

# Nest Thermostat - Residential Terms & Conditions

Valid as at 25th May 2018 until further notice

These terms and conditions relate to your purchase and use of the Nest Thermostat product and will continue to apply whether or not you are, or continue to be, an Electric Ireland customer for the supply of electricity or gas.

## 1. DEFINITIONS

- a) In these conditions, the words below have the following meanings:
- 'Additional Works' means any extra works to be carried out at the Premises, including, but not limited to:
    - installation of heating zone valves;
    - provision of power supply to existing heating zone valves;
    - installation of control wiring; and
    - an additional Product at the Premises.
  - 'Contract' means the contract between You and Us, comprising the Order to which these Terms and Conditions apply. 'Order' means the order you have placed with Us for the purchase and installation of the Product
  - 'Premises' means the premises identified in the Order being the property at which the Works are to be carried out
  - 'Product' means the Nest Thermostat and Stand referred to in Your Order
  - 'Terms and Conditions' means these conditions
  - 'Us' or 'We' means ESB, acting through our Electric Ireland business
  - 'Works' means the technical installation of one Product at the Premises, to be carried out by Electric Ireland.
  - 'You' means the person named on the Order
- b) The headings in these Conditions are for convenience only and will not affect how they are interpreted.

## 2. BASIS OF CONTRACT

- a) The Order constitutes an offer by You to purchase the Product from Us in accordance with these Terms and Conditions
- b) The Contract constitutes the entire agreement between the parties. You acknowledge that You have not relied on any statement, promise or representation made or given by or on behalf of Us which is not set out in the Contract
- c) These Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing

## 3. SUPPLY OF WORKS

- a) We shall install the Product in the Premises in accordance with the Order in all material respects
- b) The Works will be carried out in a good and workmanlike manner using all reasonable care and skill
- c) It is the responsibility of Electric Ireland to make good any damage caused to the Premises in carrying out the Works
- d) If We discover that there are issues which prevent Us from installing the Product We will notify You and You shall have the option to either:
  - i. end the Contract (see Condition 8 below); or
  - ii. suspend the Contract until such time as such issues are rectified. If such issues are not rectified within 6 months either party may terminate the Contract
- e) The Nest Thermostat installation cost covers the Works. Where required, Additional Works will be quoted by Us before commencement of the Works. Any Additional Works and costs thereof will be agreed in writing prior to commencement of the Works and/or Additional Works.

## 4. YOUR WARRANTIES AND OBLIGATIONS

- a) You warrant that You are the owner of the Premises or otherwise have legal authority to enter into the Contract
- b) You are obliged to:
  - i. provide Us, our employees, agents or subcontractor(s) with access to the Premises to install the Product at all reasonable times
  - ii. prepare the Premises for the supply of the Works; and
  - iii. abide by all instructions and advice issued by Us, our agents or subcontractor(s) regarding the installation works including but not limited to equipment and health and safety
- c) If the performance of any of Our obligations under the Contract is prevented or delayed due to failure by You to perform any relevant obligation ("Your Default"):
  - i. We shall without limiting our other rights or remedies have the right to suspend installation of the Product until You remedy Your Default.
  - ii. We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 4.3 caused by Your Default

## 5. OUR WARRANTY AND LIABILITY

- a) The Product carries a 2 year manufacturer's warranty. Full details of this warranty are contained in the documentation supplied with the Product. If you have any technical problems with the product itself please ring 1800 817 188 or email support@nest.com
- b) The installation of the product by Electric Ireland carries a 90 day warranty. If you have any issues with the installation please ring Electric Ireland at 1800 372 372

- c) Any Products which are repaired or replaced under this term shall be warranted until the later of the expiry of the warranty period applicable to the original Product or 6 months from the date of its first use after repair or replacement
- d) The ability of the Product to be accessed and controlled remotely is dependent on the availability of a Wi-Fi signal of sufficient quality at Your Premises. We are not responsible, and do not accept any liability, for any failure of the Product due to the non-availability of, any interruptions to, or the quality of, Your Wi-Fi service
- e) Our sole liability, and Your sole remedy, in contract, tort, or otherwise, shall be limited to the repair or replacement of defective Products and to the remedy of defective Services and Our liability shall be limited to the value of the Contract
- f) Nothing in these Conditions shall limit or exclude Our liability for:
  - i. death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors
  - ii. fraud or fraudulent misrepresentation; or
  - iii. breach of the terms implied by Section 12 of the Sale of Goods and Supply of Services Act 1980
- g) Subject to the foregoing paragraph, We will not be liable to You under this Contract in contract, tort (including negligence) or otherwise for any indirect damages or economic loss, including but not limited to loss of revenue, business, contracts, predicted savings or profits
- h) Except as set out in these Terms and Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract
- i) This clause 5 shall survive termination of the Contract

## 6. FEES AND PAYMENT

- a) We will charge VAT at the appropriate rate. All prices quoted are exclusive of VAT except where VAT is expressly stated to be included.

