. (a) Where new, Goods are supplied with the benefit of (and subject to the terms of) the Manufacturer Warranty (if any); (b) Where refurbished or where there is no Manufacturer Warranty, Eurostar itself affords the Eurostar Warranty to Buyer; (c) where a replacement item is supplied, such item is provided with the remainder of the term of the Manufacturer Warranty or Eurostar Warranty as was afforded under the original purchase. Eurostar's sole liability to Buyer under the warranties set out in this clause 3.1 is set out in the remainder of this clause 3.

**3.2** In respect of a breach of clause 3.1, Eurostar shall (at its option) repair, replace (with a new, graded (i.e. fully functional new items which may have some blemishes marks) or refurbished Goods) or refund in full the price of the defective Goods provided the Buyer complies with the requirements contained in the Manufacturer's Warranty and in any event (unless contradictory to the terms of the Manufacturer's Warranty); (i) Buyer gives notice in writing within 10 Business Days of delivery that some or all of the Goods do not comply with the warranty/in clause 3.1; (ii) Eurostar is given a reasonable opportunity of examining such Goods (which may include accessing Buyer's premises); and (iii) Buyer (if Eurostar requests) returns such Goods to Eurostar's place of business at Buyer's cost. These Conditions shall apply to any repaired or replacement Goods supplied under this clause.

**3.3** Eurostar is not liable for the Goods' failure to comply with the warranty in clause 3.1 if: (i) Buyer makes further use of such Goods after giving notice under clause 3.2 (unless approved in advance in writing by Eurostar); (ii) the defect arises because Buyer failed to follow Eurostar's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are no) good trade practice; (iii) the defect arises as a result of Eurostar following Buyer's Specification; (iv) Buyer alters/repairs such Goods without the written consent of Eurostar (or the manufacturer); (v) the defect arises as a result of fair wear and tear, rain, water or other liquid damage, accidental or willful damage, negligence (including failure to follow the manufacturer's instructions (whether oral or in writing), or abnormal working conditions; (vi) the Goods differ from the Goods Spec as a result of changes made to ensure they comply with Applicable Law.

**3.4** Delivery dates are approximate only and time of delivery is not of the essence. Delivery shall be completed on the Goods' arrival at the Delivery Location. Buyer is responsible for unloading.

**3.5** Eurostar reserves the right to substitute goods substantially equivalent to those in the Order.

**3.6** Eurostar shall deliver the Goods to the Delivery Location at any time after Eurostar notifies Buyer that the Goods are ready.

**3.7** If Buyer fails to accept/take delivery of the Goods (including failing to provide appropriate delivery instructions to Eurostar within 3 Business Days of Eurostar notifying Buyer that the Goods are ready); (i) delivery of the Goods is deemed to be complete at 9.00am on the 3rd Business Day following attempted delivery/notification that the Goods are ready; and (ii) Eurostar shall store the Goods until delivery takes place, and charge Buyer for all related costs and expenses (including insurance). If 5 Business Days after Eurostar notified Buyer that the Goods were ready for delivery Buyer has not accepted or taken delivery of them, Eurostar may resell or otherwise dispose of all/part of the Goods and, after deducting reasonable storage and selling costs: (i) account to Buyer for any excess; or (ii) charge Buyer for any shortfall below, the price of the Goods.

**3.8** Eurostar may deliver in instalments, each constituting a separate Contract, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel any other instalment. Buyer shall not be entitled to reject the Goods if Eurostar delivers less than the ordered quantity of any Goods, but a pro-rata adjustment shall be made to the Order invoice once any short delivery is confirmed.

**3.9** Risk in the Goods shall pass to Buyer on completion of delivery at the Delivery Location.

**3.10** Title to the Goods shall not pass to Buyer until Eurostar has received payment in full (in cleared funds) for the Goods (and any other goods that Eurostar has supplied to Buyer/ any part of its group for which payment is due). From Eurostar until title has passed to Buyer, Buyer shall: (i) hold the Goods on a fiduciary basis as Eurostar's bailee; (ii) store the Goods separately from all other goods and ensure they are readily identifiable as Eurostar's property; (iii) not remove/deface/obscure any identifying mark or packaging on or relating to the Goods; (iv) maintain the Goods in satisfactory condition and keep them insured on Eurostar's behalf against all risks for their full price; (v) give Eurostar such information relating to the Goods as Eurostar requires, but Buyer may resell/use the Goods in its ordinary course of business.

**3.11** If an Insolvency Event occurs (or Eurostar believes that the same is about to occur) before title to the Goods passes to Buyer, if the Goods have not been resold/irrevocably incorporated into another product/service, (without limiting any other right or remedy Eurostar may have) Eurostar may demand Buyer deliver up the Goods and, if Buyer fails to do so promptly, enter any premises of Buyer (or a third party) where the Goods are stored to recover them.

## 4 Charges and Payment

**4.1** The price for Goods is the price set out in the Order, or, if no price is quoted the price set out in Eurostar's published price list as at the date of delivery/performance.

