

# Eurofiber general terms & conditions



Version: 1 December 2021

# EUROFIBER GENERAL TERMS & CONDITIONS VERSION 1 DECEMBER 2021

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## 1. General

### 1.1. Purpose

The purpose of these Eurofiber General Terms & Conditions (hereinafter: General Terms & Conditions) is to explain the Eurofiber business framework to you as our customer/ partner. It defines business rules from the moment you order one or more of our Services up until the cancellation of one or more of our Services and the General Terms & Conditions apply to every Order placed with Eurofiber as well as to all legal relationships arising therefrom or connected therewith.

### 1.2. Change Management

Eurofiber may amend these General Terms & Conditions, although naturally only in the case of new Agreements. Any amendment shall be notified at least 30 (thirty) days before it becomes effective.

### 1.3. Confidentiality

1.3.1. Each Party agrees to maintain in strict confidence all Proprietary Information of the other Party which is disclosed in connection with the Agreement. Neither Party shall disclose to any third party Proprietary Information without the express prior written consent of the other Party.

1.3.2. All Proprietary Information shall remain the property of the disclosing Party, shall only be used by the receiving Party for the execution of the Agreement, and such Proprietary Information, including all copies thereof, shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the first request of the disclosing Party.

1.3.3. The provisions of article 1.3.1 and article 1.3.2 shall not apply to any Proprietary Information which:

- becomes publicly available other than through a breach of this article 1.3 by the receiving Party;
- is required to be disclosed by a governmental or judicial law, order, ruling or regulation;
- is demonstrably independently developed by the receiving Party; or
- becomes available to the receiving Party without any restriction imposed by a third party.

### 1.4. Definitions

In these General Terms & Conditions the following terms and phrases have the following meanings:

Demarcation Point	The Demarcation Point is the interface between the Eurofiber Network and the Customer's network and marks the transition between the Customer's area(s) of responsibility and those of Eurofiber.
Engineering and Installation Fee	The one-time fee that Eurofiber will charge the Customer in order to connect and/or activate the Service(s).
Service(s)	One or more network-related services based on fiber delivered by Eurofiber to the Customer. Each separate Service has its own "Service Description & Service Level Agreement" which forms an integral part in full of the Agreement. Eurofiber may determine entirely independently which part of the Eurofiber network (which fibers) is deployed for a particular Service and may independently implement changes in the interim in that regard (a different route or different fibers, for example) without this affecting or otherwise prejudicing the specifications of the Service.
Eurofiber	Eurofiber Nederland B.V. and/or an enterprise affiliated to it, as set forth in the Order.
Eurofiber Equipment	Equipment (including any software) owned or licensed by Eurofiber and placed on the Customer's location by Eurofiber for the provision of the Service(s).
Eurofiber Network	The fiber-optic network (including all passive and active (network) elements) which is owned by Eurofiber and is maintained, managed and operated by Eurofiber.
Effective Delivery Date	The date on which a particular Service is delivered by Eurofiber and accepted by the Customer (in accordance with Article 4).
Average Delivery Time	The period of time estimated on the basis of historical data and dependent on the Locations and routes of the Eurofiber Network necessary to deliver the Service(s) as specified in the Order.

Implementation Fee	The compensation for on-premises infrastructure, including on-premises cabling, patches and/or interconnection.
Term	The term for purchase of the Service by the Customer as set forth in the Order.
Fee	The (one-off and/or periodic) compensation for the Service as set forth in the Order.
Prepaid fee	The (one-off) compensation payable in advance by the Customer for the Service, if applicable, as set forth in the Order.
Customer	A Party that has entered into an Agreement with Eurofiber pursuant to which it has purchased one or more Services.
Location(s)	The location(s) where the Service must be delivered or provided at the Customer's request. A Location may be subject to rights vested in the Customer as well as any third party (such as property owners, for example) that must be respected by Eurofiber and the Customer.
On-net Location	A location is considered On-net if no permit is required in order to implement the Service (for digging and/or excavation work, for example). Authorisation by third parties (such as property owners, for example) may still be required, however.
Order	A request by the Customer for one or more Service(s), also including, for example, any follow-up, additional or altered request made using the Eurofiber template documentation signed by the Customer which request has been accepted in writing by Eurofiber.
Delivery Date	The date on which Eurofiber intends to deliver the Service(s) to the Customer, whether or not determined by Eurofiber as a result of the Site Survey, which date has been communicated by Eurofiber to the Customer in writing.
Agreement	The agreement between Eurofiber and the Customer, comprising the Order, the General Terms & Conditions and the applicable Service Descriptions & Service Level Agreement.
Force Majeure Event	Any occurrence beyond a Party's reasonable control affecting the performance of its obligations under the Agreement including, but not confined to, a refusal or failure by competent authorities to grant the necessary authorisations and/or permits (in good time), a failure to obtain access to buildings (in a timely manner), a failure to organise the dependencies by or on behalf of the Customer (in good time), labour disputes, time lost through frost, epidemic, war, riot, civil disturbance, sabotage or adverse weather conditions.
Parties	Eurofiber and the Customer jointly. Eurofiber and the Customer are also individually referred to as a Party.
Ready for Service	The Service meets the technical specifications as stated in the relevant Service Description & Service Level Agreement.
Ready for Service Date	The date, notified as such by Eurofiber to the Customer, on which the Service is Ready for Service.
Site Survey	The process whereby the Location(s) and the route of the Eurofiber Network are assessed by or on behalf of Eurofiber and whereby agreements are made or can be made with the Customer and any third party in whom rights in respect of a Location are vested.
Event of Default	A structural breach of any material provision or obligation under the Agreement, including the failure to make (timely) payment due under the Agreement.
Proprietary Information	All information which relates to the business affairs, prices, product developments, network information, trade secrets, know-how and (personnel) data of either Party as well as any information which may reasonably be regarded as proprietary information of either Party, and all information (in whatever form) designated as confidential or proprietary by the Parties.

