

# Terms & Conditions

## 1. Definitions

- 1.1. Topling: Topling Ltd, Company No. SC237281, with registered address Fenton Lodge, 42 Bridgend, Duns, Berwickshire TD11 3EX.
- 1.2. The Quotation: The quotation signed by Topling and sent to the client either scanned in an e-mail, by fax or by regular mail together with these terms and conditions.
- 1.3. The Client: The person or organization to which the quotation is addressed.
- 1.4. The Contract: The quotation signed by Topling and these terms and conditions.
- 1.5. The Goods and Services: The Goods and Services supplied by Topling as described in the Quotation.
- 1.6. The Price: The total price for the Goods and Services described in the Quotation including VAT.

## 2. Formation of the contract

- 2.1. These terms of sale apply to all goods and services supplied by Topling
- 2.2. No contract exists between you and Topling regarding the Goods and Services until we have issued the quotation and you have accepted by returning the initial stage payment.
- 2.3. By making initial stage payment you confirm that you accept these terms and conditions.
- 2.4. The contract is subject to your right of cancellation (see below).
- 2.5. Topling may change these terms and conditions without notice to you in relation to future sales.
- 2.6. No alteration of the Contract is valid unless it is signed by both parties.

## 3. Payment

- 3.1. Payment for the goods and delivery charges can be made at the times and by any method shown on the Quotation.
- 3.2. Payments shall be made as described in the Quotation. The initial stage payment is required upon signature.
- 3.3. The Client shall pay Topling subsequent invoiced sums within seven days of the date of the invoice.
- 3.4. Interest will be payable on expiry of pay due by date as detailed on invoice at Bank of England's base rate plus 5%.

## 4. Your right of cancellation

### Your rights

- 4.1 As detailed in section 9.3 of this Contract, you can cancel this contract by sending us written notice no later than 7 working days after we have received the initial stage payment.
    - 4.1.1 If you cancel this Contract after the period referred to in sections 4.1 and 9.3 of this Contract then you may have to pay compensation for costs or losses reasonably incurred. We will try to keep those costs to a minimum. We have a right to retain all or part of your deposit and further advance payment, if made, as a contribution.
  - 4.2 If there is a serious delay to the delivery of goods for reasons that are outside your control, but within our control, then you will be entitled to cancel the contract and receive a full refund.
  - 4.3 Additionally, if we are in serious breach of our obligations as detailed in this Contract then you have a right to:
    - o cancel the contract and receive an appropriate refund; or,
    - o request a repair or a replacement; or,
    - o Ask for compensation.
- You can seek those remedies if what we supply or install is faulty, incorrectly described or not fit for purpose. You cannot seek those remedies if you change your mind about the contract or you decide you no longer want some or all of the components.
- 4.4 To exercise your right of cancellation, you must give written notice to Topling by hand or post, fax or email, at the address, fax number or email address shown on its website, giving details of the goods ordered and (where appropriate) their delivery.
  - 4.5. If you exercise your right of cancellation after the goods have been delivered to you, you will be responsible for returning the goods to Topling at your own cost. The goods must be returned to the address shown on the Quotation. You must take reasonable care to ensure the goods are not damaged in the meantime or in transit.
  - 4.6. Once you have notified Topling that you are canceling the contract, Topling will refund or credit you within 30 days for any sum that has been paid by you.
  - 4.7. If you do not return the goods as required, Topling may charge you a sum not exceeding the direct costs of recovering the goods.
  - 4.8. You do not have the right to cancel the contract if the order is for audio or video recordings or computer software which has been unsealed by you, or for goods which by their nature cannot be returned or are liable to deteriorate or expire rapidly.
- Our rights**
- 4.9 If you are in serious breach of your obligations as set out in this Contract and you fail to remedy that breach within 14 days of receiving written notice from us about that breach, then we have a right to cancel the contract. We must give you reasonable opportunity to rectify the alleged breach.
  - 4.10 If we suffer a loss as a result of your breach of contract, we must take reasonable steps to prevent the loss from getting worse. If your breach of contract leads to a cancellation then you may have to pay compensation for reasonable costs or losses reasonably incurred.

## 5. Warranty & Liability

- 5.1. Topling shall not be liable for any indirect or consequential losses arising from the provision of the Goods and Services, including without limitation any delays, loss of use or profits.
- 5.2. The liability of Topling shall be limited to the re-performance of the Goods and Services, in so far as it is possible, to the extent necessary to remedy any material performance deficiencies provided that the Client gives written notice of the deficiencies.

