Switch*Heat* Ltd

Switch*Care* Terms and Conditions

Please read carefully

These Terms & Conditions are part of the contract between you (The Client) and Switch Heat Ltd.

1. Definitions

Annual Service: an annual service of your gas Boiler or Heat Pump and System to check they are safe, efficient and comply with the relevant laws and regulations.
Boiler: An appliance located at the domestic property that heats the hot water and/or heating by Gas. A single natural gas boiler in your Home that is designed for domestic use and has a heat output capacity of up to 70kW.
Business Day: a day other than a Saturday, Sunday, or public holiday in Scotland, when banks in London are open for business.
Client or you/your: who purchases the SwitchCare Plan from us and who is responsible for any costs incurred.
Heat Pump: heating appliance that moves heat from the environment (air, ground, or water) into a building, using electricity to raise the temperature.
Heating System: the heating system includes hot water cylinder, heating pipework, pump, motorized valves, radiators, radiator valves, programmer/timers, cylinder stat, room stat, pressure controls.
Plumbing System: the plumbing system includes tap repairs, Hot and cold water pipes, Cold water tanks, Toilet break downs, Silicone seals on bath and showers, Ball valves and float valves, Stop cocks and gate valves and above ground drainage.
Power Flush: a cleansing process for your boiler which removes any dirt, sludge, rust and debris that may have accumulated within your system over time.
Pre-Existing Faults: any problems with the Boiler that we determine existed prior to commencement of your Contract.
Services: means the SwitchCare Plan.
Start Date: The date that is stated on the contract as the start of the Service Contract.
Switch Heat Ltd: We/us/our (all references relate to) are a company incorporated in Scotland (company number SC838038), whose registered office is at 2nd Floor 48 West George Street, Glasgow, Scotland, G2 1BP.

SwitchCare Plans: Refers to the type of plan that you have chosen to take out as referenced in *Clause 5* of the Agreement.

2. Contacting each other

2.1 You can contact us by telephoning our customer service team at 0141 4590124 or by writing to us at enquiries@switch-heat.co.uk for general enquiries or accounts@switch-heat.co.uk for payments.

2.2 If we have to contact you, we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.

3. Basis of contract

3.1 These Terms and Conditions need to be read in conjunction with our SwitchCare Plan brochure or our website, where details of the SwitchCare Plans are provided.

3.2 The Order constitutes an offer by the Client to purchase the Service Contract in accordance with these Conditions.

3.3 The Order shall only be deemed to be accepted when the Client completes the SwitchCare Plan Proposal Form. When doing so, they confirm that they have read automatically accept our terms and conditions, at which point, and on which date the contract shall come into existence (Commencement Date).

3.4 Any samples, drawings, descriptive matter, or advertising issued by us and any descriptions of or illustrations of the Services contained in our advertising are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

3.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3.7 Any variation to these Terms and Conditions shall be inapplicable unless expressly agreed in writing by us. The Client must notify us of any variation and if we agree, (to any such variation) we reserve the right to adjust the price accordingly.

3.8 A reference to writing or written includes email.

3.9 This contract is strictly a service and maintenance plan contract and IS NOT an insurance policy.

4. Term

4.1 The term of this Contract shall commence on the date this Agreement is formally accepted by the Client and shall continue for a period of twelve (12) calendar months. Following this period, the contract will auto renew onto a further twelve (12) month contract and shall continue to renew annually on a rolling basis until terminated by either party in accordance with *Clauses 9 & 10*.

5. Types of SwitchCare Plans

5.1 We are able to offer you one of our SwitchCare Plans, details of which can be found within our brochures. Please note that all SwitchCare Plans we offer are governed by these Terms and Conditions.

5.2 For details of what is included in each SwitchCare Plan please refer to the "What's Included" section of the specific SwitchCare Plan that you choose.

5.3 All of our SwitchCare Plans come with exclusions, details of which can be found in the "What's Not Included" section of the specific SwitchCare Plan that you choose. Please ensure that you are aware of exclusions for your specific plan.

5.4 Our normal business hours are 9:00am to 17:00pm, Monday to Friday (excluding Bank Holidays). We may be able to work outside our normal business hours at an additional charge.

5.5 We shall perform Service and Maintenance/Support Services in accordance with and subject to the terms and conditions of this Agreement.

5.5 We will conduct an initial inspection of your Boiler or Heat Pump within the first month of your SwitchCare Plan and we reserve the right to cancel your Agreement if we do not deem your Boiler or Heat Pump suitable for our SwitchCare Plans.

5.6 We shall use all reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5.7 Acceptance onto one of our SwitchCare Plans does not imply that the boiler, heating system or plumbing system is installed to the relevant standards, and we will not accept liability arising from the original design or installation and so make no warranty as to the fitness for purpose.

5.8 We will not be liable for any delays in the supply of parts from our suppliers. We may fit replacement parts that are adequate but not the same as the defective part(s).