#### **Definitions specifically for the use of data:**

Supplier	A Party that is engaged by Eurofiber to carry out work or services for Eurofiber in the course of providing the Service.
Dutch Data Protection Authority	The supervisory authority referred to in Article 4(21) of the GDPR.
GDPR	The General Data Protection Regulation.
Data Subject	An identified or identifiable natural person. This may be a (representative of the) Customer or Supplier.
Personal Data Breach	A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
Customer	The party on whose behalf Eurofiber processes personal data. The Customer can be the controller as well as another Processor.
Agreement	The Agreement between Eurofiber and the Customer.
Personal Data	Any information relating to an identified or identifiable natural person, as described in Article 4(1) of the GDPR, which Eurofiber processes in connection with the performance of its obligations arising from the Agreement.
Privacy Notice	The notice by Eurofiber in which, among other things, it provides information regarding the intended use of its product or service, security measures which are implemented, Personal Data Breaches, certifications and treatment of rights of Data Subjects.

Processor	The party which, as supplier in relation to the performance of the Agreement, processes Personal Data in its role as processor.
Data Processing Agreement	The standard processing-related clauses which, together with the Privacy Statement (or comparable information) of the Processor, constitute the contract (Data Processing Agreement) referred to in Article 28(3) of the GDPR.
Processing	Any operation or set of operations which is performed on Personal Data or on sets of Personal Data in connection with the Agreement, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
Controller	The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.

## 1.5. Conclusion of Agreement

1.5.1. For each new Customer Eurofiber performs a check on creditworthiness prior to the conclusion of an Agreement. Each Agreement shall be subject to the condition subsequent that the Customer meets Eurofiber's requirements in respect of creditworthiness.

1.5.2. The Agreement shall only be effective and binding between the Customer and Eurofiber if the Order is signed by an authorised representative of both Parties.

## 1.6. Suspension

1.6.1. Eurofiber may suspend its obligations pursuant to the Agreement, where possible after sending a notice (of default) to the Customer, unless performance is permanently impossible:

- a. upon the occurrence of an Event of Default attributable to the Customer;
- b. If the Customer does not grant Eurofiber (timely) access to the Locations or if any equipment and/or other network components are not ready (in good time) so that Eurofiber is not able to deliver the Service(s);
- c. upon the revocation or expiry of any telecommunications authorisation, registration or licence that may be required for the Customer to fulfil its obligations under the Agreement and to use the Service(s);
- d. if Eurofiber thereby complies with or is thereby obliged to comply with an order, instruction or request of any public authority; and
- e. if the Customer has filed a petition for its own bankruptcy or has requested a moratorium on payments, if the Customer has been declared bankrupt or granted a moratorium on payments, if an administrator or trustee has been appointed for the Customer's business, or if the Customer is otherwise no longer able to fulfil its payment obligations towards its creditors.

## 1.7. Liability and Indemnity

1.7.1. Eurofiber's liability under an Agreement is limited to direct loss and damage only and will not exceed the total value of an Order, nonetheless with a maximum of EUR 50,000 per event or related series of events and EUR 100,000 per period of twelve months.

Direct loss and damage will only consist of the following:

- a. the reasonable costs the Customer has incurred in order to ensure that Eurofiber's performance conforms to the Agreement;
- b. the reasonable costs the Customer has incurred in order to determine the cause and the scale of the loss and damage, insofar as the determination relates to direct loss or damage;
- c. the reasonable costs the Customer has incurred in order to prevent or restrict any loss or damage, insofar as the Customer demonstrates that such costs have resulted in restriction of the direct loss or damage; and
- d. the reasonable loss or damage due to damage to tangible property of the Customer which loss or damage is the direct result of activities of or on behalf of Eurofiber directly connected with the execution of the Agreement.

1.7.2. Eurofiber's liability for loss or damage resulting from death or personal injury shall be limited to the amount claimable under the liability or indemnity insurance taken out by Eurofiber.

1.7.3. Eurofiber is not liable for any indirect loss and damage, including but not limited to loss or damage due to loss of operating time, loss of goodwill, loss of data, loss of profits, lost savings, damage through business interruptions and any claims of clients of the Customer. It is solely the responsibility of the Customer to protect and store its information in an efficient manner. The Customer is responsible for making the necessary back-ups of such information.

