



ABN 29 154893857
PO Box 165
Newcastle, NSW 2300 Australia
Ph: +6147860426
Email: sales@switchdin.com
<http://www.switchdin.com>

SWITCHDIN STANDARD TERMS AND CONDITIONS FOR SUPPLY OF PRODUCTS AND SERVICES (SEPTEMBER 2017)

1. Supply of Products and/or Services

1.1 Unless otherwise agreed in writing, all SwitchDin Pty Limited ABN 29 154 893 857 (**SwitchDin**) products and/or services supplied to the Customer (**Products and/or Services**) are supplied on the following terms and conditions (**Terms and Conditions**) and to the exclusion of any terms and conditions of the Customer. No agent or representative of SwitchDin has any authority to vary or omit part or these Terms and Conditions. Acceptance of delivery of the Products and/or Services by the Customer shall constitute acceptance of these Terms and Conditions and create a binding agreement between SwitchDin and the Customer (**Agreement**).

1.2 Before purchasing any Products and/or Services the Customer agrees that they have read and understand, and agree to be bound by, these Terms and Conditions.

1.3 In these Terms and Conditions and in addition to terms which are defined herein **Customer** means the person, body, firm or company which takes delivery of the Products and/or Services.

1.4 These Terms and Conditions of sale apply to all Products and/or Services supplied to the Customer and supersede all previous terms and conditions relating to their subject matter.

2. Quotation and purchase order

2.1 Any quotation given by SwitchDin (**Quotation**) is merely an invitation for the provision of Products and/or Services to the Customer's specification and shall not give rise to any contract between the parties. SwitchDin reserves the right to vary or withdraw a Quotation at any time and by any means (written or otherwise) prior to the dispatch of Products and/or Services the subject of the Quotation to the Customer.

2.2 The Customer must notify SwitchDin of acceptance of a Quotation within thirty (30) days of the date on the Quotation, by means of a written purchase order delivered to SwitchDin by post, fax or email (unless an expiry date is specifically noted on the Quotation in which event the expiry date on the Quotation takes precedence) (**Purchase Order**).

2.3 The Purchase Order issued by the Customer to SwitchDin must specify the Products and/or Services to be supplied. On receipt of the Purchase Order, SwitchDin will advise the Customer of its acceptance of that Purchase Order (either verbally or in writing and whether delivered by post, fax or email). Once acceptance by SwitchDin, the Customer may not alter or modify the Purchase Order without the written consent of SwitchDin.

2.4 The Customer may only cancel a Purchase Order by delivering written notice to SwitchDin:

- a) prior to dispatch of the Products and/or Services the subject of that Purchase Order from SwitchDin premises (where the Products and/or Services are a standard product normally stocked by SwitchDin); or
- b) prior to SwitchDin issuing any purchase orders to suppliers in respect of the Products and/or Services the subject of that Purchase Order and only where SwitchDin can cancel those purchase orders without attracting any cancellation charge; or
- c) prior to SwitchDin commencing manufacture of the Products and/or Services where they Products and/or Services the subject of that Purchase Order comprise a customised SwitchDin product. For the purposes of this clause, commencement of manufacture shall be deemed to have occurred when SwitchDin has issued any purchase order/s to suppliers for material to enable manufacture and is unable to cancel those purchase orders without attracting cancellation charges, or has commenced assembly or conversion of a

normally stocked item.

3. Payment of price

3.1 Unless specifically stated otherwise, all prices are expressed net of any applicable freight and insurance charges and exclusive of GST.

3.2 Subject to clause 3.3, all accounts are on a 'cash on delivery' (**COD**) basis and all Products and/or Services must be paid for in full before they are supplied.

3.3 If the Customer has an approved account with SwitchDin (in which case they will have been advised in writing by SwitchDin of the existence of that approved account), the Products and/or Services must be paid for within thirty (30) days of the date of the SwitchDin invoice for those Products and/or Services. Where any payment owed by the Customer is overdue, or where SwitchDin is in receipt of a credit reference in relation to the Customer which it regards as unsatisfactory (in its sole discretion), then SwitchDin reserves the right to place the Customer on "Stop Credit" or change the Customer to a COD account.

3.4 Customer may query an item on any invoice but this does not provide cause for non-payment of the remainder of that invoice by the due date.

3.5 Interest will be payable by *the Customer* to SwitchDin on any overdue charges at a rate equal to 2% per annum above the then current overdraft rate notified by the Westpac Bank.

4. Goods and Services Tax (GST)

4.1 SwitchDin quotes prices exclusive of GST. Unless the Customer provides SwitchDin with an authorised tax-exempt certificate, GST will be added to all invoices.

5. Title and Risk

5.1 All supplies of Products and/or Services are ex-store point of consignment unless otherwise advised by SwitchDin in writing.

5.2 SwitchDin transfers title in each Product and/or Service to the Customer immediately upon payment in full for the corresponding Product and/or Service.

5.3 The Customer accepts risk of loss or damage to the Products and/or Services from the date the Products and/or Services are loaded at the premises of SwitchDin for delivery to the Customer

5.4 Risk of loss or damage to the Products and/or Services in transit is the responsibility of the Customer and the Customer will maintain appropriate insurances in this regard.

5.3 Any property of the Customers under SwitchDin's custody or control will be entirely at the Customer's risk.

5.4 Where Products and/or Services are left at SwitchDin's premises after the Customer has been notified that those Products and/or Services are ready for collection, or shipping details have been requested, SwitchDin reserves the right, after a period of 30 days, to charge the Customer a reasonable fee for storage of the Products and/or Services.

5.5 In respect of Products referred to in clause 5.4, SwitchDin we will commence disposal procedures after 60 days in accordance with the "Uncollected Goods Act 1995".

6. Transport

6.1 All arrangements for the transport and delivery of the Products and/or Services from SwitchDin premises to *the Customer's* nominated delivery address, and the costs associated with the transport, delivery and taking delivery of the Products and/or Services will be the sole responsibility of the Customer

6.2 Where the Customer fails to make transport arrangements, SwitchDin shall:

- a) For all areas where the Customer's usual carrier delivers, SwitchDin will arrange delivery of the Products and/or Services and add a freight charge to the corresponding invoice; and
- b) For deliveries outside these areas, the Products and/or Services will be dispatched "freight on" to a local

delivery centre such as Australia Post (as determined by SwitchDin).

7. Delivery

7.1 Delivery time shall not be the essence and delivery dates are estimated in good faith by the SwitchDin.

7.2 SwitchDin will not be liable for damages (including consequential, special and incidental damages) for failure to deliver Products and/or Services, or delay in delivery of Products and/or Services, howsoever arising.

7.4 Notwithstanding any delay, the Customer is not relieved from accepting delivery of the delayed Products and/or Services at the agreed price.

7.5 If delivery of the Products and/or Services is by installments, delay in delivery of any installment shall not relieve the Customer of its obligation to accept the remaining deliveries at the agreed price.

8. Claims

8.1 The Customer shall inspect all Products and/or Services upon delivery. SwitchDin shall not be liable for any errors in relation to the Products and/or Services unless the Customer submits a claim in writing to the SwitchDin within 24 hours of the delivery of the Products and/or Services to which the claim relates.

8.2 Products and/or Services cannot in any circumstances be returned to SwitchDin without prior written consent of an authorised employee of SwitchDin and providing that the Products and/or Services:

- a) have not been used and are otherwise in "as new" condition;
- b) are in original packaging;
- c) have been returned within 7 days of delivery; and
- d) satisfy quality standards as determined by SwitchDin (acting reasonably).

8.3 A minimum restocking fee of 20% of the invoiced price, as determined by SwitchDin, will be charged by SwitchDin and payable by the Customer to SwitchDin for any Products and/or Services returned by the Customer under clause 8.2. This fee will vary having regard to whether the Products and/or Services are a standard stocked item, or need to be returned to a third party supplier (which will incur transport and /or a restocking fee charged by the supplier).

9. Service and repair

9.1 Unless otherwise requested in writing by the Customer, SwitchDin reserves the right to dispose of Products and/or Services which are replaced during any repair at SwitchDin's workshop, at the time the repaired item is collected or dispatched.