5.9 Arranging your Annual Boiler or Heat pump Service – In order to arrange this, the following will apply:

a. we will contact you or your Authorised Representative to arrange your service (Boiler or Heat pump) within one (1) calendar month of it being due;

b. we will make two (2) attempts to contact you or your Appointed Representative but if we are unable to make contact, you are obliged to contact us directly to make the necessary arrangements. Please note that you will not be refunded where you miss the annual boiler service, and this will not be rolled over into any subsequent contractual periods.

5.10 If we recommend or you request additional work to be carried out or repairs carrying out that are not included in your SwitchCare Plan(s), we will provide a Quote for parts and labour, which will be at a discounted rate. There is no obligation to ask us to proceed but if you do, all charges will have to be paid in accordance with the terms of the Quote, and separately and in addition to any charges you pay for your SwitchCare Plan.

5.11 All parts we install under the terms of this Agreement will come with the benefit of the Manufacturer's warranty (and its limitations).

5.12 Fair Usage Policy

5.12.1 SwitchCare Plans are intended to provide reasonable maintenance and support for domestic heating, hot water and plumbing systems.

5.12.2 To ensure a fair and sustainable service for all customers, Switch Heat Ltd reserves the right to review any membership where callouts, repair requests or support visits are considered excessive or unreasonable.

5.12.3 Where usage is deemed excessive, Switch Heat Ltd reserves the right to apply additional charges, amend the level of cover provided, or terminate the Agreement in accordance with these Terms and Conditions.

6. Client Obligations

6.1 Additional Obligations. In addition to any, and all other obligations within this contract, you shall:

a. co-operate with us in all matters relating to the Services;

b. provide us, our employees, agents, consultants, and subcontractors, with full and clear access to the location where the Goods and Services are to be supplied, and other facilities as reasonably required by the us;

c. provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

d. obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and Services before the date on which we start;

e. ensure that all valuables are removed from the area where the works are to be provided. We will not be responsible for moving these;

f. notify us of anything which may present a hazard or danger to anyone carrying out work in your property;

g. ensure we are provided with a safe working space;

h. ensure any and all rooms we are working in are structurally sound;

i. provide us with access to the supply of mains electricity, gas and water at the location;

j. provide us with use of a toilet on site;

k. ensure that any and all pets are secured safely away from the works area;

l. provide us with parking within 25 metres of the works site and where applicable a parking permit. If we incur any parking fees whilst providing the Services, these will be passed on to you and you will be liable for the same;

m. where applicable, keep all materials, equipment, documents, and other property of ours (Supplier Materials) at your premises in safe custody at its own risk, maintain these Goods and Materials in good condition until returned to us, and not dispose of or use the goods and Materials other than in accordance with our written instructions or authorisation;

n. comply with all applicable laws, including health and safety laws.

6.2 Client default. If our performance of any of our obligations under the contract are prevented or delayed by any act or omission by you or your agents, sub-contractors, or employees, or by failure by you to perform any relevant obligation, then:

a. without limiting or affecting any other right or remedy available to it, we shall have the right to suspend performance of the Services until you remedy the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays our performance of any of its obligations;

b. 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 your obligations as set out in this *Clause 6.2*;

c. you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Client Default.

7. Price and Payment

7.1 The price for the SwitchCare Plan, will be as detailed within detailed in our brochure or on our website and prices quoted are up to date at the point of you agreeing the initial Contract.

7.2 The SwitchCare Plan fees are payable monthly, by way of direct debit, which is set up at the commencement of the policy, payable from inception and monthly thereafter. The monthly payments will continue after each renewal. All payments are required in full and in cleared funds and time for payment shall be of the essence of the Contract.

7.3 We reserve the right to increase rates at the end of each contractual the period, in accordance with our requirements. In such circumstances, we will provide you with details no less than 30 days prior to the expiry of your current period.

7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where applicable, the VAT element of the invoice will be clearly specified and payment of this taxable element, is due at the same point as the Charges are payable.

7.5 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under *Clause 10*, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this *Clause 7.5* will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8. Cancelling your SwitchCare Plan

8.1 If you wish to cancel your contract with us before it auto renews, you are at liberty to do so providing you do the following:

a. you or your authorised representative (only) notify us of the requested cancellation in writing, by e-mail to enquiries@switch-heat.co.uk at least 30 days' notice of your intention to cancel prior to the renewal date.

8.2 You have rights to end the contract with immediate effect during the contractual period providing us immediate written notice if:

a. we commit a material breach of our obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days, after receipt of notice in writing to do so;

b. we take any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

c. we suspend, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of our business.

8.3 If you cancel during the period of your contract (excluding your right to do so under *Clause 8.2*), you will not receive a refund the for any sums paid or if you have not paid in full you will still be liable to pay for the remainder of the 12 month contracted period.