1.7.4. The limitation of liability referred to in this article does not apply insofar as the loss or damage is due to wilful misconduct or gross negligence committed by managers or supervisors of Eurofiber.

1.7.5. Notwithstanding the provisions in this article 1.7, Eurofiber is not liable for any claim for compensation, irrespective of the grounds on which a claim may be based.

1.7.6. As a condition for the creation of any right to compensation the Customer will report the occurrence of such loss or damage as soon as possible in writing to Eurofiber. Claims for compensation shall lapse by the mere expiry of 24 months after the claim has arisen.

## 1.8. Term and Termination

1.8.1. An Agreement may only be terminated in accordance with the provisions in this article 1.8.

1.8.2. An Agreement is entered into for the Term.

1.8.3. If the Customer does not wish to extend the Agreement, notice of termination of the Agreement must be given in writing at least one (1) month prior to the date on which the Term expires.

1.8.4. A Party is only entitled to give notice to terminate the Agreement in writing prematurely by registered letter in case:

- a. of an Event of Default by the other Party and said Party is in breach in this regard;
- b. of a Force Majeure Event that continues for at least sixty (60) days as a result of which a Party is not able to perform its (material) obligations pursuant to the Agreement;
- c. the other Party files a voluntary petition for bankruptcy or requests a moratorium on payments;
- d. the other Party becomes bankrupt or is granted a moratorium on payments;
- e. an administrator or trustee is appointed for the other Party;
- f. the other Party has liquidated its business and/or its legal entity.

1.8.5. Unless explicitly provided otherwise in writing in the Agreement, upon the termination of an Agreement all rights and obligations of the Parties thereunder shall terminate, without the Customer having any right to reimbursement by Eurofiber of the Prepaid Fee, the Fee and/or other payments, paid to Eurofiber in advance by the Customer.

1.8.6. Section 226 of Book 7 of the Dutch Civil Code applies by analogy. Therefore, a sale of (any part of) the Eurofiber Network shall not cause the Agreement and the obligations arising from it to terminate.

## 1.9. Intellectual Property

1.9.1. All intellectual property rights relating to the Services and the Eurofiber Network in whatever form, including, but not confined to, as-built drawings and maintenance data, shall at all times remain the property of Eurofiber or its licensors.

## 2. Miscellaneous

2.1. The articles which by their nature are intended to remain operative even after the termination of the Agreement, such as articles 1.3, 1.7 and 8, shall remain in force even after the Agreement has ended.

2.2. If any provision, covenant or condition in the Agreement is deemed to be invalid or unenforceable by a court, Eurofiber may replace such provision with a similar provision which is enforceable at law, without this affecting the legal validity of the remaining provisions in the Agreement.

2.3. The Agreement replaces all prior agreements, arrangements and commitments between the Parties with regard to the Service concerned.

2.4. The administrative records kept by Eurofiber constitute full and conclusive evidence between the Parties, subject to evidence to the contrary to be provided by the Customer.

2.5. Nothing contained in the Agreement may be deemed to constitute the establishment of a cooperation, a partnership association, joint venture, any other co-operative entity or agency agreement between the Parties for any purpose.

2.6. In case of a discrepancy between the provisions of the documents constituting the Agreement, the following order shall apply:

1. the Order;
2. the applicable Service Description;
3. the Service Level Agreement; and
4. these General Terms & Conditions.

2.7. These Eurofiber General Terms & Conditions are available in Dutch and English. In case of a dispute concerning the contents or meaning of these Eurofiber General Terms & Conditions only the Dutch version thereof pursuant to Dutch law will be binding.

2.8. Any dispute relating to or concerning the Agreement shall be governed by and construed exclusively in accordance with the laws of The Netherlands.

2.9. In the event of a dispute and/or conflict arising from or relating to the Agreement, the Parties agree to submit to the exclusive jurisdiction of the District Court of Midden-Nederland, The Netherlands, subject to Eurofiber's right to select instead the court in the place where the Customer has its registered office.

## 3. Compliance

### 3.1. Accountability

3.1.1. Eurofiber is accountable for a variety of aspects that Customers find important. Eurofiber proves that by being compliant to a variety of international standards, supported by certificates, declarations and reports. Our corporate certificates, declarations and reports are made available to you on our compliance page on our website.

3.1.2. The result of this order/ contract is a service level agreement in which we describe what you can expect from us during the course of our Service(s). Regarding the Eurofiber corporate certificates, declarations, reports as well as your service level agreements with Eurofiber, we offer you the right to audit Eurofiber. In case you wish to make use of this right, we will determine an audit scope and set-up a schedule with you.

2.1.3. For Business Units that have a ISAE3402 Type II report, Customers may request an annual ISAE3402 Type II carve-out. Specific Customer controls may be added to ensure Customers can fully rely on our reporting. In case you wish to rely on our report, we will set-up a carve-out session with you to determine whether additional controls may be needed. The actions under c) and d) are only performed after prior execution of an NDA and a mutual agreement.