## 7. ENDING THE CONTRACT

- a) You may terminate this Contract if We fail to supply the Product, or install the Product in breach of these Terms and Conditions. In this event We will refund to You all monies paid (if any) by You for the Product
- b) We may end the Contract at any time if You are in breach of any of the terms and conditions of the Contract, and fail to remedy that breach within 10 days of being requested to do so in writing. In this event You will be entitled to a refund of the cost of the Product if the Product is returned to us undamaged in its original packaging. However, We will be entitled to charge You the cost incurred by Us in attempting to deliver or install the Product
- c) We may end the Contract by giving You written notice if, for valid reason, We cannot supply You with the Product. In this event, any monies You have paid Us for the Product will be refunded and no further charges, or obligations to remain an Electric Ireland customer will be made

## 8. PRODUCT DETAILS

- a) The Product controls the heating temperatures and when the boiler is active or inactive. The Product is not suitable for separately controlling the heating of water in Your cylinder. Where You have an existing programmer to control when water is heated in Your home, You should continue to use same. For clarity, such programmes will not be compatible with the Product.
- b) To get the most out of Your Product You need a computer, tablet or smart mobile with internet access and an up to date web browser, a live broadband connection and a router with power supply to the router
- c) The Product is not suitable for customers with electric storage heating, electrical under-floor heating or biomass boilers
- d) Nest's Terms and Conditions contain some important exclusions regarding the functionality and compatibility of the Product. These should be read carefully. No warranty is provided regarding the functionality of the Product, including:
  - i. the compatibility with your smart phone/computer and home internet network; and
  - ii. whether the Product will meet your own specific requirements.

## 9. EVENTS BEYOND OUR CONTROL

- a) We will not have to carry out any obligation under the Contract if We are prevented from doing so by any cause beyond our reasonable control. This includes, but is not limited to, failure or shortage of power supplies, civil unrest, labour shortage or labour dispute, instructions or requests from the Government, an emergency services organisation, or any other competent authority, or legal obligations

## 10. CUSTOMER INFORMATION

- a) We may use information about You (including information on your use of the Product) for our own business purposes, including building up a profile of our customers, processing bills, processing orders, carrying out credit checks and carrying out market research. We may give your information to our agents who carry out certain business activities (for example, market research) on our behalf. Such agents will only be permitted to use Your data as instructed by Us. They are also required to keep your data safe and secure. You may opt out of this by contacting Us on 1800 372 333

## 11. ENERGY CREDITS

- a) You acknowledge and agree that We are entitled to any energy credits attributable to the installation of the Product in the Premises under the Irish Government's Better Energy Scheme or any replacement or similar scheme and will execute any documents reasonably required Us to transfer such energy credits to Us

## 12. GENERAL

- a) If any competent authority considers that any of the Conditions are not valid or cannot be enforced, the other Conditions will still apply
- b) Both parties must follow all the laws, regulations and orders that apply to them respectively
- c) The Contract is governed by the laws of Ireland and any dispute will be dealt with in the Irish courts
- d) Complaints and notices may be made in writing, by hand or by post to Electric Ireland, Swift Square, Northwood, Santry, Dublin 9, or by e-mail to homeservices@electricireland.ie. Notices sent by post are deemed to have been delivered two days after posting

## 13. STATUTORY RIGHTS

- a) Nothing in these Conditions excludes or affects your statutory rights

## 14. DATA PROTECTION

- a. In order that Electric Ireland may discharge its duties under this Agreement and provide you with an effective service, it will be necessary for Electric Ireland to collect and use data relating to you while you are being supplied with this service. This data is used mainly to manage our relationship with you and for the provision of the Annual Service Visit and associated services, including for example, visits to your home. In addition, data relating to you may be used for health and safety, administration, risk assessment and credit checking purposes. Electric Ireland may retain your data for a reasonable period after it has ceased to provide you with this service but will not keep it for any longer than is necessary and/or as required by law.
- b. Electric Ireland may disclose your data to other business units within the ESB group and agents who act on behalf of Electric Ireland in connection with the activities referred to in sub-clause 7.a above, including to any agent or third party service provider who Electric Ireland may engage to assist us in the performance of the service. Such agents or third parties are only permitted to use your data as instructed by Electric Ireland. They are also required to keep your data safe and secure.
- c. You may speak to employees of Electric Ireland (or agents acting on its behalf) by telephone. To ensure that Electric Ireland provides a quality service, your telephone conversations may be recorded. This (call) is recorded for training, quality and account management purposes in accordance with data privacy laws. For more information about how Electric Ireland respects & manages your privacy please go to [www.electricireland.ie/Privacy](http://www.electricireland.ie/Privacy)
- d. Details about how we use your data, and the rights you have in relation to your data, please refer to our Privacy Notice at [www.electricireland.ie/privacy](http://www.electricireland.ie/privacy) For further information, you may contact the ESB Data Protection Officer at Two Gateway, East Wall Road, Dublin D03 A995 or at [dpo@esb.ie](mailto:dpo@esb.ie).