9.2 If the Customer requires replaced parts to be held for a period after completion of the repair work, the maximum period such parts will be held is 14 days.

10. Intellectual property, Confidentiality and Privacy

In this clause, Intellectual Property Rights means all intellectual property rights, including but not limited to, the following rights: (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether such rights are registered or capable of being registered.

10.1 The Customer acknowledges that SwitchDin has developed and owns intellectual property of significant value and agrees:

- a) all title to or rights, including Intellectual Property Rights, in the Products/and or Services will at all times remain vested in SwitchDin (**SwitchDin IP**);
- b) Customer is not permitted to use or disclose any SwitchDin IP for any purpose other than as authorised in writing by SwitchDin; and

- c) unless otherwise agreed in writing between SwitchDin and Customer, Customer is not permitted to develop, enhance, modify, reverse engineer or decompile the SwitchDin IP. If Customer does develop, enhance, or modify the SwitchDin IP, then such developments, enhancements, modifications or creations will vest in SwitchDin on creation, and Customer will have no claim to or interest of any nature in that Intellectual Property.

In this clause, **Confidential Information** means information that: (a) is by its nature confidential; (b) is designated by a party as confidential; (c) a party knows or ought to know is confidential, including the SwitchDin IP.

10.2 Subject to clause 10.3 a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

10.3 The obligations on the parties under this clause will not be taken to have been breached to the extent that Confidential Information:

- a) is disclosed by a party to its advisers or employees solely to comply with obligations, or to exercise rights, under these Terms and Conditions;
- b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Agreement related activities;
- c) is authorised or required by law, including under these Terms and Conditions, under a licence or otherwise, to be disclosed; or
- d) is in the public domain otherwise than due to a breach of these Terms and Conditions.

10.4 The Customer must comply, and must ensure that its employees, agents and contractors comply, with all Privacy Laws as they apply to SwitchDin, and must not do or allow the doing of anything that would cause SwitchDin to breach any Privacy Laws.

10.5 The Customer will indemnify and hold harmless SwitchDin for any loss or damage suffered or incurred arising from the Customer being in breach of its obligations under this clause.

11. Warranties

11.1 Customer warrants that it has relied entirely on its own judgement in determining whether the Products and/or Services are suitable for the purposes for which Customer intends to use those Products and/or Services.

11.2 Customer also warrants itself as a responsible and competent user or reseller of the Products and/or Services and that they comprehend and understand and accept full responsibility for the dangers of incorrect installation, assembly, or use of, the Products and/or Services. In the event SwitchDin provides information, documentation or instructions (written or otherwise) with respect to the Products and/or Services (**Documentation**), the Customer shall follow those instructions and shall release and indemnify, and keep released and indemnified, SwitchDin, against all claims, cost or demands of any nature (including third party claims) arising from the Customer's incorrect installation, assembly or use of, the Products and/or Services and any failure on the part of the Customer or their employees, officer, servants or agents, to comply with the Documentation.

11.3 SwitchDin reserves the right to declare void any warranty claim where the claimant does not extend to the SwitchDin a reasonable opportunity to fully inspect the goods, application and circumstances of the claim.

11.4 All third party goods supplied by SwitchDin to the Customer are supplied on an "as is" basis without any warranty of any kind. SwitchDin shall assign to the Customer, in so far as it is able to do so, the benefit of any condition, warranty or guarantee expressed or implied in the SwitchDin's contract with its own supplier. All warranty repairs will be carried out at the SwitchDin premises. All Products and/or Services in respect of which a warranty claim is made are to be presented at SwitchDin premises at no cost to SwitchDin

11.5 Unless otherwise agreed in writing by SwitchDin, all Products and/or Services are supplied on the basis that they will be used by the Customer only in environments specified by the manufacturer of those Products and/or Services.