**4.2** Eurostar reserves the right to increase the price of the Goods, giving notice to Buyer at any time before delivery/performance, to reflect any increase in the cost of the Goods to Eurostar that is due to: (a) a Sourcing Issue or a change in Applicable Law; (b) any request by Buyer to change the delivery/performance date(s)/quantities or types of Goods ordered/the Goods Spec; or (c) any delay caused by any instructions of Buyer in respect of the Goods or failure of Buyer to give Eurostar adequate or accurate information or instructions in respect of the Goods.

**4.3** Eurostar shall invoice Buyer for the Goods at any time following acceptance. Unless otherwise agreed in writing, prices are exclusive of: (i) all packaging/insurance/transport costs; (ii) value added tax and (iii) any surcharges for payment by credit or debit card, which shall be added to the applicable invoices. Buyer shall pay each invoice in full (without any deduction/withholding) in accordance with the Credit Terms and time for payment is of the essence. Eurostar reserves the right to reject any payment made by Buyer by cheque. Should Eurostar believe that the credit worthiness of Buyer has reduced, Eurostar may vary the Credit Terms on written notice to Buyer. The Buyer confirms that, where payment to Eurostar is made by credit/debit card/BACS/CHAPS/Faster Payment, the payment method used is authorised by the holder of the relevant account and is an approved method of payment. All payment methods are subject to validation checks being completed by Eurostar. Eurostar will not be responsible for any delay or non-delivery of any Order caused by the failure of any validation checks. The Late Payment of Commercial Debts (Interest) Act 1998 shall apply to all payments due under each Contract.

**4.4** Eurostar may undertake such checks as it considers necessary from time to time to verify Buyer's identity and credit worthiness, including passing information to credit reference and fraud detection agencies.

**4.5** Buyer shall make payment in the invoice currency, unless expressly agreed to the contrary in the Order that an alternative currency is permitted ("**Alternative Currency**"), in which case payment shall be made in the Alternative Currency using the prevailing rate of exchange between the invoice currency and the Alternative Currency (calculated on the date of payment by Buyer to Eurostar) to ensure full payment is made to Eurostar for the Goods.

**4.6** Eurostar may, without limiting its other rights or remedies, set off any amount owing to it by Buyer against any amount payable by Eurostar to Buyer or sell any outstanding balance due from Buyer to Eurostar to any third party without prejudice to any claims by Eurostar against Buyer.

## 5 Indemnities / Limitation of Liability\*\*

**5.1** Buyer shall indemnify Eurostar from and against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Eurostar in connection with: (i) any claim made against Eurostar for actual or alleged infringement of a third party's IPR arising out of or in connection with Eurostar's use of Buyer's Specification; (ii) any failure of Buyer to obtain appropriate licenses and/or consents under clause 7.2, or any subsequent revocation or non-renewal of any such licence and/or permit; (iii) any failure of Buyer to ensure compliance with Applicable Law under clause 7.2; (iv) any use of the Goods, Eurostar Materials, by Buyer other than as envisaged under the Contract; and (v) any Buyer Default.

**5.2** Nothing in these Conditions shall limit/exclude Eurostar's liability where such a limit or exclusion is not permissible under Applicable Law. By way of example, where the Unfair Contract Terms Act 1977 applies to the Contract, Eurostar's liability shall not be limited or excluded for: (i) death/personal injury caused by its negligence; or (ii) fraud/fraudulent misrepresentation.

**5.3** Subject to clause 5.2, Eurostar's liability (whether in contract or otherwise) is limited as follows: (i) Eurostar shall not be liable for: (a) any delay in delivery of the Goods; or (b) any failure to deliver the Goods that is caused by a Force Majeure Event or Buyer's failure to provide Eurostar with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; (ii) if Eurostar fails to deliver the Goods, its liability is limited to the costs/expenses incurred by Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods; (iii) Eurostar's total liability to Buyer in respect of a breach of warranty relating to Goods is limited repair, replacement or refund as described in clause 3.2; (iv) Eurostar shall not be liable to Buyer for any loss of profit, or any indirect or consequential loss arising under/in connection with a Contract; and (v) Eurostar's total liability to Buyer in respect of all losses arising under/in connection with a Contract shall in no circumstances exceed the lower of £100,000 and the value of the Contract.

**5.4** Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. This clause 5 shall survive termination.

## 6 Termination

**6.1** Without limiting its other rights or remedies, Buyer may terminate a Contract with immediate effect giving written notice to Eurostar if Eurostar commits a material breach of such Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach from Buyer.

**6.2** Without limiting its other rights or remedies, Eurostar may terminate one or more Contracts (or suspend the Goods): (i) by giving Buyer 1 month's written notice; or (ii) with immediate effect giving written notice to Buyer where: (a) necessary as a result of Applicable Law; (b) a Sourcing Issue has occurred which affects such Goods; (c) a Force Majeure Event prevents Eurostar from providing Goods for more than 4 weeks; (d) Buyer commits a material breach of its obligations under a Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach from Eurostar; (e) an Insolvency Event has occurred; (f) Buyer fails to pay any amount due under this Contract on the Due Date. Buyer shall notify Eurostar immediately if it becomes (or believes it may in the future become) subject to an Insolvency Event.