### 3.2. Complaints

3.2.1. Eurofiber will only process complaints that relate to the rendering or execution of the Service(s).

3.2.2. Complaints must be notified to Eurofiber in writing and within thirty (30) days after the occurrence of the event giving rise to the complaint. Eurofiber will respond to the complaint within fifteen (15) working days of receiving the complaint.

3.2.3. The submission of a complaint shall not cause the suspension of the Customer's obligations. All rights and obligations set forth in the Agreement shall remain in full force.

3.2.4. Complaints can be submitted in writing by sending an email to [complaints@eurofiber.com](mailto:complaints@eurofiber.com). When submitting a complaint, always include the following details so we can quickly assist you.

- Your first name and surname;
- Your email address (personal or work email);
- Company name;
- Phone number where we can reach you during the day;
- Description of your complaint;
- What would be your preferred solution.

## 4. Realisation of the Services

4.1. The Order contains the Average Delivery Time for the Services, unless the Parties agree on a specific date.

4.2. If the Demarcation Point of the Service(s) is not required at the standard location in the premises (as described in the Service Description & Service Level Agreement), a Site Survey will be performed in connection with the delivery of network-related services in consultation with the Customer (to the extent reasonably possible within ten (10) working days after the Order). The Average Delivery Time will then be converted into the Delivery Date. Eurofiber may charge the Customer an Implementation Fee where a Demarcation Point will not be delivered at the standard location. Eurofiber will inform the Customer in advance in the event an Implementation Fee is charged.

4.3. The Delivery Date will be communicated to the Customer in writing after the Order has been placed, or after the Site Survey has been performed.

4.4. The Customer may only cancel the Order in writing, without being required to pay any compensation to Eurofiber, within five (5) working days after Eurofiber has notified the Customer in writing of the Delivery Date in accordance with article 4.3:

- if the Delivery Date exceeds the Average Delivery Time by more than fourteen (14) days; or
- for On-net Locations if the Delivery Date exceeds the Average Delivery Time by more than seven (7) days (and only when the Customer has chosen a standard Demarcation Point).

4.5. Eurofiber reserves the right at all times to cancel an Order or to amend an Order in consultation with the Customer if Eurofiber cannot be expected according to standards of reasonableness and fairness (e.g. due to exceptionally high digging costs and implementation fee) to be bound by its offer.

4.6. If for reasons other than (i) a Force Majeure Event, or (ii) those attributable to the Customer (such as but not limited to denial of (timely) access to the Customer's premises and/or locations or the Customer's failure to ensure that Customer Equipment and/or other network components are ready in good time), the Effective Delivery Date:

- exceeds the Delivery Date, the Customer is only entitled to the liquidated damages as described below; and
- exceeds the Delivery Date by sixty (60) calendar days, the Parties are entitled to give notice to terminate the specific Order. If the Effective Delivery Date of the Service is after the Delivery Date, the Customer is entitled to liquidated damages in an amount equal to



two times the daily Fee, calculated on a pro rata basis, for each full working day that the Effective Delivery Date exceeds the Delivery Date, with a maximum of thirty (30) days.

4.7. Save for Eurofiber's obligation to pay liquidated damages as set out in article 4.6, Eurofiber is not liable toward the Customer for any other costs, loss and/or damage due to late delivery of the Service, unless in the event of wilful misconduct or gross negligence.

4.8. Prior to the Effective Delivery Date, Eurofiber shall test the Service(s) to verify that each Service is Ready for Service.

4.9. Eurofiber will inform the Customer of the Ready for Service Date. For a period of ten (10) working days commencing on the Ready for Service Date, the Customer is entitled to conduct on-site testing of the Service(s) allowing the Customer to establish that the Service(s) meet the specifications as described in the applicable Service Description and the Service Level Agreement.

4.10. If the Customer accepts a Service after the on-site tests referred to above have been carried out (cf. article 4.9), the Ready for Service Date will be deemed to be the Effective Delivery Date. In the event that the Customer (i) does not conduct on-site testing of the Service(s), or (ii) fails to prove to Eurofiber within ten (10) working days after the Ready for Service Date that the Service(s) does/do not meet the specifications as described in the applicable Service Description and the Service Level Agreement, the Ready for Service Date shall also be deemed to be the Effective Delivery Date.

4.11. If the Customer proves to Eurofiber within the aforementioned period of ten (10) working days that the Service(s) does/do not meet the specifications set out in the applicable Service Description and Service Level Agreement and informs Eurofiber in writing that it does not accept the Service(s), Eurofiber will take all necessary measures that may reasonably be expected of it to ensure that the Service(s) meet(s) the specifications in the applicable Service Description and Service Level Agreement and shall ensure that the Service(s) is/are tested again by it. Eurofiber will provide the results of the new tests to the Customer. The date on which the results of the new tests are provided to the Customer shall constitute the new Ready for Service Date. If a new Ready for Service Date is determined, the procedure described in article 4.9 to article 4.11, inclusive, will be repeated.

4.12. If Eurofiber cannot deliver a Service for reasons attributable to the Customer or for the Customer's risk, such as but not limited to denial of (timely) access to the Locations or the Customer's failure to ensure that (Customer) Equipment and/or other network components are ready (in good time), Eurofiber will inform the Customer thereof in writing. The Customer shall be deemed to have accepted the Service(s) one (1) month after the date of the aforementioned written notification to the Customer. The date of such written notification to the Customer shall constitute the Effective Delivery Date.