11.6 Subject to clause 11.7, SwitchDin's obligation and liability to the Customer with respect to the goods and

services supplied and all terms, conditions, warranties and representations that might otherwise be implied by statute or otherwise are hereby expressly excluded

11.7 Certain legislation, including the Trade Practices Act, 1974 implies warranties or conditions or impose obligations upon SwitchDin, which cannot be excluded, restricted or modified except, to a limited extent. These conditions must be read and construed subject to such statutory provisions. Where such statutory provisions apply, to the extent to which the SwitchDin is entitled to limit its liability then its liability shall be limited at its options to:

- a) In the case of a supply of Products manufactured by a party other than SwitchDin and provided those good, in the opinion of SwitchDin (at its sole discretion) have not been subjected to any form of modification or repair by any third party (including the Customer) or any neglect or abuse by the Customer:
 - (i) the replacement of goods or supply of equivalent goods;
 - (ii) the payment of the cost of replacing goods or acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods
- b) In the case of goods that have been manufactured by SwitchDin or its agent, SwitchDin will provide a warranty for twelve (12) months from the date of the Purchase Order received from the customer for defects in material or workmanship that are not attributable, in the opinion of SwitchDin (at its sole discretion), to modification or repair by a party other than the SwitchDin (including the Customer) or neglect or abuse by the Customer:
 - (i) the replacement of goods or supply of equivalent goods;
 - (ii) the payment of the cost of replacing goods or acquiring equivalent goods;
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of goods.
- c) In the case of service repair, SwitchDin will provide warranty in relation to the labour for three (3) months from the date of completion of repair or return of goods to customer for defects in workmanship that are not attributable, in the opinion of the SwitchDin (at its sole discretion), to any form of modification or repair by any party other than SwitchDin (including the Customer), or neglect or abuse by the Customer:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- d) Specifically excluded from the warranties in this clause are:
 - (i) items considered to be consumables, perishables and wear items, such as (but not limited to) memory cards, labels, paper documents, enclosures etc; and
 - (ii) items considered to be maintenance such as (but not limited to) periodic preventative maintenance tasks

12. Limitations of Liability

12.1 To the extent permitted by law and subject only to any exceptions expressly set out in these Terms and Conditions, SwitchDin shall under no circumstances be liable in any way whatsoever to the Customer for any form of loss, damage or expenses sustained or incurred by the Customer, or any other party, in consequence of or resulting directly or indirectly out of the supply of the Products and/or Services by SwitchDin, the use or performance thereof, any breach by SwitchDin of any provision of any contract incorporating these terms and conditions or the negligence of SwitchDin or its servants or agents, and to the extent it cannot exclude its liability, limits its liability in aggregate to an amount not exceeding the invoiced price of the relevant Products and/or Services.

14. Force Majeure

In this clause **Force Majeure Event** means any act of god, strike, fire, flood, extreme drought or other natural disaster or disease, riot, terrorism, war, an embargo, government action or government restriction, which is not within the control of the party alleging it.

14.1 Where a Force Majeure Event occurs neither party will be deemed to be in breach of this agreement, or

otherwise be liable to the other, for any delay in the performance, or the non- performance of any of its obligations under this agreement (other than an obligation to pay money) where:

- a) the delay or non- performance it outside the control of the party;
- b) the circumstance constituting the Force Majeure were notified to the other pay within 7 working days or the event occurring; and
- c) the party subject to Force Majeure takes all reasonable steps within its power to resolve the circumstances constituting the Force Majeure in as short a time as possible.

15. Advice and information

15.1 Any advice, recommendation, information, assistance or service given by SwitchDin in relation to Products and/or Services, or any other products or services supplied by SwitchDin, or their use or application, whether by the Customer or any other party, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and SwitchDin does not accept and liability or responsibility for any loss or damage suffered or incurred by the Customer (including to any third party), arising directly or indirectly out of or in connection with the Customer's reliance on such advice, recommendation, information, assistance or service.

16. General

16.1 These Terms and Conditions may be varied only in writing signed by each party.

16.2 The Agreement is governed by, and is to be construed in accordance with, the laws of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

16.3 In these Terms and Conditions, except where the contrary intention is expressed:

- a) a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule, or attachment or annexure to, these Terms and Conditions, and a reference to these Terms and Conditions includes any schedule or attachment or annexure;
- b) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- c) a reference to a party is to a party to these Terms and Conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- e) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act; the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- f) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms and Conditions or any part of it;
- g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- h) headings are for ease of reference only and do not affect interpretation.