

# Eurostar Global Electronics Limited - Terms and Conditions of Purchase

These terms and conditions (as amended under clause 9.5) ("**Conditions**") govern the purchase of goods (and related services) by Eurostar Global Electronics Limited, registered in England & Wales with company no. 06046810 ("**Eurostar**") from the person or firm who sells such goods/services ("**Seller**"). These Conditions apply to the exclusion of any other terms that Seller seeks to impose, or which are implied by trade, custom, practice or course of dealing.

**\*\*Note particularly clause 7 (Indemnity)\*\***

## 1 Interpretation

In these Conditions: (i) **person** includes a natural person/corporate/unincorporated body; (ii) a reference to Eurostar/Seller 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 & includes any subordinate legislation; (iv) any phrase introduced by the terms **including/include/in particular** (or similar) shall be illustrative & shall not limit the sense of the preceding words; (v) a reference to **writing/written** includes e-mails but not fax; & (vi) the following definitions apply:

**"Applicable Law"**: the laws of England & Wales and the EU and any other 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 & Wales.

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

**"Delivery Location"**: the delivery location in the Order, or such other location as the parties may agree from time to time.

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

**"Goods Spec"**: the specification for the Goods provided by the Seller or set out (or referred to) in the applicable Order.

**"Insolvency Event"**: (a) Seller suspends/threatens to suspend payment of its debts/is unable 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 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies; (b) Seller starts negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for/enters 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 Seller; (d) Seller is the subject of a bankruptcy petition/order; (e) a creditor/encumbrancer of Seller 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 Seller; (g) a floating charge holder over the assets of Seller becomes entitled to appoint/has appointed an administrative receiver; (h) a person becomes entitled to appoint a receiver over the assets of Seller or a receiver is appointed over the assets of Seller; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.

**"Order"**: Eurostar's order for the supply of Goods as set out in Eurostar's standard purchase order

**"Services"**: the services (if any) to be supplied by Seller as set out in the Order.

**"Services Spec"**: the specification for the Services provided by the Seller or as set out (or referred to) in the Order.

## 2 Basis of Contract

2.1 Eurostar may place an Order at any time. Each Order constitutes an offer by Eurostar to purchase Goods from Seller in accordance with these Conditions together with any specific conditions specified on the Order. The Order shall be deemed to be accepted on the earlier of: (i) Seller issuing written acceptance of the Order or (ii) any act by Seller consistent with fulfilling the Order ("**Start Date**"), at which point the Contract shall come into existence. Seller shall notify Eurostar of the order number.

2.2 Eurostar may at any time prior to despatch of Goods amend/ cancel an Order without liability by written notice to Seller.

2.3 Any forecasts provided to Seller by Eurostar shall not form any legally binding obligations on Eurostar.

## 3 Goods

3.1 Seller shall supply the Goods to Eurostar in accordance with the terms of the Contract and shall ensure that the Goods: (a) correspond with their description and Goods Spec (including without limitation if the Goods are specified to be SIM free or locked to a named carrier or network) (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) & fit for any purpose held out by Seller/made known to Seller by Eurostar, expressly or by implication, (c) be free from defects in design, materials & workmanship & remain so for 24 months after delivery (unless a longer period is specified in the Order); & (d) comply with all Applicable Laws relating to the manufacture, labelling, packaging, storage, handling & delivery of the Goods.

3.2 Seller warrants that it has full, clear & unencumbered title to the Goods, & that at the date of delivery, it will have full & unrestricted rights to sell & transfer all such items to Eurostar and that all Goods are free from any charges or claims by a third party.

3.3 All Goods must be T2 status and in free circulation unless otherwise agreed on the Order.

3.4 All Goods must be brand new, boxed with all manufacturers standard accessories with standard manufacturers specification and latest version software where applicable. Used Goods will only be accepted if agreed with Eurostar and graded in accordance with Eurostar's used product grading system ("**Graded Goods**"). Details of Eurostar's grading system is obtainable from Eurostar upon request.

