

GENERAL TERMS

1. Agreement

- 1.1 Switchbuild Limited (**Switchbuild**) agrees to supply the products (**Products**) and services (**Services**) ordered by you (**Customer**).
- 1.2 Where the Products or Services include any software, software modules, platforms, mobile applications, cloud-based services, or other digital solutions supplied now or in the future, including but not limited to AlarmSuite (**Switchbuild Software**), Core Automation Limited (**Core Automation**) agrees to supply the Switchbuild Software.
- 1.3 The Customer agrees to purchase the Products and Services on the following terms:
 - (a) terms set out in the quote supplied to the Customer (**Quote**) (if any);
 - (b) specific terms set out in written correspondence between Switchbuild and the Customer; and
 - (c) these General Terms (**Terms**)
- 1.4 In the case of any conflicting terms in the documents listed in clause 1.1, the priority of those documents shall be as listed with each document prevailing over a document lower in the list.

2. Quotes

- 2.1 Switchbuild quotations are not an offer or obligation to sell and Switchbuild reserves the right to accept or reject any orders received.

3. Delivery

- 3.1 Switchbuild will deliver the Products and supply the Services to the Customer at the address provided by the Customer (**Delivery Address**).
- 3.2 Delivery dates set out in the Quote are subject to confirmation when placing the order (Delivery Period).
- 3.3 Delivery and transport insurance can be arranged at the Customer's instructions and cost.
- 3.4 If the Customer is unable to accept delivery of the Products, suitable storage can be arranged at the Customer's cost.

4. Price

- 4.1 The price for the Products and Services will be the price set out in the Quote or as otherwise agreed by the parties at the time an order is accepted by Switchbuild and includes any licence fee payable for Switchbuild Software under clause 10 (**Price**).
- 4.2 Unless stated otherwise in the Quote, the Price includes packing (if any) in accordance with Switchbuild standard practice. Any additional packing requested by the Customer or deemed necessary by Switchbuild will be charged for in addition to the Price.
- 4.3 All Prices are in New Zealand dollars and exclude GST.

5. Information and Drawings

- 5.1 The Customer acknowledges that all drawings, descriptive matter, weights, dimensions and shipping specifications submitted to the Customer and the description and illustrations contained in catalogues, price lists and other advertising matter are approximate only and are intended merely to present a general idea of the Products and Services.
- 5.2 Every reasonable precaution will be taken by Switchbuild to ensure accuracy of the weights and dimensions shown on the despatch notes of shipping documents.
- 5.3 Drawings are provided in PDF format unless otherwise agreed.

6. Testing and Performance

- 6.1 Switchbuild will carry out any routine tests on the Products as required by any government or regulatory authorities.
- 6.2 Any additional tests required by Switchbuild shall be at the Customer's expense unless otherwise stated in a Quote.

7. Faulty Products

- 7.1 Subject to clause 7.2, Switchbuild will replace or repair free of charge faulty products provided that such faults are notified to Switchbuild in writing within 12 months from delivery to the Customer.
- 7.2 Switchbuild will not replace a faulty Product where the fault results from:
 - (a) fair wear and tear;
 - (b) incorrect or negligent use of the Product;
 - (c) unsuitable protection of the Product;
 - (d) unauthorised installation, alteration or repairs carried out by the Customer or another third party; or
 - (e) the Customer's refusal to grant Switchbuild access to inspect or carry out repairs as necessary on the Product(s) at a reasonable time or under suitable conditions.
- 7.3 Where the Products and/or Services are provided for business purposes, the parties acknowledge that the provisions of the Consumer Guarantees Act 1993 do not apply and section 9, 12(a), 13 and 14(1) of the Fair Trading Act 1986 are excluded where the Customer requires Services from Switchbuild "in trade" (as defined in that Act).

8. Liability

- 8.1 To the extent permitted by law, the maximum aggregate liability of Switchbuild and Core Automation to the Customer in connection with these Terms, whether in contract, tort (including negligence), under statute or otherwise at law is the Price paid by the Customer to Switchbuild for the Products and Services in the 12 months preceding any claim. Nothing in these Terms limits or reduces Switchbuild's liability:
 - (a) in respect of liability which cannot be limited at law;
 - (b) in respect of penalties applicable under any act of parliament, regulation, consent or licence;
 - (c) in the case of fraud, criminal conduct, wilful misconduct, wilful default or gross negligence; or
 - (d) which arises in connection with Switchbuild's repudiation or abandonment of its obligations under these Terms.
- 8.2 Switchbuild and Core Automation shall not be liable for any loss of profit, indirect or consequential loss sustained by the Customer.
- 8.3 Switchbuild and Core Automation shall not be liable for any loss, damage, or expense the Customer or an Authorised User suffers as a result of any notification not being sent, received, or acted upon, regardless of cause.

