

## EVERYSIGHT TERMS AND CONDITIONS OF SALE

**Last Updated: JUNE 12, 2018**

These Terms and Conditions of Sale and any other terms referred to in these terms ("**Terms**"), apply between you and Everysight Ltd., (referred to as "**Everysight**" or "**we**"), when you order or purchase Everysight Raptor and/or accessories or Raptor DK (software development kit) (collectively the "**Products**") from our Site or from a representative of Everysight. Everysight may change these Terms from time-to-time in its discretion, provided that the version then in effect at the time of order will apply.

Please carefully read these Terms. By ordering or purchasing Products, you are agreeing to these Terms. If you do not understand the Terms or do not accept any part of them, do not place an order or purchase. To place an order or purchase, you must be 18 years or older.

When you use any Everysight Services (through the Site or Products), your use is subject to the applicable terms and conditions for those Services, including the Terms of Service available at <https://everysight.com/legal/terms-of-service/> apply generally to the use of the Sites, Products and Services, and our Privacy Policy available at <https://everysight.com/legal/privacy-policy/> which explains our practices regarding the collection, use and disclosure of information that we receive from you. You should review this documents before placing an order for any Products through the Site. Capitalized terms not defined in these Terms will have the meaning set forth in the Terms of Service

### **1. Online Orders**

You can purchase the Products via our Site. When you submit your order on our Site, your payment information will be handled by an independent third party service provider, which operates under separate Terms and Conditions with respect to your online payment transaction. You understand that you are paying the entire purchase price towards the Products upfront, authorizing our payment processing partner to charge you for the full purchase price of the Products. Orders are subject to availability and we will indicate availability of an item ("in stock", "out of stock" or "pre-ordered") and estimated delivery time during the order process and in the confirmation email sent following completion of an order. We will notify you by email when your order has shipped.

### **2. Order Acceptance**

We reserve the right, at our sole discretion, to refuse or cancel any order for any reason, or to limit the quantity of Products sold to you. You will be charged at the time you place your order, not when your order is shipped. Some situations that may result in your order being canceled include limitations on quantities available for purchase, inaccuracies or errors in our product or pricing information, or problems identified by our credit and fraud avoidance system. We will contact you if all or any portion of your order is canceled. If your order is canceled after your credit card (or other payment account) has been charged, we will issue a credit refund to your credit card (or other applicable payment account) in the amount of the charge. Prices, specifications and configurations are subject to change without notice, and Everysight reserves the right at any time in its sole discretion and without notice to correct any errors, inaccuracies or omissions to the information on the Site.

### **3. Prices, Taxes and extra charges**

Prices advertised on our Site are subject to change without notice, and do not include shipping or applicable country or region taxes, which may be added to the price you pay and will be usually calculated prior to checkout. However, you are responsible for, and shall pay, any applicable taxes and duties that may be applicable to the sale and/or delivery of the Products and therefore Everysight reserves the right to revise its price after the execution of an order to include any and all taxes or duties that may become due hereunder. Unless otherwise specified, all prices, charges and refund amounts are in U.S. Dollars, and Everysight is not responsible for changes in currency exchange rates or transaction fees.

### **4. Changes to Orders Prior to Shipment**

You may request to cancel your order or change the time or place of delivery of your order at any time prior to shipment by contacting us at [support@everysight.com](mailto:support@everysight.com). You will be responsible for any additional charges due to changes in delivery. In the event that you are entitled to a refund, Everysight will use best commercial efforts to process your refund within 14 days following receipt of a cancellation request.

### **5. Delivery of Products**

By placing an order for our Products, you are acknowledging and agreeing to support a new Product. You understand that the Products are under development, and numerous technical, financial, and practical obstacles may interfere with their delivery to you. We will use reasonable commercial efforts to deliver the Products within the timelines estimated in the order form. You understand that all scheduled shipment dates are estimates only and not guaranteed. We'll make reasonable efforts to meet the scheduled shipment dates, but in no event will we be liable for any loss, damage, or penalty resulting from any delay in shipment or delivery.

In case of any unforeseen delay, Everysight will keep you updated on progress using the email address associated with your Account and notify you of your options, including, if appropriate under the circumstances, the ability to cancel your order. In the event of inconvenience due to any unforeseen delay in the timeline, please inform us at [support@everysight.com](mailto:support@everysight.com) and we will make reasonable efforts to resolve your issue.

Everysight will deliver Products to the address you provide at the time of order. Note that we cannot deliver to a PO Box, and may not be able to deliver to all locations. If Everysight does not offer shipping to the address indicated, you will be sent a notice and the order will not be processed. Please ensure that your information is accurate, as Everysight cannot be responsible for delivery problems due to inaccurate information. You will be charged for extra shipping costs incurred for if your order is not delivered successfully due to errors in the information you provide.

Title and risk of loss to the Products passes to you upon delivery. You should inspect all packages and Products for shipping damage upon receipt (except for latent damage). Everysight must be notified of any shipping damages or errors within 5 days of delivery to obtain full replacement or credit and after this time frame the Products shipped and delivered to you will be deemed to have been delivered and accepted by you.

## 6. Returns and Refunds

If you change your mind, we offer you the right for a limited time to return unopened Products. Products may be returned to your original seller within 14 days from delivery (as shall be indicated by the applicable shipping agent), provided the Product (i) is unused and in its original unopened packaging with all contents and (ii) has not been designated by us as non-returnable. To return a Product, you must first contact your original seller or Everysight at [support@everysight.com](mailto:support@everysight.com) to request a return merchandise authorization (“RMA”). Everysight or the original seller shall provide you with RMA instructions which you will need to comply with when returning the Products. Authorized returns will be eligible for a refund of your purchase price, excluding shipping costs and non-refundable taxes. Refunds will be issued within 14 days of receipt of the returned Product, with payment or credit issued based on the method of payment you used for your original purchase.

Everysight reserves the right to refuse to accept returns made without a valid RMA or not in compliance with the RMA instructions. Also, we may in our discretion charge a restocking fee of up to 50% of the purchase price of the Product, which will be deducted from any refund or otherwise accept returns of opened and/or used Products for a partial refund.

## 7. Export

The Products may be subject to the export laws and regulations of the United States. You shall be responsible for compliance with all export control laws and regulations of the U.S. Government and any other applicable governmental authority (including without limitation, the Export Administration Regulations and the International Traffic in Arms Regulations) (“Export Laws”). Neither the Products nor any direct product thereof nor any technical data related thereto may be: (i) exported or re-exported directly or indirectly in violation of any applicable Export Laws (including without limitation to any to any individual, entity or country prohibited by Export Laws, including by any U.S. sanctions program or to anyone on the SDN List, the Denied Persons List or Entity List or other export control lists); or (ii) used for any purposes prohibited by any applicable export laws. You represent and warrant that you are not identified on the U.S. Office of Foreign Assets Control’s Specially Designated Nationals List (“SDN List”), and are not on the U.S. Department of Commerce’s Denied Persons List or Entity List or any other U.S. export control list.

## 8. Limited One Year Device Warranty

Everysight warrants with respect to the Devices or any part thereof only as set forth under the Limited Warranty available at <https://everysight.com/legal/warranty/> (“Limited Warranty”). As more particularly set forth under the Limited Warranty, if Everysight determines that your Device falls within the terms of the Limited Warranty, Everysight, at its discretion, shall repair or replace the Device. THE LIMITED WARRANTY APPLICABLE TO A DEVICE REPRESENTS EVERYSIGHT’S ENTIRE REPRESENTATIONS, CONDITIONS, ENDORSEMENTS AND WARRANTIES TO YOU. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THIS WARRANTY. EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN THE LIMITED WARRANTY, EVERYSIGHT EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WHETHER STATUTORY OR IMPLIED. Some jurisdictions do not allow limitations on how long an implied warranty lasts so the above limitations may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary by jurisdiction.

## 9. Hazardous Activity Disclaimer

The Products are not designed for use in operating motor vehicles or aircraft, or any other activities where product failure reasonably could lead to injury to persons or loss of life or catastrophic property damage. Products are intended to be used only as a travel aid and must not be used for any purpose requiring precise measurement of direction. ACCORDINGLY, EVERYSIGHT DISCLAIMS ANY AND ALL LIABILITY FROM AND YOU ASSUME ALL RISK OF USE OF THE PRODUCT IN SUCH HAZARDOUS ACTIVITIES.

## 10. Limitation of Liability

EVERYSIGHT AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, LICENSORS, DISTRIBUTORS AND SUPPLIERS (COLLECTIVELY, "EVERYSIGHT PARTIES"), WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, OR THE COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE PRODUCT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT EVERYSIGHT PARTIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL EVERYSIGHT PARTIES' TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE PRODUCT EXCEED THE AMOUNT YOU HAVE ACTUALLY PAID TO EVERYSIGHT FOR THE PRODUCT GIVING RISE TO THE LIABILITY.

Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, and we do not exclude or limit in any way our liability to you where it would be unlawful to do so. The above limitations may not apply to you in which case such limitation or exclusion shall apply to maximum extent permitted by applicable law.

## 11. Dispute Resolution

Same Dispute Resolution provisions provided under our Terms of Service shall apply on these Terms as well. Our goal is to provide you with great service, so we'll try our best to resolve any disagreements that you have with us. If we can't, then you and we both agree to resolve disputes related to your use of the Services or these Terms (each, a "Claim") in binding arbitration instead of court, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

- **What is arbitration?** Arbitration does not involve a judge or jury. Instead, a neutral person (the "arbitrator") hears each party's side of the dispute, and makes a decision that is finally binding on both parties. The arbitrator can award the same relief as a court could award, including monetary damages. While court review of an arbitration award is limited, if a party fails to comply with the arbitrator's decision, then the other party can have the arbitration decision enforced by a court. If for any reason a Claim proceeds in court rather than in arbitration, **you and we each waive any right to a jury trial.**
- **Can a Claim be part of a class action or similar proceeding?** No. You agree to resolve your Claims with us solely on an individual basis, and not as part of a class, representative or consolidated action. We agree to do the same. unless both you and Eversight otherwise agree in writing, the

arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding.

- **What rules apply in the arbitration?** The arbitration will be conducted under the American Arbitration Association (“AAA”) Consumer Arbitration Rules (the “AAA Rules”). The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879.
- **How will the arbitration be conducted? How much does it cost?** The arbitration will be conducted by the AAA or a comparable arbitration body in the event the AAA is unable to conduct the arbitration. The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA’s roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.
- **Arbitration Location and Procedure.** Unless you and Everysight otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and Everysight submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration
- **How do I start an arbitration proceeding?** A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules (The AAA provides a general [Demand for Arbitration](#)). To begin an arbitration proceeding against us, send a letter requesting arbitration and describing your Claim to Everysight LTD. Andrei Sakharov 9, Building 3, Floor 4 Advanced Technology Center, Haifa 3508409, Israel, as well as a copy via e-mail to [legal@everysight.com](mailto:legal@everysight.com). If we request arbitration against you, we will give you notice at the email address or street address you provided.
- **Fees.** Unless the arbitrator finds your Claim frivolous, we’ll pay for all filing, administration and arbitrator fees if your Claim is for less than \$10,000, and we won’t seek our attorneys’ fees and costs if we prevail in the arbitration
- **INSTRUCTIONS FOR OPTING-OUT OF ARBITRATION:** If you don’t want to agree to arbitrate your Claims as explained above, then you can opt-out of this arbitration agreement by notifying us of your decision in writing to Everysight LTD. Andrei Sakharov 9, Building 3, Floor 4 Advanced Technology Center, Haifa 3508409, Israel, as well as a copy via e-mail to [legal@everysight.com](mailto:legal@everysight.com). You must opt-out within **30 days** of the date you first agree to these Terms or any updated Terms. Unless you timely provide us with an Arbitration Opt-out Notice, ***you acknowledge and agree that you and Everysight are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.***

This Dispute Resolution section only applies to Claims between us and individual consumers, and is governed by The Federal Arbitration Act.



## **12. Governing Law**

These Terms and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions.

## **13. Choice of Forum**

The exclusive jurisdiction and venue for all Claims that are not subject to arbitration, including any Claims brought on behalf of a company or other legal entity, will be the state and federal courts located in San Francisco, California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

## **14. General Terms**

These Terms constitute the entire and exclusive understanding and agreement between Everysight and you regarding the Products, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Everysight and you regarding the Product. If any provision of these Terms is held invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Everysight's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Everysight may freely assign or transfer these Terms without restriction. You may, only where permitted under local law, transfer our Limited Warranty to a person who has acquired the Product; we may require the person to whom the Limited Warranty is transferred to provide reasonable evidence that they are now the owner of the relevant Product. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Everysight shall not be liable for any alleged loss or damages resulting from any failures or delays in performance due to government action, earthquake, fire, flood, epidemic, quarantine, energy crisis, unavailability of supplies, strike, labor trouble, acts of terror, war, riot, accident, delay in transportation, or any other causes beyond Everysight's reasonable control.

Everysight's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Everysight. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.