5.3. Topling accepts no liability for any effect that drilling, trenching or other works may have on foundations, services or structures, and the Client should arrange for his other Consultants to advise on the potential impact of such works and approve the position and construction of such works.

5.4. Topling is reliant on information provided by the Client, its consultants and other contractors and no liability is accepted by Topling for the adequacy or correctness of such information. In the event that basic design information is not provided by the client and Topling derives its own figures for the purpose of providing the Quotation, then the Client shall be responsible for approval of such figures prior to the production of the final specification of the installation or any subsequent variation.

### 5.5. Installation services

5.5.1 Topling Ltd warrants to the customer that the Installation Services will be performed by the appropriately qualified and trained Topling Ltd Registered Installers using reasonable care and skill, to such high standard of quality as it is reasonable for the Customer to expect.

5.5.2 The Warranty Period for the Installation Services shall be two years from completion of the Installation Services

### 5.6. Remedial Action

5.6.1 Where a valid claim in Respect of the manner of performance of the Services is notified to the us in accordance with these Terms and Conditions, we may arrange for the relevant Products to be reinstalled by any of our Registered or approved Installers or, at our sole discretion, refund to the Customer the charge for the relevant part of the Installation Service (or a proportionate part of such charge), in which case Topling Ltd shall have no further liability to the customer.

### 5.7. Exceptions

5.7.1 This Warranty will not apply:

5.7.1.1 Unless the Product has been installed by a Topling Ltd registered Installer and has been properly used and maintained throughout the Warranty Period.

5.7.1.2 Unless the Customer has informed Topling Ltd of the alleged defect within the Warranty Period and within a reasonable period of discovery.

### 5.8. General conditions

5.8.1 The Customer agrees that he will promptly provide all information and support (including access to site and services) reasonably necessary to enable us to evaluate any alleged defect and to perform its obligations under this Warranty.

5.8.2 The Customer agrees that all premises, plant, power, fuel support services and other inputs that he is providing for the installation and use of the Products are reasonable, are fit for purpose and will be properly used and provided.

### 5.9. Third Party Rights

5.9.1 The benefit of this Warranty shall be exercisable by Topling Ltd.'s Customer or, in cases when the property to which a system has been installed is sold within the Warranty Period, to the new legal owner of the property. It may not be transferred to or exercised by any third party.

### 5.10. Law

5.10.1 This warranty shall be construed in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish courts.

### 5.11. Manufacturer's Product Warranty

5.11.1 Most Products supplied by Topling Ltd come with the benefit of a manufacturer's product guarantee. Where a claim in respect of any of the Products is notified to Topling Ltd by a Customer in accordance with the Topling Ltd.'s Terms and Conditions, Topling Ltd will liaise with the manufacturer and use all reasonable endeavours to secure a replacement of the Product or the part in question) or (at the manufacturer's discretion) a refund of the price of the Product (or a proportionate part of the price), in which case Topling Ltd shall have no further liability to the Customer.

5.12 The above warranty is given by Topling subject to the following conditions:

5.12.1 The Goods are installed by an authorised dealer or installer of Topling.

5.12.2 A Maintenance Contract is set up within 3 months from date of installation/commissioning.

5.12.3 The goods are maintained in accordance with the manufacturer's instructions by an authorised dealer/installer/maintenance Company.

5.12.4 Topling will not issue credits for either parts or labour allowance until complete warranty forms and faulty parts are returned.

5.12.5 Repeat Warranty replacements will be subject to investigation by Topling Ltd. and/or the manufacturer.

5.12.6 Topling shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Client, or for defects caused by faulty installation.

5.12.7 Topling shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, and failure to follow Topling's instructions, misuse or alteration or repair of the Goods by anyone other than an authorised dealer or installer of Topling.

5.12.8 Topling shall be under no liability under the above warranty if the total price for the Goods has not been paid by the due date for payment.

5.13 Labour contribution depends on the part being replaced and is in accordance with the manufacturer's Schedule of Payment. No additional charge or expenses will be acceptable.

5.14 If Topling is required to attend on site in the event of a breakdown travelling expenses and labour costs will be chargeable.

5.15 Upon request by Topling the Client shall provide Topling with evidence of regular maintenance under a maintenance contract at the time of any warranty claim.

5.16 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

5.17 Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Topling in accordance with these Conditions Topling shall be entitled to replace the Goods (or the part in question) free of charge or at Topling's sole discretion refund to the Client the price of the Goods (or a proportionate part of the price) but Topling shall have no further liability to the Client.

5.18 Except in respect of death or personal injury caused by Topling's negligence Topling shall not be liable to the Client by reason of any representation or any implied warranty, condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of Topling, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Client except as expressly provided in these conditions.

5.19 We offer a 2 year warranty on Topling's workmanship of all installations.

## 6. Data protection

6.1. Topling will take all reasonable precautions to keep the details of your order and payment secure, but unless Topling is negligent, Topling will not be liable for unauthorized access to information supplied by you.

6.2. Topling will only use the information you provide about yourself for the purpose of fulfilling your order, unless you agree otherwise. Topling would like to notify you of products and offers that may be of interest to you from time to time, and if you would not like to be notified of these, please notify us on [info@topling.co.uk](mailto:info@topling.co.uk) You can correct any information about you, or ask for information about you to be deleted, by giving written notice to Topling at the address, fax number or email address shown on Topling's website.

## 7. Events outside the control of the parties

7.1. Neither party shall be deemed to be in breach of this contract or liable to the other for any delay in performance or non-performance of its obligations to the extent that the delay or non-performance is due to war, strikes, natural disasters, fire or plague.

7.2. In the case of installations requiring ground-works Topling will not usually undertake a geological survey before starting work but assumes that the geological conditions at your property matches typical conditions of the area in which your property is located. If unexpected geological conditions are discovered after work starts and if those works will generate significant additional costs, Topling has the right to pass those costs on to you. If you do not accept those additional costs we have the right to cancel this contract within seven working days (as defined in clause 4.1) of being notified of the additional costs.

7.3 You agree that we are not liable for any financial losses incurred as a result of delay or closure of any grant or subsidy scheme. This will include any systems registered whereby the eligibility of such systems is queried by the grant or subsidy delivering Agency.

7.4 We will register you on any relevant grant or subsidy programme or scheme (as agreed within the quotation) once we have received all payments due to us.

7.5 We will upon occasion provide drawings or schematics to illustrate the proposed design. You will not hold us liable for any error or omissions in these documents nor any subsequent losses or additional expenditure that may be incurred.

7.6 All drawings, designs, schematics and documents provided will remain the property of Topling Ltd. It is not permissible for these documents to be distributed to external parties nor used towards achieving any financial gain without the express written permission of Topling Ltd.

7.7 You agree that we will not be held liable in any way whatsoever for any direct or indirect loss revenue, grant, subsidy, tariff or any other additional costs as a result of the installation. Nor will we be liable for any reduction in performance from the installation.

7.8 You agree that we will not be held responsible for any loss of earnings or additional costs incurred as a result of shading or cabling design.

7.9 You agree that we will not be held responsible for attaining any necessary grid connection permissions or seeking confirmation or delivering notifications to either your electricity company or distribution network operator.

7.10 You agree that we are not responsible for any cost increase as a result of disturbances or faults attributable on the local grid nor for any witness testing, seeking, acceptance or notification of grid connection with the relevant authorities.

## 8. Applicable law

8.1. These terms of sale and the supply of the goods will be subject to English law for those installations carried out in England and Scottish law for installations carried out in Scotland. English courts will have jurisdiction in respect of any dispute arising from the contract for installations in England; and Scottish courts will have jurisdiction in respect of any dispute from the contract for installations in Scotland.

# Terms & Conditions

## **9. Acceptance Of Proposal**

9.1 The Quotation is valid for a period of 30 days from the date of posting. If you wish to proceed then you must indicate acceptance by returning the initial stage payment (deposit).

9.2 We will rely upon the written terms set out here in the Contract. Please read them carefully before signing them. If you need any explanations about these terms please write or telephone us at the address and telephone number provided. If any amendments to this Contract are required you must confirm these in writing and they must be agreed by an authorized representative of this Company.

### *The "Cooling Off Period"*

9.3 You can cancel this Contract by sending us written notice using the address provided. You must send that written notice no later than 7 working days after the date on which this Contract was signed by Topling; this right is known as the "Cooling Off Period".

9.4 Topling reserve the right to alter the price of the quotation if there are significant changes to the exchange rate between sterling and the Euro, during the period of validity.