3.5 Seller shall ensure that at all times it has & maintains all licences/permissions/authorisations/consents & permits needed to carry out its obligations under the Contract.

3.6 Seller shall ensure: (a) the Goods are properly packed & secured so as to enable them to reach their destination in excellent condition; (b) each delivery contains a delivery note showing the Order number (c) deliveries will be made by a reputable carrier and (d) an accessible bar code in the format required by Eurostar on outer packaging.

3.7 Seller shall deliver the Goods CIP (Newcastle Under Lyme) (Incoterms 2010) unless an alternative Delivery Location is agreed on the date specified in the Order or (if no date is specified) within 24 hours of the Order unless otherwise agreed with Eurostar provided that in no event shall delivery be more than 7 days of the date of the Order.

3.8 Title in the Goods shall pass on the earlier of delivery or payment. Risk in the Goods shall pass to Eurostar on completion of delivery.

3.9 Seller is solely responsible for obtaining, at its own cost, such export licences/other consents in relation to the Goods as are required from time to time in order to export the Goods to the UK and, if required by Eurostar, the Seller shall make those licences/consents available to Eurostar prior to the relevant shipment.

3.10 Eurostar may test and inspect the Goods within ten (10) Business Days following delivery and reject any Goods which fail to meet clause 3.1 in which circumstance clause 5.1 shall apply.

3.11 The Seller shall record and provide upon request a list of serial numbers relating to the Goods.

3.12 The Seller shall provide all information necessary to validate the Goods and Eurostar may reject Goods at its sole discretion based on mobile validation checks including without limitation the Recipro database.

## 4 Services

4.1 If Eurostar requires any related Services then Eurostar shall submit an Order for the same. Seller shall provide the Services to Eurostar in accordance with the terms of the Contract and shall: (a) meet any completion dates for the Services specified in the Order; (b) ensure that the Services conform with the Services Spec; (c) perform the Services with the best care, skill & diligence in accordance with best practice in Seller's industry, profession or trade; (d) obtain & maintain all necessary licences & consents, & comply with Applicable Law.

4.2 Seller shall require the Services to Eurostar in accordance with the terms of the Contract and shall: (a) meet any completion dates for the Services specified in the Order; (b) ensure that the Services conform with the Services Spec; (c) perform the Services with the best care, skill & diligence in accordance with best practice in Seller's industry, profession or trade; (d) obtain & maintain all necessary licences & consents, & comply with Applicable Law.

## 5 Eurostar's Remedies

5.1 If Seller breaches clauses 3.1 or 4.2, there are missing Goods or empty packaging or Seller fails to deliver the Goods by the applicable date then if requested by Eurostar the Seller shall co-operate and engage fully with Eurostar to agree resolution of the breach to Eurostar's satisfaction within 48 hours of notification by Eurostar. Eurostar may at its option: (a) require Seller to do all things possible to minimise the delay; (b) terminate the Contract with immediate effect by giving notice to Seller; (c) refuse to accept any further Goods; (d) recover from Seller any costs of obtaining substitute goods from a third party; (e) in respect of any advance payments for Goods not yet provided, have the same refunded and/or request that the Seller immediately makes a claim to its insurers and keeps Eurostar informed of the progress of such claim; (f) claim damages for any additional costs/loss/expenses incurred by Eurostar which are in any way attributable to Seller's breach.

5.2 These Conditions shall extend to any repaired/replacement Goods supplied by Seller.

5.3 If Eurostar considers that Seller is in breach (or may in the future breach) the Contract, Eurostar shall inform Seller & Seller shall immediately take necessary action to rectify the breach (or avoid future breach).