9. Our rights to Cancel your SwitchCare Plan

9.1 Without affecting any other right or remedy available to it, we may terminate the Contract with immediate effect by giving you written notice if:

a. you commit a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 24 hours of being notified in writing to do so;

b. fail to pay any amount due under the Contract on the due date for payment;

c. you take any step or action in connection with entering bankruptcy, administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

9.2 We may cancel your contract prior to the automatic renewal by giving you 30 days' notice in writing.

10. Consequences of ending your contract

10.1 What happens if the contract is ended early. On ending the Contract:

a. we may retain any advanced payment (where applicable) you will be liable to pay for any further works and Goods, Products and Materials used/fitted up to the point of termination;

b. you will be liable to pay the remainder of the contractual period in full unless you are terminating the contract in accordance with *Clause 8.2*;

c. we shall not be liable to refund any sums paid under the contract unless *Clause 8.2*, applies.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. Consumer Rights

11.1 Nothing in these terms will affect your legal rights.

11.2 For detailed information please visit the Citizens Advice Scotland website https://www.cas.org.uk/ or call 0800 028 1456.

12. Our responsibility for loss and damage suffered by you

12.1 We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these **terms**, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.

12.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent

misrepresentation; for breach of your legal rights in relation to the products and for defective products under the Consumer Protection Act 1987.

12.3 Further limitations of our potential liability to you. Subject to the terms of *Clause 12.2*, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

a. loss of profits;

b. loss of sales or business;

c. loss of agreements or contracts;

d. loss of anticipated savings;

e. loss of use or corruption of software, data, or information;

f. any pre-existing faults or issues with your Boiler or Heat Pump and Heating system;

g. any sludge or debris already existent within your Heating system;

h. any issues or losses arising from your failure to act upon our advice to undertake a Power Flush;

i. any non-linked or non-related issues;

j. loss of or damage to goodwill; and

k. any indirect or consequential loss.

12.4 Our total liability. Subject to *Clause 12.3* our total liability to you, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges paid under the Contract.

12.5 Exclusion. The **terms** implied by sections 13 to 15 of the Sale of Goods Act 1979 and the **terms** implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.6 Claims. All claims against us must be brought within one 1 year after the cause of action arises and you agree to waive any statute of limitations which might apply by operation of law or otherwise.

12.7 This *Clause 12* shall survive termination of the Contract.

13. Data Protection and Data Processing

13.1 We both acknowledge that for the purposes of General Data Protection Regulation (GDPR), that you are the Data Controller, and we are the Data Processor in respect of any Personal Data.

13.2 We shall process the Personal Data only in accordance with your instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the you.

13.3 We will take all reasonable measures to ensure they adhere to its obligations under Articles 30 and 32 of GDPR taking into account the information that the Data controller has made available to it.

13.4 We shall take reasonable steps to ensure the reliability of all our employees who have access to the Personal Data.

13.5 We both warrant to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards, and other similar instruments.

13.6 We warrant that, having regard to the state of technological development and the costs of implementing any measures, we will:

a. take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

(i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, or damage; and

(ii) the nature of the data to be protected.

b. take reasonable steps to ensure compliance with those measures.

13.7 We both agree to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages, or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this *Clause 13*.

13.8 You acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use and process the Personal Data. Consequently, we will not be liable for any claim brought by a Data Subject arising from any action or omission by us, to the extent that such action or omission resulted directly from your instructions.

13.9 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14. Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

15. Severance

If any term or provision of these Terms and Conditions is held invalid, illegal, or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated

16. Governing Law

These Terms and Conditions shall be governed by and construed in accordance with the law of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

17. General

17.1 Jurisdiction - These terms of use are governed by and construed in accordance with the laws of Scotland. Any dispute which may arise between the parties concerning these terms of use shall be determined by the Scottish Courts and you submit to the exclusive jurisdiction of the Scottish Courts for such purpose.

17.2 Waiver - A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.4 No partnership or agency - Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.5 Entire agreement

a. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

b. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

c. Nothing in this clause shall limit or exclude any liability for fraud.

17.6 Assignment and other dealings

a. We may at any time assign, transfer, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under the Contract.

b. You shall not assign, transfer, subcontract, delegate, or deal in any other manner with any of its rights and obligations under the Contract.

SwitchHeat ltd
2nd Floor West George Street
Glasgow G2 1BP
Company Number SC838038

Call: 0141 459 0124
Email: Enquiries@Switch-Heat.co.uk
Visit: Switch-Heat.co.uk

SwitchHeat

CANCELLATION FORM

(Complete and return this form only if you wish to withdraw from the contract)

To Switch Heat Ltd, 2nd Floor 48 West George Street, Glasgow, Scotland, G2 1BP or enquiries@switch-heat.co.uk

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods and services, Ordered on [*]/received on [*],

Contract number: [insert contract number)

Name of customer(s),

Address of customer(s),

Signature of customer(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate