

The Top Edge Limited
Terms and Conditions of Business

1. Definitions and Interpretation

1.1 In these Terms and Conditions of Business (save where the context otherwise requires) the following expressions shall have the following meanings :-

1.1.1 **“Top Edge”** means The Top Edge Limited (Company Registration No. 05276614) whose registered office is at 8 Parkway Close, Sheffield S9 4WJ.

1.1.2 **“Client”** means the person(s) purchasing the Products from Top Edge

1.1.3 **“Terms”** means these Terms and Conditions of Business governing the sale by Top Edge and the purchase by the Client of the Products

1.1.4 **“Quotation”** means the estimated costs of the Products to be supplied by Top Edge to the Client in accordance with these Terms

1.1.5 **“Final Confirmation”** means the final confirmation provided by the Client to Top Edge confirming the Client's order for the Products and confirming that all details, information and specifications provided by the Client and contained on the Production Drawing are complete and accurate

1.1.6 **“Products”** means cut and edged kitchen worktops or any other goods detailed in Top Edge's current product and/or price list as amended from time to time

1.1.7 **“Production Drawing”** means the drawing supplied by Top Edge to the Client following receipt of the Client's written order detailing information relating to and specifications of the Products ordered by the Client

1.2 Words importing the singular number only shall include the plural number and vice versa and where a party consists of more than one person obligations and agreements of that party shall take effect as joint and several obligations and agreements.

1.3 The clause headings in these Terms are for ease of reference only and shall not be taken into account in the construction or interpretation of the clauses to which they refer.

1.4 Words importing the neuter shall include the masculine and feminine and words denoting natural persons shall include corporations and firms and all such words shall be construed interchangeably in that manner.

1.5 Words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to permit or allow infringement of such restriction.

1.6 These Terms supersede any prior agreement (oral or in writing) between the parties and the parties acknowledge that these Terms contain the whole agreement between them and that the Client has not relied upon any oral or written representations made by Top Edge or its employees or agents.

1.7 These Terms shall be governed by the laws of England and Wales and the parties shall submit any dispute arising hereunder to the exclusive jurisdiction of the Courts of England and Wales.

2. Product Request

2.1 The Client will select the Products he/she requires using Top Edge's website to include (but not limited to), if appropriate, the following specifications of the Products:

2.1.1 type of edge

2.1.2 edge profile

2.1.3 colour and texture

2.1.4 shape

2.1.5 dimensions and end shape

2.1.6 address for delivery of the Products

2.1.7 method of payment for the Products

2.1.8 any Product accessories required (which for the avoidance of doubt will only be sold in connection with an order for Products and will not be sold separately)

and following the input of all necessary information in relation to the Products required by the Client together with the Client's confirmation that the information supplied is complete and accurate, Top Edge will provide the Client with a Quotation based solely on the said information supplied by the Client.

2.2 If it is not possible for the Client to obtain a Quotation for the Products in accordance with Clause 2.1 the Client may contact Top Edge by email, facsimile, telephone or post on the numbers or to the addresses specified by Top Edge from time to time and provide Top Edge with the relevant information (as outlined in Clause 2.1) following receipt of which Top Edge will provide the Client with a Quotation and/or a Production Drawing.

2.3 If the Client wishes to accept the Quotation he/she must place an order for the Products with Top Edge. The order must be in writing with reference to the Quotation provided by Top Edge and will be deemed by Top Edge to confirm that all details and information supplied by the Client are complete and accurate.

2.4 As soon as practicable following receipt of the written order Top Edge will provide the Client with a Production Drawing. The Client must confirm his/her written order by providing Top Edge with Final Confirmation together with confirmation of the method of payment and, if appropriate, credit or debit card information from which payment for the Products will be made. The Client must inform Top Edge of any errors in the Production Drawing and in the event of such, Top Edge will provide to the Client a further Production Drawing for the Client's Final Confirmation.

2.5 In placing the written order for the Products and/or by providing Final Confirmation the Client confirms to Top Edge that he/she accepts and understands these Terms and agrees to be bound by them.

2.6 If the Quotation contains provisional sums Top Edge shall use its best endeavours to ascertain an accurate cost and agree it with the Client before incurring expenditure on the Client's behalf. However, if this is not possible the Client shall pay the actual cost of the item in which case the total price set out in the Quotation shall be adjusted accordingly.

2.7 Unless otherwise stated, any Quotation issued by Top Edge is valid for acceptance for 14 days from the date thereof Provided that Top Edge has the right to withdraw the Quotation at any time.

2.8 Subject to Clause 6.4 unless agreed by Top Edge in writing, Top Edge will not commence work in relation to the Client's order for a period of 7 days from the date of receipt by Top Edge of the Final Confirmation and during such 7 day period, which for the purposes of this Clause only, time shall be of the essence, the Client may cancel or change the order in writing to Top Edge and such cancellation or change shall only be valid if it is acknowledged, confirmed and accepted by Top Edge in writing. Due to the unique nature of the Products ordered by the Client, upon the expiry of the 7 day period from the date of receipt by Top Edge of the Final Confirmation, the Client will not be entitled to cancel or change the order and will be liable for payment in full.

2.9 If Top Edge agrees with the Client to commence work relating to the Client's order prior to the expiry of the 7 day period referred to in Clause 2.8 and the Client then cancels the order within the 7 day period and the cancellation is accepted by Top Edge, Top Edge has the right to charge the Client a cancellation fee of up to 100% of the value of the Quotation depending on the amount of work carried out in relation to the Client's order. The level of such cancellation fee shall be at the sole discretion of Top Edge.

2.10 If Top Edge agrees with the Client to commence work relating to the Client's order prior to the expiry of the 7 day period referred to in Clause 2.8 and the Client then changes the order within the 7 day period and the change is accepted by Top Edge, Top Edge has the right to amend the Quotation and Production Drawing in respect of the change and charge the Client a fee of up to 100% of the value of the original order depending on the amount of work carried out in relation to such original order made by the Client. The level of such fee shall be at the sole discretion of Top Edge.

3. Product Supply

3.1 Top Edge will supply the Products in the quantity stated on the order to the specifications set out on the Production Drawing provided by Top Edge in accordance with Clause 2.4 and not to any other written specification (if different) and, subject to Clause 4, during the week specified for delivery in the Quotation or, if not contained in the Quotation, during the week as notified by Top Edge to the Client.

3.2 All work is carried out to normal wood working tolerances (plus/minus 3mm on every dimension).

3.3 If Top Edge is unable to supply the Products within a reasonable time after any date given for delivery it may at its sole discretion cancel the Client's order and return any money already paid by him/her, but without interest, compensation or any other payment whatsoever.

4. Time Not of the Essence

Top Edge shall use its reasonable endeavours to meet any times and dates specified for performance of its obligations contained in these Terms. However, all such times and dates are approximate only and Top Edge shall not be deemed to be in breach of the Terms and shall not be liable in any manner for any delay, for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the performance of its obligations and, subject to Clauses 2.8, 5.6 and 7.2, time shall not be of the essence of these Terms.

5. Delivery

5.1 Delivery shall be deemed to take place when the Products are delivered to the address specified in the Client's order and confirmed in the Client's Final Confirmation and from the moment that the Products begin to be unloaded from the delivery vehicle.

5.2 The Quotation shall include the costing of delivery to the address specified in the Client's order. Top Edge will not be required to deliver parts of an order to more than one address. However, if such a request for delivery is made by the Client to Top Edge or if the Client requests Top Edge to deliver the Products to a different address than that specified in the Client's order, Top Edge will be entitled to make an additional charge to the Client calculated in accordance with the extra costs incurred by it in respect of such delivery and which, if possible, will be notified to the Client by Top Edge prior to delivery.

5.3 If the premises or property to which the Products are delivered are, at the time of delivery, closed, there is no answer, or if delivery is not accepted, delivery will be rearranged as soon as practicable and Top Edge will be entitled to make an additional charge to the Client in respect of such.

5.4 The Client will ensure that a sufficiently accessible ground floor secure and dry area is available upon delivery where the Products may be stored and inspected by the Client in accordance with Clause 7. If no such accessible secure and dry area is provided by the Client, Top Edge shall be entitled to retain the Products until such time as such an area or an alternative address for delivery is made available for delivery and Top Edge shall be entitled to make an additional charge to the Client in respect of such.

5.5 All Products supplied by Top Edge are at the Client's risk from the moment of delivery under this Clause 5 and the Client should insure the Products against loss or damage.

5.6 Any claim by the Client in respect of non-delivery of Products ordered by him/her must be made in writing within 3 days of the proposed delivery date to Top Edge, which for the purposes of this Clause only, time shall be of the essence, upon receipt of which Top Edge shall deal with the claim as it sees fit. Failure to comply with this time period will render any potential claim void.