9. Installation

- 9.1 Unless otherwise agreed Switchbuild and Core Automation are not responsible for the erection, installation, or commissioning of any Products.

10. Switchbuild Software

- 10.1 **Licence:** If the Products and Services include Switchbuild Software, Core Automation and/or Switchbuild may grant the Customer a non-exclusive, royalty-free, revocable licence to download, install and use the Switchbuild Software for a licence fee on these Terms.
- 10.2 **Access:** Where Switchbuild or Core Automation has agreed to grant the Customer a licence to use Switchbuild Software, the Switchbuild Software may permit the Customer to authorise its employees, contractors or other permitted users to access and use the Switchbuild Software (**Authorised Users**). The Customer is responsible for ensuring that all Authorised Users maintain the confidentiality of any login details.
- 10.3 **Compliance:** The Customer shall comply and shall ensure that all Authorised Users are aware of and comply with these Terms. The Customer shall remain fully liable for all acts and omissions of Authorised Users, and any breach of these Terms by an Authorised User will be deemed a breach by the Customer.
- 10.4 **No Warranty:** All information contained in Switchbuild Software and use of all related features are provided on an "as is, as available" basis without any warranties whether express or implied.

- 10.5 **Notifications and liability:** Switchbuild may send notifications, alerts, or messages to the Customer and its Authorised Users through the Switchbuild Software. Switchbuild shall use its best endeavours to ensure that any notifications, alerts, or messages are accurate and delivered in a timely manner. However, Switchbuild and Core Automation do not guarantee delivery, timeliness, accuracy, or reliability of any notifications, alerts, or messages. The parties acknowledge that Switchbuild's liability is limited in accordance with clause 8 and accordingly, Switchbuild and Core Automation shall not be liable for any loss, damage, or expense the Customer or an Authorised User suffers as a result of any notification not being sent, received, or acted upon, regardless of cause.
- 10.6 **Location data:** If the Customer or an Authorised User consents to Switchbuild accessing location data while using Switchbuild Software, Switchbuild and/or Core Automation (as is applicable) may collect and use that location data to provide location-based features and functionality within the Switchbuild Software. Use of location data is subject to the Customer's and/or Authorised User's consent, which may be withdrawn at any time by disabling location settings on their device.
- 10.7 **Accuracy and errors:** Switchbuild makes every effort to ensure that the information provided in the Switchbuild Software is accurate and up-to-date. However, Switchbuild makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the information contained in or about the use of the Switchbuild Software. Any reliance the Customer or Authorised User places on such information is at its own risk.
- 10.8 **Down-time:** Neither Switchbuild nor Core Automation guarantee uninterrupted, secure, or error-free operation of the Switchbuild Software and may modify, suspend, or discontinue any part of the Switchbuild Software at any time without liability to the Customer. The Customer's access to the Switchbuild Software may also be occasionally restricted to allow for repairs, maintenance or the introduction of new features.
- 10.9 **Third-party content:** Switchbuild Software may host third party content such as advertisements and endorsements belonging to other traders, or link users to other websites or apps. Switchbuild and Core Automation have no responsibility for the availability of, or for any errors or omissions in, such third-party content, websites or apps. The Customer acknowledges that the Switchbuild Software may include, integrate with, or be configured to operate using software, code, components, or services provided by third parties. Switchbuild may incorporate or configure such third-party software as part of the Switchbuild Software.
- 10.10 **Security:** Subject to clause 11.1, Switchbuild and Core Automation do not warrant and cannot ensure the security of any data which the Customer or an Authorised User inputs into the Switchbuild Software. Switchbuild and Core Automation (where applicable) will take reasonable steps to preserve such data in a secure manner. Switchbuild and Core Automation (where applicable) takes all due care in ensuring that Switchbuild Software is free of any virus and/or malware, however Switchbuild is not responsible for any damage to the Customer or Authorised User's computer system which arises in connection with the use of the Switchbuild Software or any linked website.
- 10.11 **Suspension or termination:** Switchbuild and Core Automation reserve the right to suspend or terminate the Customer's or Authorised User's access to Switchbuild Software where Switchbuild considers that the Customer or Authorised User is using the Switchbuild Software or mobile app in breach of these Terms.