5.4 Eurostar's rights under the Contract are in addition to its rights & remedies implied by statute & common law.

## 6 Charges and Payment

6.1 The price for the Goods shall be the price set out in the Order or as otherwise agreed by Eurostar in writing. All amounts payable by Eurostar under the Contract are exclusive of value added tax ("VAT") or any relevant sales tax as specified in the Order and which shall be added to the applicable invoices. Prices shall be inclusive of insurance costs. The Seller shall comply with the requirements of the applicable VAT regime as specified on the Order and has responsibility for ensuring that the Goods qualify for such VAT regime.

6.2 Unless otherwise agreed in writing by Eurostar, Seller shall invoice Eurostar at any time after completion of delivery (and if delivered in instalments, completion of delivery of the final instalment). Each invoice shall include all supporting information required by Eurostar including the Order number.

6.3 Eurostar shall pay the invoiced amounts within 60 days (or within such other period agreed in writing between Eurostar and the Seller) of receipt of a correctly rendered invoice. If Eurostar fails to pay any amount properly due & payable by it under the Contract, Seller may charge interest on the overdue amount at the rate of 2% per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

6.4 Eurostar may, without limiting its other rights or remedies, set off any amount owing to it by Seller against any amount payable by Eurostar to Seller.

6.5 Eurostar shall not be liable to the Seller: (i) in respect of any liability under a Contract, in excess of the total price under any Contract; (ii) in respect of any indirect, special or consequential losses; or (iii) in respect of any loss of business, revenue or profits. However, nothing in these Conditions shall limit/exclude Eurostar's liability for: (i) death/personal injury caused by its negligence; (ii) fraud/fraudulent misrepresentation; or (iii) any other liability which cannot be excluded by law.

## 7 Indemnity

7.1 Seller shall indemnify Eurostar & keep Eurostar indemnified in full from & against any & all costs, expenses, damages & losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation & all interest, penalties & legal & other reasonable professional costs & expenses) suffered or incurred by Eurostar in connection with any claim made against Eurostar: (i) by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts/omissions of Seller, its employees, agents or subcontractors; (ii) by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by Seller, its employees, agents or subcontractors; & (iii) for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods.

7.2 For the duration of the Contract & for a period of 12 months thereafter, Seller shall maintain in force, with a reputable insurance company product liability insurance & public liability insurance to cover its liabilities under or in connection with the Contract & shall, on Eurostar's request, produce both the insurance certificate giving details of cover & the receipt for the current year's premium in respect of each insurance.

7.3 This clause 7 shall survive termination of the Contract.

## 8 Termination

8.1 Without limiting its other rights or remedies, Eurostar may terminate one or more Contracts with immediate effect by giving written notice to Seller if (a) Seller commits a material or persistent breach of the Contract & (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach; (b) an Insolvency Event occurs;

## 9 General

9.1 Confidentiality: Seller shall keep in strict confidence the terms and conditions of each Order/Contract and any commercially sensitive information or information relating to its business provided by Eurostar to the Seller, its employees, agents or subcontractors. This clause 9.1 shall survive termination.

9.2 Publicity: Seller must not make any announcement in relation to the Contract without the prior written consent of Eurostar.

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

9.4 Notices: Any notice required to be given under or in connection with this Contract shall be in writing, addressed to the Finance Director of Eurostar and the contact name/title detailed in the Order for the Seller & shall be delivered by email with a hard copy posted. The notice shall be deemed delivered at 9.00am on the next Business Day, provided a valid delivery confirmation has been received. This clause 9.4 shall not apply to the service of any proceedings or other documents in any legal action.

9.5 Variation/Waiver: Except as set out in these Conditions, any variation, including the introduction of any additional terms & conditions, to the Contract shall only be binding when agreed in writing & signed by Eurostar.

9.6 A waiver of any right is only effective if it is in writing & 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, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative & do not exclude rights provided by law.

9.7 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, & the validity & 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 & legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid & enforceable.

9.8 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.

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

9.10 Governing law & jurisdiction: This Contract, & 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, & construed in accordance with, English law & the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England & Wales.

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