4.13. In the event Eurofiber provides the use of IP addresses in order to facilitate the rendering of the Service, these shall remain the property of Eurofiber and may be amended at any time. Eurofiber will notify any amendment in advance. In the event the Agreement and/or the Service is terminated, for whatever reason, Eurofiber may, where applicable, revoke or withdraw all identification data, IP addresses and/or codes immediately following the termination of the Agreement and/or Service.

## 5. Quality of the Services provided

5.1. The provision of services under the Agreement entails the right to use the Services as described (in detail) in the Order and the applicable Service Description and the Service Level Agreement during the Term. The Service meets Dutch legal and regulatory requirements.

5.2. The Customer acknowledges and explicitly accepts that the Agreement does not grant it more or other rights than as referred to in article 3.1 and does not grant it any right to use any other Service than explicitly agreed in the Order.

5.3. If and insofar as the Customer, as part of the Service(s), makes (partial) use of a network owned or services provided by any third party, the Eurofiber Service Description & Service Level Agreement will apply thereto, unless expressly agreed otherwise in the Agreement.

5.4. The Customer may only deploy the Service and any associated bandwidth for its own use (including use within the Customer's group of companies within the meaning of clause 2:24b BW). The Customer may not (re-)sell the Service and the associated bandwidth or otherwise make the same available to any third party without the express prior written consent of Eurofiber, which consent will not be withheld on unreasonable grounds.

5.5. The Customer may not use the Services for any action or operation contrary to the Agreement, the law, public morals and/or public order.

5.6. Unless explicitly agreed otherwise between the Parties, the Customer is responsible for obtaining (timely) access to the Location(s).

5.7. Provided that Eurofiber gives the Customer as much notice as reasonably practicable, Eurofiber may: (a) suspend a Service in the event of an emergency and/or to safeguard the integrity and security of the Eurofiber Network and/or conduct repair or emergency works; (b) for operational reasons, change the technical specification of the Service, provided that any such change does not materially decrease or impair performance of the Service; or (c) provide an alternative, equivalent service, where it becomes necessary to do so.

5.8. Eurofiber may change a Service (e.g. change a route) due to incomplete or inaccurate information provided by the Customer.

5.9. The Customer shall, upon reasonable notice from Eurofiber, allow Eurofiber (and/or its subcontractors) physical access to the Locations as may be reasonably necessary for the performance by Eurofiber of its obligations under this Agreement, including the installation or maintenance of Eurofiber Equipment and the recovery or removal of any Eurofiber Equipment.

5.10. If Eurofiber is required to install any Eurofiber Equipment at a Location, the Customer shall, prior to installation and at its own expense:

- a. obtain all necessary consents, including consents for any necessary alterations to buildings and any consents required for the installation and use of any Eurofiber Equipment over the Customer's network or at the Customer's Location;
- b. permit access to Eurofiber and its subcontractors to the relevant Location as may be required by Eurofiber or Eurofiber's subcontractor to install the Eurofiber Equipment;
- c. provide a suitable and safe working environment, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards;
- d. provide any electricity and telecommunication connection points required by Eurofiber;
- e. provide any openings in buildings required to connect such Eurofiber Equipment to appropriate telecommunications facilities;
- f. provide internal cabling between the Eurofiber Equipment and any equipment of the Customer, as appropriate;
- g. take up or remove any fitted or fixed floor coverings, ceiling tiles and partition covers in time to allow Eurofiber to undertake any necessary installation or maintenance Services and carry out afterwards any work that may be required to make good any cosmetic damage caused during the installation or maintenance Services.

The above actions must be completed in advance of any installation work by Eurofiber, otherwise the provisions in article 5.8 shall apply.

5.11. If the Customer delays or fails to perform its obligations under this article 5, then at Eurofiber's option, Eurofiber may either:

- a. change the delivery date or cancel the relevant Order(s) and invoice the Customer for any applicable termination Charges; or
- b. invoice the Customer for any reasonable Charges and expenses incurred for any work that is performed by Eurofiber on behalf of the Customer and that is directly attributable to the Customer's failure to perform or delay where such work is necessary to provide the Services. Except in case of an emergency, Eurofiber shall seek to notify the Customer in advance of its intention to invoke this article.

5.12. The Customer is responsible for the provision, installation, configuration, monitoring and maintenance of any equipment of the Customer connected to the Service. The Customer shall ensure that any equipment of the Customer connected to or used with the Service is connected and used in accordance with any instructions and safety and security procedures applicable to the use of that equipment.

## 6. Substitution or Relocation

6.1. If Eurofiber is required by order or other lawful action of any government or public authority or for technical reasons to substitute or relocate any part of the Eurofiber Network, including any of the facilities used or required in providing the Service(s), Eurofiber is entitled to proceed with such substitution or relocation provided that any such substitution or relocation (i) shall be performed and tested by Eurofiber to determine compliance with the specifications set forth in the relevant Service Description & Service Level Agreement following substitution or relocation, and (ii) shall not result in an unreasonable and material adverse change in the services rendered to the Customer. The Customer will be informed in advance by Eurofiber in the event of any substitution or relocation.

## 7. Pricing and Payment

7.1. Depending on the method of payment chosen by the Customer, the Customer shall pay the Engineering and Installation Fee to Eurofiber in addition to a Prepaid Fee or the Fee as set forth in the applicable Order.

7.2. In determining the Engineering and Installation Fee, Eurofiber assumes that the digging and construction activities, to the extent applicable, (i) do not involve any contaminated or polluted ground or buildings, such as but not limited to asbestos; (ii) do not involve the need for a crane and/or any roping down activities (iii) are (capable of being) carried out by a contractor appointed by Eurofiber and in accordance with the instructions provided by Eurofiber; and (iv) can be carried out on working days between 06.00 hours and 18.00 hours. Any additional costs incurred as a result of deviations from the assumptions mentioned above shall be charged separately by Eurofiber to the Customer on the basis of actual costs and shall be paid by the Customer.

7.3. The compensation for the Implementation Fee, including on-premises cabling, patches and/or interconnection, may be charged to the Customer separately by Eurofiber on the basis of actual costs and shall be paid by the Customer.

7.4. As from the Effective Delivery Date of the Service for each single Location that will be delivered, Eurofiber is entitled to invoice the Customer the Fee and the Implementation Fee, including on-premises cabling, patches and/or interconnection for the Service. Eurofiber is entitled to invoice the Engineering and Installation Fee as of the date of the Order.

7.5. Eurofiber is entitled to review the Fee each year and adjust it in line with the Consumer Price Index for all Households published by Statistics Netherlands, the so-called inflation adjustment. The inflation adjustment will be charged to the Customer by way of a separate one-off invoice or by way of an adjustment of the Fee going forward.

7.6. Eurofiber will prepare invoices for all payments required to be made by the Customer pursuant to the Agreement. All payments due to Eurofiber shall be made in full within thirty (30) days of the date of the invoice without any right of set-off.

7.7. In the event the Customer fails to make any payment under the Agreement when due, such amount shall accrue statutory interest



from the date such payment is due until the date the outstanding amount is fully paid.

7.8. All judicial and extrajudicial costs related to the collection of an amount owing to Eurofiber by the Customer shall be for the Customer's account. The extrajudicial costs shall amount to at least 15% of the amount due, with a minimum of €200 (in words: two hundred Euro), without prejudice to Eurofiber's right to claim any excess amount from the Customer in the event these costs are greater.

7.9. Payments made by the Customer to Eurofiber will firstly be allocated to meet any interest due and/or costs and only after this to settle the oldest outstanding amounts owed to Eurofiber, even if the Customer specifies otherwise on payment.

7.10. All amounts set forth in the Agreement are, to the extent applicable, exclusive of VAT and indexation.

7.11. If and to the extent the relevant (fiscal) authorities qualify the Service(s) provided under the Agreement as Leasing, the Parties hereby opt to charge VAT pursuant to Section 11 subsection 1 sub b under 5 of the Dutch Turnover Tax Act 1968. The Customer declares in this connection by signing the Agreement that it shall use the leased connection or space for activities that grant it an entitlement to claim deduction of all or almost all the VAT on costs incurred. In the event the leased connection or space is not used (any longer) by the Customer from any financial year for purposes for which there is an entitlement to deduction of all or almost all VAT on costs under Section 15 of the Dutch Turnover Tax Act 1968, without this being reasonably foreseeable in advance by the Customer, and the use of such connection or space in the following financial year similarly does not entitle the Customer to claim deduction of all or almost all the VAT on costs under Section 15 of the Dutch Turnover Tax Act 1968, then the exception concerning taxed lease shall no longer be applicable from the end of the financial year concerned. With effect from the date on which termination of the option for taxed lease becomes effective, the Customer shall be liable to pay Eurofiber an amount instead of VAT such that Eurofiber is fully compensated for any and all loss and/or damage sustained by Eurofiber due to the termination of the option.

## 8. Security & Privacy

### 8.1. Processing of personal data

8.1.1. Eurofiber processes Personal Data of and concerning Customers and their employees/representatives, users (such as website visitors, attendees of events and prospects) and Suppliers. Personal Data means any information relating to an identified or directly or indirectly identifiable natural person. The data concerned include the names and contact details of representatives of a Customer (an existing or prospective customer in the form of a company or government organization) its employees/representatives, representatives of an Supplier as well as other information such as IP addresses, which links a website user has clicked on and the length of time a user spent on a particular page of the website. The processing of personal data is governed by special statutory provisions. Where we process personal data we comply with all applicable legislation and regulations, including the General Data Protection Regulation (GDPR). Eurofiber processes personal data lawfully, fairly and transparently.

8.1.2. Eurofiber processes different types of Personal Data of and concerning the Customer, and their employees/representatives as follows:

- Contact and address details of (employees/representatives of) the Customer, including the contact representative's business email address and telephone number;
- The content of written or oral contacts with (various departments of) Eurofiber, including information shared by the Customer or the Customer's representative in connection with the preparation for or execution of an agreement;
- Agreement(s) with Eurofiber;
- Payment information, such as invoices and payment details, including name details, a creditor's position and bank account number;
- Notes made by engineers and Suppliers, including photos of the location where a fiber-optic connection is provided;
- The Customer's replies to additional questions, such as surveys concerning our services;
- Details about visits to our website(s), including IP addresses and navigation history.

8.1.3. Eurofiber processes different types of Personal Data of and concerning (employees/representatives of) Suppliers, as follows:

- Contact and address details of (employees/representatives of) the Supplier, including the contact representative's business email address and telephone number;
- Notes made by engineers and contractors concerning the work;
- Required qualifications of Suppliers, such as necessary diplomas, and disqualification, if any.

8.1.4. Eurofiber does not process any sensitive personal data of or concerning the Customer or Supplier.

### 8.2. Purposes and grounds of data processing

8.2.1. Eurofiber processes the personal data of the Customer for two main purposes: business operations and marketing.

8.2.2. These two main purposes include various specific sub-purposes. The GDPR specifies various grounds for the processing personal data. In addition to the basis of consent, Eurofiber applies two other bases for the various sub-purposes, as follows: necessary in order to comply with a legal obligation and necessary to satisfy a legitimate interest.

#### **Basis: consent**

- For the purpose of newsletter distribution;
- Storing answers to customer satisfaction survey questions in your name
- In order to offer customers and prospective customers of Eurofiber by email or by other means of communication content or services

which are (more) relevant to their interests.

- For the purpose of installing and reading tracking cookies and similar techniques via the website(s).

#### **Basis: legal obligation**

- In order to comply with legal and regulatory requirements, including, where necessary, meeting lawful requests by law enforcement or investigating authorities;
- To submit to inspection and auditing, including of a financial nature.

#### **Basis: necessary for legitimate interest**

- In order to facilitate the formation and execution of an agreement with the employer of the Data Subject;
- In order to provide the Services, including matching the Service to the needs and wishes of the Customer;
- In order to manage the infrastructure;
- In order to carry out (necessary) repairs;
- In order to implement digital as well as analogue security measures;
- In order to enable communication with existing Customers and their employees/representatives, including the distribution of service messages and communication for a commercial purpose.
- To deal with disputes or complaints;
- In order to administer the customer database, including details of prospective customers and former customers;
- In order to conduct or commission market and customer satisfaction research;
- For the purpose of product and service development as well as to assist in defining strategy;
- In order to make targeted offers to existing and former Customers;
- In order to monitor the use of our website(s) and to analyse, maintain, optimize and secure the website(s). Optimization also refers to the use of techniques for remembering visitors' data which ensure that they no longer need to enter the same data multiple times when downloading content. This is only done where the visitor has first given consent for the installation or reading of tracking cookies.
- In order to facilitate the exchange of personal data between the different companies operating in the Eurofiber group. In this way personal data may, for instance, be combined with other data that have been collected in connection with the use of our products or services (and/or products or services of other group companies). These data enable us to draw up a business customer profile so that we can be of better service to a Customer and can match our products and services even more closely to their wishes and needs.

8.2.3. Eurofiber processes the personal data of (personnel of) the Supplier only insofar as necessary for business operations, and only based on the necessity for performance of an agreement with the Supplier, or based on the necessity for satisfying its legitimate interest on the termination of a relationship in connection with disqualification.

### **8.3. Sharing and provision of personal data**

8.3.1. The Customer will ensure that its employees/representatives notify correct data, such as, name and address details and contact person details to Eurofiber on request. Any changes must be notified to Eurofiber in writing in a timely manner after the Customer has become aware of the change. Eurofiber's Privacy Notice available on our website contains information on how Eurofiber handles and protects personal data. The Customer will inform its employees/representatives of this Privacy Notice whose Personal Data is made available to Eurofiber.

8.3.2. Eurofiber is responsible under the GDPR for the processing of contact and payment details of its (business) Customers. Eurofiber is **not** responsible for the processing of personal data that Customers transmit and receive over its optical fiber network. Eurofiber is also **not a processor** for the personal data that are processed via customers' optical fiber, since Eurofiber has no control over, and no knowledge of, the data transmitted over the Eurofiber Network by the Customer.

8.3.3. Eurofiber may in some circumstances process Personal Data of the Customer for the purposes described in article 8.2. In these situations the Controller for the processing of Personal Data of the Customer as referred to in the GDPR is Eurofiber Nederland B.V. and other companies operating in the Eurofiber group (hereafter collectively: 'Eurofiber' or 'we' and/or 'us'). Eurofiber Nederland B.V. can be contacted at PO Box 7072, 3502 KB Utrecht, the Netherlands, by phone at +31 (0)30 242 8700 and by email via [privacy@eurofiber.com](mailto:privacy@eurofiber.com).

8.3.4. We may, insofar as necessary for our operations or in order to comply with a legal obligation, provide Personal Data to third parties in connection with the investigation of loss and/or damage or detection of fraud, or the prevention of loss and/or damage or fraud, as well as in order to guarantee the security and continuity of our network and our services. Where possible (if the party is not designated by law to perform a particular task independently), these parties will be bound by a data processing agreement, or Eurofiber will enter into a joint responsibility agreement.

8.3.5. We may also engage third parties to assist in the performance of our work and marketing activities. We have concluded data processing agreements with these organizations. These Processors may only process the personal data according to our instructions and under our supervision, solely for purposes determined by us and subject to strict confidentiality. We actively monitor compliance with the security obligations of Processors.

8.3.6. Our policy is aimed at limiting as much as possible Processors established outside the European Economic Area (EEA), but where we do use processors established outside the EEA or processors that use sub-processors outside the EEA, we implement appropriate safeguards as referred to in article 46 of the GDPR, including the use of standard data protection clauses adopted by the European Commission (so-called Standard Contractual Clauses) in combination with appropriate safeguards.

## 8.4. Security

8.4.1. Eurofiber implements technical and organizational security measures. In implementing technical and organizational security measures, Eurofiber has taken into account the state of the art, the costs of implementing the security measures, the nature, scope and context of the processing, the purposes and the intended use of its products and services, the risks involved by the processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects which they might expect given the intended use of the Services.

8.4.2. All our services and processes have been designed to the highest standards and are regularly tested. For an up-to-date listing of our certificates, go to the corporate compliance page on our website.

8.4.3. The Customer is responsible itself for taking appropriate technical and organizational protection measures to protect Personal Data that it processes via the Service. Eurofiber advises the Customer to encrypt Personal Data. If the Customer purchases active services, using active equipment supplied by Eurofiber (such as WDM), Eurofiber can provide encryption as an optional service.

## 8.5. Personal data breaches

8.5.1. We implement measures aimed at preventing Personal Data Breaches. These include digital and analogue security measures on our infrastructure, careful selection of processors, contractual agreements and continuous employee training.

8.5.2. We have procedures in place for the steps to take in case of a Personal Data Breach (such as our data breach protocol). This ensures that swift and effective action can be taken to minimize any loss or damage. The top priority following the discovery of a Personal Data Breach is to stop the breach.

8.5.3. If we, as the Controller, discover a Personal Data Breach (as referred to in article 4(12) of the GDPR, we will notify the Dutch Data Protection Authority, unless the Personal Data Breach is unlikely to result in a risk to Data Subjects. Where the Personal Data Breach is likely to result in a high risk to the privacy of Data Subjects, we also inform the Data Subjects. We will not make any notification if:

- the Personal Data have been rendered unintelligible to any person who is not authorized to access them, e.g. because effective and up-to-date encryption has been applied and the key enabling decryption has not also been leaked;
- the nature of the data, combined with Eurofiber's protection measures, means that the breach is unlikely to result in a high risk to Data Subjects;
- the notification to the Data Subjects involves disproportionate effort because Eurofiber does not have contact details, such as, for instance, if Eurofiber only has IP addresses of website visitors. In such a case, Eurofiber will make a public communication or similar effective communication of the Personal Data Breach.

## 8.6. Retention periods

8.6.1. We do not retain Personal Data we process as a Controller for longer than necessary for the purposes referred to in article 8.2, including in order to comply with tax-related retention obligations. For more information about this we refer to our retention policy which is available upon request via [privacy@eurofiber.com](mailto:privacy@eurofiber.com).

## 8.7. Rights of data subjects

8.7.1. Users, Customers and Suppliers (summarized as: Data Subjects) can exercise their privacy rights with Eurofiber. This may concern a request to access personal data relating to them, for instance. Following a request to access Personal Data, data may be found to be inaccurate or incomplete. Eurofiber will rectify or supplement inaccurate or incomplete data on request. Data Subjects can also request Eurofiber to erase data, to restrict the processing of data, or (if the processing is based on consent or a contract) to transmit their data (data portability). We will comply with such requests provided that there is no legal obligation or other well-founded reasons requiring us to retain the data. Data Subjects may object to the processing of personal data for marketing purposes at any time and may withdraw their consent at any time.

8.7.2. Requests that concern processing by a Eurofiber group company can also be notified to Eurofiber at any time.

8.7.3. Requests to exercise these rights can be notified to [privacy@eurofiber.com](mailto:privacy@eurofiber.com) or by post, stating 'personal data', to Eurofiber Nederland B.V., attn. Security and Privacy Department, PO Box 7072, 3502 KB Utrecht, the Netherlands.

## 8.8. Submitting a privacy complaint

8.8.1. If Eurofiber fails to respond in a timely or satisfactory manner to a request or complaint you have concerning data processing, you may submit a complaint to the Dutch Data Protection Authority. For further details: <https://autoriteitpersoonsgegevens.nl/>

## 8.9. Change of processing

8.9.1. Eurofiber may amend these General Terms & Conditions concerning privacy and Personal Data protection. We will announce any amendment on our website. If we wish to substantially alter the purposes of processing, and the processing is based on your consent, we will first request your consent again for the new purposes.

8.9.2. If the Customer has reasonable objections to the new purposes of processing, it may object to the new purposes of processing.