

### BACKGROUND:

These Terms of Sale set out the terms under which Goods are sold by Us to business customers through this website, <https://eversmart.co> ("Our Site"). Please read these Terms of Sale carefully and ensure that you understand them before ordering any Goods from Our Site. You will be required to read and accept these Terms of Sale when ordering Goods. If you do not agree to comply with and be bound by these Terms of Sale, you will not be able to order Goods through Our Site. These Terms of Sale, as well as any and all Contracts are in the English language only.

### 1. Definitions and Interpretation

1.1 In these Terms of Sale, unless the context otherwise requires, the following expressions have the following meanings:

<b>"Contract"</b>	means a contract for the purchase and sale of Goods, as explained in Clause 7;
<b>"Goods"</b>	means the goods sold by Us through Our Site;
<b>"Order"</b>	means your order for Goods;
<b>"Order Confirmation"</b>	means Our acceptance and confirmation of your Order;
<b>"Order Number"</b>	means the reference number for your Order; and
<b>"We/Us/Our"</b>	means EVERSMART.

### 2. Information About Us

2.1 Our Site, <https://eversmart.co>, is owned and operated by EVERSMART

### 3. Access to and Use of Our Site

3.1 Access to Our Site is free of charge.

3.2 It is your responsibility to make any and all arrangements necessary in order to access Our Site.

3.3 Access to Our Site is provided "as is" and on an "as available" basis. We may alter, suspend or discontinue Our Site (or any part of it) at any time and without notice. We will not be liable to you in any way if Our Site (or any part of it) is unavailable at any time and for any period.

3.4 Use of Our Site is subject to Our Website Terms of Use

<https://eversmart.co/website-terms-of-use/>. Please ensure that you have read them carefully and that you understand them.

#### **4. Business Customers and Consumers**

- 4.1 These Terms of Sale apply to business customers only. These Terms of Sale do not apply to individual consumers purchasing Goods for personal use (that is, not in connection with, or for use in, their trade, business, craft, or profession). If you are a consumer, please consult Our Consumer Terms of Sale <https://eversmart.co/tos-goods-to-consumers/>.
- 4.2 These Terms of Sale constitute the entire agreement between Us and you with respect to your purchase of Goods from Us. You acknowledge that you have not relied upon any statement, representation, warranty, assurance, or promise made by or on behalf of Us that is not set out in these Terms of Sale and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based upon any statement herein.

#### **5. International Customers**

Please note that We only deliver within the United Kingdom.

#### **6. Goods, Pricing and Availability**

- 6.1 We make all reasonable efforts to ensure that all descriptions and graphical representations of Goods available from Us correspond to the actual Goods. Please note, however, the following:
- 6.1.1 Images of Goods are for illustrative purposes only. There may be slight variations in colour between the image of a product and the actual product sold due to differences in device displays and lighting conditions;
- 6.1.2 Images and/or descriptions of packaging are for illustrative purposes only, the actual packaging of Goods may vary.
- 6.2 Please note that sub-Clause 6.1 does not exclude Our responsibility for mistakes due to negligence on Our part and refers only to minor variations of the correct Goods, not to different Goods altogether. Please refer to Clause 10 if you receive incorrect Goods (i.e. Goods that are not as described).
- 6.3 Where appropriate, you may be required to select the required model, colour, number, of the Goods that you are purchasing.
- 6.4 We cannot guarantee that Goods will always be available. Stock indications are not provided on Our Site.
- 6.5 Minor changes may, from time to time, be made to certain Goods between your Order being placed and Us processing that Order and dispatching the Goods, for example, to reflect changes in relevant laws and regulatory requirements, or to address particular technical or security issues. Any such changes will not change any main characteristics of the Goods and will not normally affect your use of those Goods. However, if any change is made that would affect your use of the Goods, suitable information will be provided to

you.

- 6.6 We make all reasonable efforts to ensure that all prices shown on Our Site are correct at the time of going online. We reserve the right to change prices and to add, alter, or remove special offers from time to time and as necessary. Changes in price will not affect any order that you have already placed (please note sub-Clause 6.10 regarding VAT, however).
- 6.7 All prices are checked by Us before We accept your Order. In the unlikely event that We have shown incorrect pricing information, We will contact you in writing to inform you of the mistake. If the correct price is lower than that shown when you made your Order, We will simply charge you the lower amount and continue processing your Order. If the correct price is higher, We will give you the option to purchase the Goods at the correct price or to cancel your Order (or the affected part of it). We will not proceed with processing your Order in this case until you respond. If We do not receive a response from you within 7 days, We will treat your Order as cancelled and notify you of this in writing.
- 6.8 In the event that the price of Goods you have ordered changes between your Order being placed and Us processing that Order and taking payment, you will be charged the price shown on Our Site at the time of placing your Order.
- 6.9 Prices on Our Site are shown both exclusive of and inclusive of VAT. If the VAT rate changes between your Order being placed and Us taking payment, the amount of VAT payable will be automatically adjusted when taking payment.
- 6.10 Delivery charges are not included in the price of Goods displayed on Our Site. Delivery options and related charges will be presented to you as part of the order process.