11. Privacy

- 11.1 Switchbuild will only collect, use and disclose the Customer's personal information in accordance with its Privacy Policy.

12. Customer's Obligation

- 12.1 The Customer shall:
- (a) provide Switchbuild access to its nominated delivery address in order for Switchbuild to deliver the Products and perform the Services;
 - (b) comply with Switchbuild's reasonable instructions in relation to the use of the Product(s); and
 - (c) comply with Switchbuild's health and safety requirements.

13. Terms of Payment

- 13.1 The Customer shall pay all invoices by the 20th of the month following date of invoice or claim for progress payments (as is applicable).
- 13.2 Switchbuild reserves the right to submit claims for progress payments against any Services provided and the value of Products delivered during the course of providing the Services.
- 13.3 'Paid if Paid' conditions (being any conditions where payment is subject to the Customer being paid by a third party) are not accepted under any circumstances.
- 13.4 If any amount payable under these Terms is overdue by 30 days or more, Switchbuild may charge interest at such rate as shall be charged by Switchbuild's bankers for overdraft accommodation and calculated from the date the invoice is overdue to the actual date of full and final payment.
- 13.5 Switchbuild may suspend its obligations under these Terms until the Customer has made all required payments in full.

14. Retention of Title

- 14.1 The Customer acknowledges that clause 16.2 creates a security interest (**Security Interest**) (as that term is defined in the Personal Property Securities Act 1999 (**PPSA**)) in the Products. The Customer will, at Switchbuild's request, promptly execute any documents, provide all necessary information, and do anything else required by Switchbuild to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA). The Customer waives its rights to receive a copy of any Verification Statement (as that term is defined in the PPSA).
- 14.2 Switchbuild may at any time take possession of the Products that have not been paid for in full. The Customer irrevocably authorises Switchbuild to enter any property where the Products are kept or might be kept for the purposes of exercising Switchbuild's rights under this clause 14.

15. Returns

- 15.1 All sales are final, and no Products can be returned for credit without the prior consent of Switchbuild.
- 15.2 Any Products indented by Switchbuild because of instructions received from the Purchaser may not be returned.
- 15.3 No Products will be accepted back that have had electric power applied to them.
- 15.4 Where Products are accepted to be returned by Switchbuild, the Products must be returned at the expense of the Customer, in good order and condition, unused and in the original packaging.

16. Title and Risk

- 16.1 Where Switchbuild has arranged freight of the Products, risk passes to the Customer on such date the Products are delivered to the Customer. Where the Customer has arranged freight for the Products, risk passes when the Products have been collected for delivery.
- 16.2 Title to the Products does not pass from Switchbuild to the Customer until payment has been made in full.

17. Intellectual Property

- 17.1 In this clause, 17, Intellectual Property means all statutory, common law and proprietary intellectual property rights, including patents, layout designs, rights in confidential information, copyright works, designs, inventions, trademarks and other rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967, whether registered or unregistered, as may exist anywhere in the world at any time and applications for such rights.
- 17.2 The Customer warrants that any design or instruction given to Switchbuild shall not cause Switchbuild to infringe the Intellectual Property rights of any third party.
- 17.3 Each party shall continue to own all Intellectual Property which is owned by or licensed to that party at the date the parties begin to be bound by the Terms or is developed or acquired by that party after that date but outside of the performance of these Terms.
- 17.4 All Intellectual Property arising either directly or indirectly from the performance of the Services shall immediately and directly vest in Switchbuild.
- 17.5 The Customer shall not:

- (a) reverse engineer, reproduce, decompile, disassemble, merge, modify, adapt, or translate a Product or the Switchbuild Software or any of its components, or create derivative works based on a Product, nor allow any third party to do so;
- (b) work around any technical limitations in a Product or use a Product or the Switchbuild Software in any way that exceeds its technical or usage limitations;
- (c) make copies of documentation produced through the use of the Product or the Switchbuild Software other than permitted under these Terms or use backup copies for any purpose other than restoring the Customer's use of a Product or the or the Switchbuild Software following a failure of the Product or the or the Switchbuild Software.

18. Dispute Resolution

- 18.1 If a difference in opinion shall arise between the Customer and Switchbuild in relation to the Terms, the parties will attempt to settle the amicably within an agreed timeframe.
- 18.2 If the dispute or difference is not resolved to the mutual satisfaction of both parties then either party may provide a written notice requiring the dispute to be referred for mediation.