6. Price and Payment

6.1 The price for the Products will be as shown in Top Edge's current price and/or product list as amended from time to time and will be reflected in the Quotation provided to the Client.

6.2 Top Edge does not offer any settlement discounts to the Client.

6.3 All sums payable by the Client pursuant to these Terms are (unless otherwise stated) exclusive of any Value Added Tax or any other applicable tax which the Client will pay in addition on the due date for payment.

6.4 Payment may only be made in pounds sterling and only in advance by banker's draft, cheque, or money order, or by credit or debit card via secure on-line payment. Payment in cash will not be accepted. Top Edge will not commence

work in relation to the Client's order until such payment is made by the Client to Top Edge. In the case of payment by credit or debit card, Top Edge will send the Client an email containing a link to the secure payment site provided by Barclaycard Merchant Services for the Client to complete the payment process and the Client authorises Top Edge to deduct from the credit or debit card those sums due to it in accordance with these Terms without any deduction whether by way of set-off counterclaim or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Top Edge to the Client. Top Edge will not pass on the Client's credit or debit card details to any third party (save to the relevant payment processing agency) and the Client undertakes that all details he/she provides to Top Edge for the purpose of ordering and purchasing the Products are correct, that the credit or debit card the Client is using is his/her own and that there are sufficient funds to cover the cost of the Products ordered. However, as no data transmissions over the Internet can be guaranteed to be 100% secure, Top Edge cannot ensure or warrant the security of any information the Client transmits to it and the Client does so at his/her own risk

6.5 The Client confirms that he/she consents to the transfer of data held concerning the Client by Top Edge in accordance with the provisions of Clause 6.4 and to any purchaser or prospective purchaser of Top Edge only.

6.6 Upon receipt from the Client of the signed and approved Order Confirmation the Top Edge will send the Client an email with payment instructions containing a link to the secure payment site of Barclaycard Merchant Services to facilitate the debit of the Client's credit or debit card of the sum contained in the Quotation provided by Top Edge and Top Edge will send to the Client an invoice confirming payment in respect of such.

6.7 Following delivery of the Products to the Client in accordance with Clause 5 any outstanding sums due to Top Edge will be debited from the Client's debit or credit card and Top Edge will send to the Client an invoice confirming payment in respect of such.

6.8 Ownership of the Products supplied by Top Edge, whether installed or not, shall not pass to the Client until all sums due to Top Edge have been paid in full and until such time the Client shall keep the Products in good repair and condition and properly protected and insured, and Top Edge shall at any time be entitled to enter the Client's property, or onto any property at which Top Edge reasonably believes the Products to be, to remove any Products for which the Client has not paid in full.

6.9 Payment is not considered received from the Client until Top Edge receives notification of cleared funds representing the amount paid in its bank account or the bank account of its agent or nominee.

7. Product Inspection

7.1 Upon delivery of the Products to the Client, the Client will inspect the Products and, subject to Clause 7.2, signify on the delivery note that the Products are not damaged in any way and that there is no shortage of Products supplied.

7.2 If during the inspection of the Products by the Client, the Client discovers any damage to or shortage of the Products, the Client must state the damage or shortage discovered on the delivery note accompanying the Products and notify Top Edge in writing of such damage (and any further damage discovered) or shortage within 72 hours of delivery, which for the purpose of this Clause only, time shall be of the essence.

7.3 Once notified in accordance with Clause 7.2 of the damage or shortage by the Client, Top Edge will:

7.3.1 As soon as reasonably practicable deliver to the Client to the address specified on the Client's order and confirmed in the Client's Final Confirmation any shortage of the Products provided that Top Edge is satisfied that there is such a shortage of Products; or

7.3.2 Within 7 days of receiving such notification collect and/or inspect the damaged Products from and/or at the place where they were delivered and if satisfied that:

7.3.2.1 having inspected the Products concerned, the damage occurred prior to delivery of the Products to the Client; and
7.3.2.2 the Products concerned have not been worked upon, cut or fitted

Top Edge will use its best endeavours to replace the damaged Products as soon as practicable thereafter or if such is not possible, will provide the Client with a credit note in respect of those Products

8. No Warranty

The materials used in the Products are not manufactured by Top Edge and Top Edge gives no express warranty to the Client in respect of such materials, their performance or their durability. Top Edge will ensure that it notifies manufacturers of any written complaints made by the Client to it relating to any Products manufactured by them.