## **10. Our MAIN OBLIGATION to you is to do the work with all reasonable skill and care according to the timetable set out in the Quote and agreed in the Contract.**

10.1 We agree to carry out the work with all reasonable skill and care in the design, installation and commissioning of the system described in the Quotation. The goods we supply must:

- Be of satisfactory quality;
- Be fit for purpose; and,
- Operate as we described to you.

### *The Timetable*

10.2 We agree to supply the goods and carry out the installation work as specified in the timetable set out in the Quotation. We must have discussed that timetable with you before you sign this Contract. Your acceptance of these terms indicates that you agree to proceed using that timetable.

10.2.1 We may adjust that timetable after discussing this with you according to the conditions set out in section 16 of this Contract. If we fail to carry out the work according to that timetable then the conditions set out in section 16.2 of this Contract will apply.

10.2.2 If, for whatever reason, there is any delay, suspension or cancellation of the supply of the goods or installation of the system then the conditions described in 16.2.1 and 16.2.2 of this Contract will apply.

10.3 We will carry out the work and all communication with you according to Consumer Code a detailed Quotation that includes:

- o An itemized list of the goods to be supplied
- o An itemized list of all survey, design, installation and other services to be provided
- o An itemized list of services not included in the Quotation which you will need to provide
- o Any relevant taxes such as VAT
- o A timetable for supplying the goods and for carrying out installation work.
- o A right to cancel this Contract by sending written notice to the address provided by us.
- o The chance to approve site designs before the work starts.
- o A written estimate of how the system will perform, calculated according to the relevant MCS installer standard.
- o Detailed information about any work you need to do before the installation can begin and about when that work needs to be carried out.
- o Accurate and truthful information both in our verbal communication with you and our marketing literature and advertising.

10.4 The installation must comply with the relevant installer standard.

10.5 At the end of the contract we will give you any guarantees, test certificates and other relevant paperwork related to your goods and installation. We should give you this within seven days of the installation being completed.

10.6 We will provide you with guarantees that cover the goods and installation.

10.6.1 We will explain to you the terms of the guarantees both in writing and verbally.

## **11. Your MAIN OBLIGATION to us is to make the payments due to us**

### *The Deposit:*

11.1 You will pay us the deposit specified in the Quotation when you sign this agreement. The deposit shall not amount to more than 30% of the total contract price set out in the Quotation. Should you decide to cancel the contract within the "Cooling Off Period". (See section 9.3 of this Contract) we will return that deposit to you in full.

11.1.1 If you pay the deposit before we have inspected your site, and if we find during that inspection that the installation cannot proceed, then we will promptly refund that deposit to you in full.

### *Advance payments*

11.2 We will require you to pay further advance payments during the course of the installation but such a further advance payments, taken together with the deposit, will under no circumstances be more than 90% of the total price in the Quotation and will only be used to carry out this installation, for example to purchase goods.

### *Final Payment*

11.3 The balance outstanding on the contract price is due on completion and commissioning of the installation. We will issue you with an invoice when the work is complete and has been commissioned.

11.4.1 You will not be entitled due to any alleged minor defect to withhold more than a proportionate amount of the outstanding balance. If you do withhold any amount after the due date because of any alleged minor defect you must give us notice before the final date on which payment is due. In that notice you must also state the reasons you are withholding the payment.

### *Consequences of late payment*

11.5 If you fail to pay the amount specified in an invoice by the due date then we may charge interest until the full amount is paid. The interest rate we charge will be 5% above the base rate set by the Bank of England.

11.5.1 If we do not receive payment by the seventh day after payment is due, then we may give you written notice that we intend to stop work on the installation. Once we have sent you this written notice, we may suspend all work until payment is made.

11.6 If you are in breach of this Contract because you have failed to make an agreed payment, and we have suspended work on the installation, as detailed in section 11.5.1 of this Contract, then we may be entitled to recover any additional costs we incur. We will provide you with written notice containing full particulars of any claim for compensation within 21 days of any suspension of work.

11.7 We may require you to return and deliver up the goods to us. Failing this we will take legal proceedings to recover the goods or their outstanding value.

## **12. Your other obligations to us**

12.1 You must obtain all relevant permissions (such as planning and building consents) that are necessary before we start work on the installation. If we ask to see those permissions (and related drawings and/or specifications) you must make those available.

12.2 You agree that we are in no way responsible for determining permitted development rights eligibility or confirming or attaining granted planning permission or acceptance with Building Control.

### *Supply of services*

12.3 You must agree to provide the following for our use free of any charge:

- o water, washing facilities and toilets;
- o electricity supply;
- o adequate storage space;
- o safe and easy access to your property from the public highway;
- o Easy access to the location within the property where the installation is to take place by removing all belongings.
- o off loading, dry storage and protection of equipment and materials
- o movement of equipment and materials from storage to location and installation
- o protection of partially complete and complete installations

12.4 You, or a contractor you employ, may need to carry out preparatory work before the installation described in the Quotation can start. If so, we will describe this to you in writing. This work must be finished before the agreed date on which installation work is due to start. This work must be undertaken by competent persons and must be of the necessary quality for the installation. If this preparatory work is not finished before the agreed date on which the installation is due to start, then the conditions described in section 16.3 of this Contract will apply.

### *Additional charges*

12.5 Should you be in breach of conditions set out in 12.1, 12.2, 12.3 and 12.6 of this Contract you may incur additional costs due to delay and/or provision of additional services. You may be required to pay reasonable compensation to cover those extra costs.

## **13. Delivery, Title and Risk**

13.1 We will deliver the goods to the location detailed in the Quotation.

13.2 Until ownership of the goods passes to you, you must:

- store the goods separately in such a way that they remain readily identifiable as our property;
- Not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
- maintain the goods in a satisfactory condition.

13.3. By agreeing to this contract, you are confirming that you are the lawful owner of the property on which the goods are to be installed. Topling assumes in good faith that any land made available for the installation is part of the property you own. If it transpires that any works undertaken prior to or as part of the installation are in fact made on property not owned by you, you will indemnify Topling for any claims made by third parties.

13.4. If the site is not made available to Topling for the installation on the date agreed between the parties, or if work that must be carried out before the installation can start is not finished, Topling has the right to reschedule the start of the installation within the following eight weeks. Unless the Client has notified Topling about the delay six weeks before the scheduled start of the installation, Topling will charge 1% of the Price per delayed week as a compensation for capital costs on Goods and rescheduling costs.

13.5. You will become responsible for risk of loss and damage to the goods once they have been delivered to the site or another delivery address of your choosing.

13.6. If the price for the goods is not paid when it is due, Topling has the right to remove the goods without any obligation to refund any monies paid by you.

## **14. Change of work**

14.1 If, after signing the contract, you want to change the work, you must consult with us first. We may be able to incorporate your changes into the installation provided that:

- It is technically possible;
- We have the necessary resources;
- The necessary permissions are in place.

14.2 If we agree to this change of work you must

- confirm this in writing; and,
  - do so within 14 days of when you first tell us.
- 14.3 We will then adjust the price:
- By written agreement beforehand, if possible; or if not then
  - By later written agreement; or if not then
  - By referring to any priced documents, if this applies; or if not then
  - By a reasonable amount for the work done or goods supplied.
- 14.4 Every change that means extra or revised work (as opposed to changes that leave something out) may mean extra costs. We will try to keep those costs to a minimum.

## **15. Unexpected Work**

15.1 Any unexpected work due to site conditions or special circumstances beyond the control of Topling or undertaking any work that is insisted upon but found not to be required will incur an additional hourly rate of £45 per man-hour or a daily rate of £350 per man-day.

15.2 Where unexpected work arises, we will tell you and ask how you want us to proceed. If you want us to continue then section 14.3 of this Contract will apply.

## **16. Changes to Agreed Timetable**

16.1 We will make every effort to complete the work by the time agreed with you. You must appreciate, however, that sometimes delays may occur for reasons beyond our control, especially when third parties are involved in installing other, related works. We cannot be held responsible for those delays. If such delays occur we will complete the work as soon as possible.

### *Consequence of delay caused by us*

16.2 You will be entitled to compensation if we cause significant or unreasonable delay due to factors within our control.

16.2.1 In the case of major delays to the delivery of goods or installation then you may be offered different products of equivalent specification, value and quality

### *Consequences of delay caused by you*

16.3 We will seek to accommodate small delays without recourse to compensation.

16.3.1 If the work is delayed or lasts longer than expected for any reason within your control, we will adjust the price accordingly, as shown in section 14.3 and subject to section 15 of this Contract