**6.3** On termination of the Contract for any reason, the accrued rights/remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of any Contract which existed at/before the date of termination/expiry.

Without limiting any other right: (i) Buyer shall immediately pay to Eurostar all of Eurostar's outstanding unpaid invoices and interest; (ii) in respect of Goods supplied but for which no invoice has yet been submitted, Eurostar shall submit an invoice, which is payable by Buyer immediately on receipt; (iii) if Buyer fails to pay in accordance with (i) and/or (ii) above, at Eurostar's request, Buyer shall return any and all Goods which have not been fully paid for. If Buyer fails to return Goods, Eurostar may enter any premises of Buyer or of any third party where the same are stored in order to recover them.

## 6.4

Conditions which expressly or by implication have effect after termination shall continue in full force and effect.

## 7 General

**7.1** IPR: All IPR in or arising out of or in connection with the Goods is owned by Eurostar (or its licensors).

**7.2** Import/Export Regulations: The Goods may be subject to import and/or export laws/rules/regulations of the European Union, the United States and other countries. Buyer agrees to comply with such laws/rules/regulations and will obtain and maintain any export and import licences required for the delivery of Goods to the Buyer under each Contract and, if required by Eurostar, shall undertake any and all testing necessary to ensure such compliance at its own cost. It is Buyer's responsibility to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. Buyer must ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Location. Where necessary, Buyer shall inform Eurostar at a reasonable time before delivery of any documents which it is necessary for Eurostar to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction. Without limiting the foregoing, and as an example, Buyer will not knowingly export or re-export Goods to destinations identified pursuant to Articles in Chapter II of European Council Regulation (EC) 428/2009 and specifically will also comply with U.S. government Export Administration Regulations ("EAR", 15 C.F.R. §§ 730-774, <http://www.bis.doc.gov/>) administered by Department of Commerce, Bureau of Industry and Security and economic sanctions regulations (30 C.F.R. §§ 500 et. seq., <http://www.treas.gov/offices/enforcement/ofac/>) administered by the U.S. Department of Treasury, Office of Foreign Assets Control.

**7.3** Confidentiality: A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning Disclosing Party's business or its products or its services which Receiving Party may obtain. Receiving Party shall restrict disclosure of such information to such of its employees, agents or subcontractors as need to know it to discharge Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind Receiving Party. This clause 7.3 shall survive termination.

**7.4** Entire Agreement: Each Contract constitutes the entire agreement between the parties relating to the particular Order, superseding all previous arrangements between the parties relating to its subject matter. Any samples/drawings/descriptive matter/illustrations/advertising issued by Eurostar or contained in Eurostar's websites, catalogues, brochures or literature are issued/published for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract or have any contractual force. Buyer confirms it has not relied on any statement/promise/representation made or given by or on behalf of Eurostar which is not set out in the applicable Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the applicable Contract.

**7.5** Force majeure: Eurostar shall not be liable to Buyer as a result of any delay/failure to perform its obligations under this Contract as a result of a Force Majeure Event.

**7.6** Assignment/subcontracting: Eurostar may at any time assign/transfer/charge/subcontract/deal in any manner with all or any of its rights under the Contract. Buyer shall not, without the prior written consent of Eurostar, assign/transfer/charge/subcontract/deal in any other manner with all or any of its rights or obligations under the Contract.

**7.7** Notices: Any notice required to be given under or in connection with this Contract shall be in writing, addressed to the contact name/title detailed in the Order and shall be delivered to the other party; (i) personally or sent by prepaid first-class post/recorded delivery/commercial courier, to its registered office/principal place of business (if not a company); or (ii) sent by email to the other party's email address set out in the Order. Any notice is deemed received if: (i) delivered personally, when left at such address; (ii) if sent by prepaid first-class post or recorded delivery, at 9.00am on the 2nd Business Day after posting; (iii) if delivered by commercial courier, at the date/time that the courier's delivery receipt is signed; (iv) if sent by email, at 9.00am on the next Business Day, provided a valid delivery confirmation has been received. If actual delivery takes place outside of working hours on a Business Day, date/time of deemed delivery shall be 9.00am on the next Business Day. This clause 7.7 shall not apply to the service of any proceedings or other documents in any legal action.

**7.8** Variation/Waiver: Eurostar reserves the right to change or to add to these Conditions from time to time. Unless you have placed an Order (which has been accepted by Eurostar) by the time such a change takes effect, we shall not be obliged to give you notice of any such modification or withdrawal to these Conditions. A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**7.9** Severance: If a court or any other competent authority finds that any provision (or part of a provision) of the Contract is invalid/illegal/unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**7.10** No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership/joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**7.11** Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

**7.12** Buyer's Compliance with Applicable Law: Buyer shall at all times comply (and shall ensure that relevant third parties comply) with Applicable Law, including the Bribery Act 2010.

**7.13** Personal Information: Where personal information is provided to Eurostar, this shall be processed in accordance with Eurostar's Privacy Policy (which can be found at <http://www.eurostarglobal.co.uk/download/privacy-policy>).

**7.14** Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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