19. Force Majeure

- 19.1 Neither party will be liable for any delay or failure to perform any of its obligations (excluding any payment obligation) that is caused or contributed to by any event beyond its reasonable control (including but not limited to an act of nature, environmental occurrence, biological occurrence, genetic variation, fire, discontinuity in power supply, court order, riot, war, strike, or labour disturbance) provided that party:
 - (a) could not have avoided or overcome the event by exercising a standard of reasonable care at a reasonable cost;
 - (b) notifies the other party in writing of the event on becoming aware of it; and
 - (c) uses its best endeavours to mitigate the effects of the event and to perform its obligations not affected by the event.

If the event materially affects a party's ability to meet its obligations under these Terms for more than 90 days, the other party may terminate these Terms by notice in writing.

20. Increase in Prices

- 20.1 The parties agree that Switchbuild may vary the Price where there is an increase in costs incurred by Switchbuild due to:
 - (a) any Act of Parliament, Order in Council or to any order regulation or by-law made with statutory authority by government departments or by local body or other authorities, introduced since the date the Price is agreed which increases Switchbuild's costs;
 - (b) a variation in rates of exchange, custom or other duties, insurance or freight charges;
 - (c) a rise in the cost or availability of materials, labour or transport; or
 - (d) delays in the supply of documentation or approvals within an agreed time frame.
- 20.2 Any increase in the Price under clause 20.1 shall be notified to the Customer and where such a variation will cause detriment to the Customer, the Customer will be given the option to terminate these Terms within 3 working days of being notified of the price change. Where the Customer does not respond to the price variation notification within those 3 working days, such price variation will be deemed to be accepted by the Customer.
- 20.3 Subject to clause 20.1, the Prices shall be fixed and firm for the duration of the Delivery Period.

21. Termination

- 21.1 Either party may terminate these Terms by written notice if the other party:
 - (a) does not fulfil any of its obligations under the Terms and the breach is not remedied 14 days after notice requiring it to be remedied (or the breach cannot be remedied); or
 - (b) commits an act of bankruptcy, is placed in liquidation, receivership, voluntary administration or statutory management, is insolvent or ceases to carry on a substantial part of its business or makes any composition or arrangement with its creditors.

- 21.2 Switchbuild may revoke a Quote and terminate these Terms with immediate effect any time prior to the Customer accepting the Quote.
- 21.3 In the event of termination Switchbuild shall remain entitled to payment for any Services or Products Provide up to an including the date of termination.
- 21.4 Switchbuild may terminate these Terms where the Customer has failed or refused to take delivery of the Products and such failure or refusal continues for a period of 14 days after Switchbuild advises the Customer that the Products are ready for delivery.

22. Variations

- 22.1 Subject to clause 22.2, and 20.1, no variation or amendment to the Terms is effective unless agreed to by both the parties.
- 22.2 Where an instruction is not given or identified as a variation and Switchbuild considers that the work involves a variation, Switchbuild will provide a written notice to the Customer of the variation. The Customer has 14 days to reject the variation otherwise the variation will be deemed to have been accepted by the Customer.
- 22.3 The Customer shall grant Switchbuild an extension of time that reasonably reflects the net effect of any variation.

23. General

- 23.1 **Inconsistency:** If there is a conflict or inconsistency between the terms set out in a Quote, the terms set out in the correspondence between Switchbuild and the Customer and these General Terms, the priority of the terms shall be as listed at the beginning of the General Terms, with each set of terms prevailing over the terms lower in the list.
- 23.2 **Governing law:** The Terms are governed by New Zealand laws and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 23.3 **Survival:** The intellectual property and limitation of liability obligations in these Terms, and any other obligations which by their nature are to continue beyond the expiry or termination of these Terms, survive beyond the expiry or termination of these Terms.
- 23.4 **Assignment:** Neither party may transfer or assign any of its liabilities or rights under these Terms to any other person without the other party's prior written consent.
- 23.5 **Partial invalidity:** If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from the Terms and such invalidity or unenforceability will not affect the other provisions of these Terms, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 23.6 **No waiver:** No failure or delay by a party in insisting on the strict performance of these Terms or to exercise any right under this Terms will operate as a waiver of those matters. A waiver will not be effective unless it is in writing. A waiver of any breach will not be a waiver of any other breach.