## **7. Orders – How Contracts Are Formed**

- 7.1 Our Site will guide you through the ordering process. Before submitting your Order you will be given the opportunity to review your Order and amend it. Please ensure that you have checked your Order carefully before submitting it.
- 7.2 If, during the order process, you provide Us with incorrect or incomplete information, please contact Us as soon as possible. If We are unable to process your Order due to incorrect or incomplete information, We will contact you to ask to correct it. If you do not give Us the accurate or complete information within a reasonable time of Our request, We will cancel your Order and treat the Contract as being at an end. If We incur any costs as a result of your incorrect or incomplete information, We may pass those costs on to you.
- 7.3 No part of Our Site constitutes a contractual offer capable of acceptance. Your Order constitutes a contractual offer that We may, at Our sole discretion, accept. Our acknowledgement of receipt of your Order does not mean that We have accepted it. Our acceptance is indicated by Us sending you an Order Confirmation by email. Only once We have sent you an Order Confirmation will there be a legally binding Contract between Us and you.
- 7.4 Order Confirmations shall contain the following information:

- 7.4.1 Your Order Number;
  - 7.4.2 Confirmation of the Goods ordered including full details of the main characteristics of those Goods;
  - 7.4.3 Fully itemised pricing for the Goods ordered including, where appropriate, taxes, delivery and other additional charges;
  - 7.4.4 Estimated delivery date(s);
- 7.5 In the unlikely event that We do not accept or cannot fulfil your Order for any reason, We will explain why in writing. No payment will be taken under normal circumstances. If We have taken payment any such sums will be refunded to you as soon as possible and in any event within 7 days.
- 7.6 Any refunds due under this Clause 7 will be made using the same payment method that you used when ordering the Goods.

## **8. Payment**

- 8.1 Payment for Goods and related delivery charges must always be made in advance and you will be prompted to pay during the order process. Your chosen payment method will not be charged until We dispatch your Goods.
- 8.2 Payment must be made in full for your Order, without any set-off, counterclaim, deduction, or withholding (except where any deduction or withholding of tax is required by law).
- 8.3 We accept the following methods of payment on Our Site:
- 8.3.1 PayPal;
  - 8.3.2 Stripe;

## **9. Delivery, Risk and Ownership**

- 9.1 All Goods purchased through Our Site will normally be delivered within 30 calendar days after the date of Our Order Confirmation unless otherwise agreed or specified during the Order process (subject to delays caused by events outside of Our control, for which see Clause 12).
- 9.2 If We are unable to deliver the Goods on the delivery date, the following will apply:
- 9.2.1 If no one is available at your delivery address to receive the Goods and the Goods cannot be posted through your letterbox, We will leave a delivery note explaining how to rearrange delivery or where to collect the Goods;
  - 9.2.2 If you do not collect the Goods or rearrange delivery within 14 days, We will contact you to ask you how you wish to proceed. If We cannot contact you or arrange redelivery or collection, We will treat the Contract as cancelled and recover the Goods. If this happens, you will be refunded the purchase price of the Goods themselves, but not the

cost of delivery. We may also bill you for any reasonable additional cost that We incur in recovering the Goods.

- 9.3 In the unlikely event that We fail to deliver the Goods within 30 calendar days of Our Order Confirmation (or as otherwise agreed or specified as under sub-Clause 10.1), if any of the following apply you may treat the Contract as being at an end immediately:
- 9.3.1 We have refused to deliver your Goods; or
  - 9.3.2 In light of all relevant circumstances, delivery within that time period was essential; or
  - 9.3.3 You told Us when ordering the Goods that delivery within that time period was essential.
- 9.4 If you do not wish to cancel under sub-Clause 9.3 or if none of the specified circumstances apply, you may specify a new (reasonable) delivery date. If We fail to meet the new deadline, you may then treat the Contract as being at an end.
- 9.5 You may cancel all or part of your Order under sub-Clauses 9.3 or 9.4 provided that separating the Goods in your Order would not significantly reduce their value. Any sums that you have already paid for cancelled Goods and their delivery will be refunded to you within 7 days. Please note that if any cancelled Goods are delivered to you, you must return them to Us or arrange with Us for their collection. In either case, We will bear the cost of returning the cancelled Goods.
- 9.6 Delivery shall be deemed complete once We have delivered the Goods to the address you have provided.
- 9.7 Ownership of the Goods passes to you once We have received payment in full of all sums due (including any applicable delivery charges).
- 9.8 Responsibility for (the risk in) the Goods will pass to you [when delivery is complete, as defined in sub-Clause 9.6.
- 9.9 Any refunds due under this Clause 9 will be made using the same payment method that you used when ordering the Goods.

## **10. Faulty, Damaged or Incorrect Goods**

- 10.1 We warrant that the Goods, on delivery, and for a period of 1 year thereafter (the "Warranty Period") shall be as described; be free from material defects in design, material, and workmanship; be of satisfactory quality (as defined in the Sale of Goods Act 1979); and be fit for any purpose described by Us.
- 10.2 If any Goods you have purchased do not comply, subject to sub-Clause 10.3 and your compliance with sub-Clauses 10.2.1 to 10.2.3, We shall repair the affected Goods, replace them, or issue you with a full refund for the price of the affected Goods. The following conditions shall apply:
- 10.2.1 You must give Us written notice of the non-compliance [during the Warranty Period within a reasonable time of discovering it;
  - 10.2.2 You must return the Goods in question to Us at Our expense (see sub-Clause 10.6 for more information); and

- 10.2.3 You must give Us a reasonable opportunity to examine the Goods in question.
- 10.3 We will not be liable for any non-compliance with the provisions of sub-Clause 10.1 of any Goods if any of the following apply:
- 10.3.1 You have made any further use of the affected Goods after giving Us written notice of the non-compliance under sub-Clause 10.2.1;
- 10.3.2 The non-compliance has arisen as a result of your failure to follow Our instructions on the correct usage, maintenance, installation, storage of the affected Goods or, where no instructions are provided, your failure to follow good trade practice with respect to the same;
- 10.3.3 The non-compliance has arisen as a direct result of any information (incorrect or otherwise) provided by you to Us;
- 10.3.4 You have made any unauthorised alterations or repairs to the affected Goods; or
- 10.3.5 The non-compliance is the result of normal wear and tear, deliberate damage, negligence, or abnormal or unsuitable working conditions.
- 10.4 The terms of this Clause 10 shall also apply to any Goods which are repaired or replaced by Us under sub-Clause 10.2.
- 10.5 Except as provided in this Clause 10, We shall have no further liability to you with respect to Goods which do not comply with sub-Clause 10.1.
- 10.6 To return Goods to Us for any reason under this Clause 10, please contact Us at [contact\\_us@eversmart](mailto:contact_us@eversmart) to arrange for a collection and return. We will be fully responsible for the costs of returning Goods under this Clause 10 and will reimburse you where appropriate.
- 10.7 Refunds (whether full or partial) under this Clause 10 will be issued within 7 days of the day on which We agree that you are entitled to the refund.
- 10.8 Any and all refunds issued under this Clause 10 will include all delivery costs paid by you when the Goods were originally purchased.
- 10.9 Refunds under this Clause 10 will be made using the same payment method that you used when ordering the Goods.

## **11. Our Liability**

- 11.1 Subject to sub-Clause 11.4, We will not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, interruption to business, for any loss of business opportunity, or for any indirect or consequential loss arising out of or in connection with any contract between you and Us.
- 11.2 Subject to sub-Clause 11.4, Our total liability to you for all other losses arising out of or in connection with any contract between you and Us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be either £50 or 1% of the total sums paid by you for the Goods under the contract in question, whichever is the greater sum.
- 11.3 Except to the extent expressly set out in sub-Clause 10.1, the terms implied by Sections 13 to 15 of the Sale of Goods Act 1979 and by Sections 3 to 5 of the

Supply of Goods and Services Act 1982 are excluded.

- 11.4 Nothing in these Terms of Sale seeks to limit or exclude Our liability for death or personal injury caused by Our negligence (including that of Our employees, agents or sub-contractors); for fraud or fraudulent misrepresentation; for breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; for defective products under the Consumer Protection Act 1987; or for any other matter in respect of which liability cannot be excluded or restricted by law.

## **12. Events Outside of Our Control (Force Majeure)**

- 12.1 We will not be liable for any failure or delay in performing Our obligations where that failure or delay results from any cause that is beyond Our reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, strikes, lock-outs or other industrial action by third parties, riots and other civil unrest, fire, explosion, flood, storms, earthquakes, subsidence, acts of terrorism (threatened or actual), acts of war (declared, undeclared, threatened, actual or preparations for war), epidemic or other natural disaster, or any other event that is beyond Our reasonable control.

- 12.2 If any event described under this Clause 12 occurs that is likely to adversely affect Our performance of any of Our obligations under these Terms of Sale:

12.2.1 We will inform you as soon as is reasonably possible;

12.2.2 We will take all reasonable steps to minimise the delay;

12.2.3 To the extent that We cannot minimise the delay, Our affected obligations under these Terms of Sale (and therefore the Contract) will be suspended and any time limits that We are bound by will be extended accordingly;

12.2.4 We will inform you when the event outside of Our control is over and provide details of any new dates, times or availability of Goods as necessary;

12.2.5 If the event outside of Our control continues for more than 28 days We will cancel the Contract and inform you of the cancellation. Any refunds due to you as a result of that cancellation will be paid to you as soon as is reasonably possible and in any event within 7 days of the date on which the Contract is cancelled and will be made using the same payment method that you used when ordering the Goods;

12.2.6 If an event outside of Our control occurs and continues for more than 28 days and you wish to cancel the Contract as a result. Please contact Us directly to cancel, please use the following details:

Telephone: 07307 365 247;

Email: [contact\\_us@eversmart.co](mailto:contact_us@eversmart.co);

In each case, providing Us with your name, address, email address, telephone number, and Order Number. Any refunds due to you as a result of such cancellation will be paid to you as soon as is reasonably

possible and in any event within 7 days of the date on which the Contract is cancelled and will be made using the same payment method that you used when ordering the Goods.

### **13. Communication and Contact Details**

- 13.1 If you wish to contact Us with general questions or complaints, you may contact Us by telephone at 07307 365 247, by email at [contact\\_us@eversmart.co](mailto:contact_us@eversmart.co)
- 13.2 For matters relating the Goods or your Order, please contact Us by telephone at 07307 365 247, by email at [contact\\_us@eversmart.co](mailto:contact_us@eversmart.co)
- 13.3 For matters relating to cancellations, please contact Us by telephone at 07307 365 247, by email at [cancel\\_order@eversmart.co](mailto:cancel_order@eversmart.co), or refer to the relevant Clauses above.

### **14. Complaints and Feedback**

- 14.1 We always welcome feedback from Our customers and, whilst We always use all reasonable endeavours to ensure that your experience as a customer of Ours is a positive one, We nevertheless want to hear from you if you have any cause for complaint.
- 14.2 All complaints are handled in accordance with Our complaints handling policy and procedure, available from <https://eversmart.co/complaints-policy/> and <https://eversmart.co/complaints-procedure/> respectively.
- 14.3 If you wish to give Us feedback on any aspect of your dealings with Us, please contact Us in one of the following ways:
  - 14.3.1 By email, addressed to [contact\\_us@eversmart.co](mailto:contact_us@eversmart.co);
  - 14.3.2 Using Our website contact form, following the instructions included with the form;
  - 14.3.3 By contacting Us by telephone on 07307 365 247.

### **15. How We Use Your Personal Information (Data Protection)**

- 15.1 All personal information that We may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and your rights under the GDPR.
- 15.2 For complete details of Our collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of your rights and how to exercise them, and personal data sharing (where applicable), please refer to Our Privacy Policy <https://eversmart.co/gdpr-policy/> and <https://eversmart.co/website-privacy-and-cookie-policy/>

### **16. Other Important Terms**

- 16.1 We may transfer (assign) Our obligations and rights under these Terms of



Sale (and under the Contract, as applicable) to a third party (this may happen, for example, if We sell Our business). If this occurs, you will be informed by Us in writing. Your rights under these Terms of Sale will not be affected and Our obligations under these Terms of Sale will be transferred to the third party who will remain bound by them.

- 16.2 You may not transfer (assign) your obligations and rights under these Terms of Sale (and under the Contract, as applicable) without Our express written permission.
- 16.3 The Contract is between you and Us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any provision of these Terms of Sale.
- 16.4 If any of the provisions of these Terms of Sale are found to be unlawful, invalid or otherwise unenforceable by any court or other authority, that / those provision(s) shall be deemed severed from the remainder of these Terms of Sale. The remainder of these Terms of Sale shall be valid and enforceable.
- 16.5 No failure or delay by Us in exercising any of Our rights under these Terms of Sale means that We have waived that right, and no waiver by Us of a breach of any provision of these Terms of Sale means that We will waive any subsequent breach of the same or any other provision.
- 16.6 We may revise these Terms of Sale from time to time in response to changes in relevant laws and other regulatory requirements. If We change these Terms of Sale as they relate to your Order, We will give you reasonable advance notice of the changes and provide details of how to cancel if you are not happy with them. If you do opt to cancel, you must return any affected Goods you have already received and We will arrange for a full refund (including delivery charges) which will be paid within 7 days of your cancellation and will be made using the same payment method that you used when ordering the Goods.

## **17. Law and Jurisdiction**

- 17.1 These Terms of Sale, and the relationship between you and Us (whether contractual or otherwise) shall be governed by, and construed in accordance with, English law.
- 17.2 Any disputes concerning these Terms of Sale, the relationship between you and Us, or any matters arising therefrom or associated therewith (whether contractual or otherwise) shall be subject to the exclusive jurisdiction of the courts of England and Wales.