9. Liability

9.1 All Products supplied by Top Edge are believed to be of satisfactory quality and fit for their purpose for use in kitchens, not in bathrooms or in other areas of high humidity. The Client must however satisfy himself/herself that the Products are of the correct specification and designed for the required purpose.

9.2 Top Edge shall not be liable for any claim:

9.2.1 in relation to any defects in any Products supplied nor for any works necessitated by fair wear and tear, wilful damage, negligence of the Client, damage caused by any third party (including without limitation workmen standing on the Products), damage caused as a result of working on the Products or for any damage caused by the Client when unwrapping the Products;

9.2.2 resulting from any work carried out on the Products, including but not limited to holes or cuts made, and in any event the Client should ensure that any such work carried out on the Products is carried out

by individuals or professionals with appropriate qualifications and experience;

9.2.3 resulting from the ingress of moisture at joints, sink or hob cut outs or any other unfinished edge of the Products;

9.2.4 in respect of wood-edged Products arising as a result of shade/grain variations, slight colour changes or the wearing-off of any lacquered surface;

9.2.5 in respect of any swelling of the chipboard core resulting from moisture ingress from moisture left lying on the Product surface or at the undersides of Products above appliances or at any screws or other fastenings to the surface, edges or underside of the Products, or any other claim arising where there is evidence of any misuse of any Product.

9.3 Subject as expressly provided in these Terms and except where the Products are supplied 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.

9.4 Top Edge shall not be liable for the failure of the operation of its website or any connected or linked website and shall not be liable (including any liability for negligence) for the acts or omissions of telecommunications service providers or for failures of, or faults in their networks and equipment.

10. Indemnity

10.1 The Client will indemnify Top Edge against any damages, losses, costs, claims or expenses or any other sums incurred by it in respect of any loss Top Edge suffers directly or any claim brought against it by any third party in relation to :-

10.1.1 Any loss, injury or damage wholly or partly caused by the Products or their use;

10.1.2 Any loss, injury or damage in any way connected with the performance of these Terms;

10.1.3 Any loss or damage caused by the Client during unloading of the Products in accordance with Clause 5;

10.1.4 Any costs, claims or expenses of any third party involved in recovering outstanding monies due from the Client to Top Edge Provided that this Clause will not require the Client to indemnify Top Edge against any liability for the negligence of Top Edge.

11. Termination

11.1 The Client may only terminate these Terms in accordance with the provisions of Clause 2.

11.2 Top Edge shall be entitled without prejudice to the other rights and remedies available to it, either to terminate the whole or any part of these Terms or to suspend any future service or supply in any of the following events:

11.2.1 If any debt due and payable by the Client to Top Edge is unpaid on the due date of

payment or if the Client is in breach of his/her obligations under the Terms

11.2.2 The Client becomes insolvent or has a receiving order in bankruptcy made against him/her

11.3 The termination of the Terms howsoever arising shall be without prejudice to the rights and duties of either the Client or Top Edge accrued prior to termination.

11.4 Failure by Top Edge to enforce or partially enforce any provision of the Terms will not be construed as a waiver of any of its rights under these Terms.

12. General

12.1 All drawings, descriptive matter, specifications and advertising issued by Top Edge and any descriptions or illustrations contained in Top Edge's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the products and services described in them. They will not form part of the Terms and all patents, copyrights, design rights and all other rights in relation to such items shall remain vested in Top Edge.

12.2 The Products or part of them are or may be protected by patents, copyrights, design rights and other rights and any such rights or confidential information relating to the Products remain with their legal owner solely and absolutely.

12.3 Top Edge may sub-contract all or any part of its rights or obligations under these Terms without the Client's consent.

12.4 These Terms are personal to the Client who may not assign licence or sub-contract all or any of its rights or obligations under these Terms without Top Edge's prior written consent.

12.5 Any variation to these Terms shall have no effect unless expressly agreed in writing between the parties

12.6 Top Edge shall not be liable for any failure to perform its obligations under these Terms due to unforeseen circumstances or circumstances beyond its control including without limitation adverse weather conditions, flood or fire.

12.7 These Terms shall operate on the footing that if any of the provisions either in part or in whole is held by a Court or any other competent authority not to be valid or enforceable, the validity and enforceability of the remaining provisions of the Terms and the remainder of the affected provision shall continue to apply.