

# Customer Agreement

## TERMS AND CONDITIONS OF USE FOR CONTROL KIT BUNDLE (DOMINATOR ELITE ONLY)

Your use of the Control Kit is conditional on your acceptance and compliance with the terms, conditions, notices and disclaimers contained in, or referred to in, this document (the Terms) and the User Manual. By using the Control Kit, you agree to accept and be bound by the Terms. If you do not agree to the Terms, you have a right to return the Control Kit, unused and in the same conditions as which you bought it, within 14 days of purchase and seek a refund.

### 1. General

- (a) Automatic Technology (Australia) Pty Ltd (Automatic Technology) is the provider of the Smart Hub (Smart Hub), products that are supplied by Automatic Technology and which are compatible with the Smart Hub (Compatible Products) and smartphone apps that are compatible with the Smart Hub (Compatible Apps), including the Control-A-Door App.
- (b) The Terms govern the relationship between you and Automatic Technology regarding your use of the Smart Hub, Compatible Products and Compatible Apps (collectively, the Control Kit). A link or copy of the Terms was provided to you at the time you purchased and/or downloaded components of the Control Kit.
- (c) In order to operate, the Smart Hub requires a connection with one or more Compatible Products, which are available for purchase separately. The Smart Hub and any Compatible Products must be installed in accordance with the applicable installation instructions for those devices. The Smart Hub may also be connected to the Compatible Apps, which are available for download from the Apple iTunes or App Store and the Google Play Store.
- (d) The services provided by the Control Kit (Services) are the control, monitoring and operation of Compatible Products. Automatic Technology reserves the right to modify the Services at any time.
- (e) In order to use the Services, you must create a user account using a Compatible App and register your Compatible App with the Smart Hub (together, your Account).
- (f) You may only use the Control Kit, the Services and/or your Account (collectively, the Control Kit Bundle) for the purposes permitted by the Terms (Authorized Purpose).
- (g) You are only authorized to use the Control Kit Bundle to register, install, access or operate a Smart Hub in the United States and Canada.

### 2. Use of the Control Kit Bundle

#### (a) You must:

- (i) comply with all applicable laws when using the Control Kit Bundle and must not use the Control Kit Bundle to engage in any illegal conduct or activity;
- (ii) not rent, lease, sell, trade, gift, bequeath or otherwise transfer an Account to anyone (unless you are the administration user for an Account and are setting up another user on that Account);
- (iii) not access or use an Account which has been rented, leased, sold, traded, gifted, bequeathed, or otherwise transferred from the Account creator (except where an Account administration user is setting you up to be a user on that Account); and / or
- (iv) comply with all warnings, cautions and instructions Automatic Technology publishes relating to the Control Kit Bundle. You should consult the Automatic Technology website regularly to access any updated information that Automatic Technology may publish from time to time.

(b) Automatic Technology, its related corporate entities and their respective directors, officers and employees shall not be responsible for any eventualities arising from any failure to comply with the requirements in paragraph (a) above.

(c) You are solely responsible for any data or network charges incurred using the Control Kit Bundle.

(d) You must comply with any applicable third party terms of agreement which are displayed to you, or otherwise brought to your attention, in the course of downloading or registering to use any part of the Control Kit Bundle.

### 3. Security of the Control Kit

(a) You are responsible for maintaining the security of your login password, and must not disclose your password to any other person, or otherwise allow any other person to access your Account.

(b) You must protect the Control Kit Bundle and any personal information stored on the Control Kit Bundle from misuse, interference and loss as well as unauthorized access, modification or disclosure.

**(C) WHILE AUTOMATIC TECHNOLOGY HAS USED REASONABLE EFFORTS TO ENSURE THE CONTROL KIT BUNDLE IS SECURE, AUTOMATIC TECHNOLOGY AND ITS RELATED CORPORATE ENTITIES MAKE NO REPRESENTATIONS AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCLUDE ALL WARRANTIES AS TO THE SECURITY OF THE CONTROL KIT BUNDLE FROM ANY THIRD PARTY INTERFERENCE AND TAKE NO RESPONSIBILITY FOR ANY ERROR, OMISSION OR DEFECT IN SUCH SECURITY.**

(d) In the event you become aware of or suspect any breach of security, including without limitation any loss, theft or unauthorized disclosure of your password, you must immediately notify Automatic Technology and modify your password.

### 4. License to use the Smart Hub

Automatic Technology grants to you a revocable, non-exclusive, non-transferable license to use the Control Kit Bundle provided that you agree to comply with the following license conditions:

(a) you will only use the Control Kit Bundle in a manner which is permitted by:

- (i) the Terms;
- (ii) in the case of a Compatible App downloaded and used on an iPhone, iPad or similar such Apple device, the Apple iTunes Store Terms and Conditions provided at <http://www.apple.com/legal/internet-services/itunes/au/terms.html>; and
- (iii) in the case of a Compatible App downloaded and used on an Android phone, the Google Play Store Terms of Service provided at [https://play.google.com/intl/en\\_au/about/play-terms.html](https://play.google.com/intl/en_au/about/play-terms.html);

(b) you will not:

- (i) use exploits, automation software, hacks or any software designed to modify, disrupt, overburden or interfere with use and enjoyment of the Control Kit Bundle;
- (ii) institute, assist or become involved in any type of attack, including without limitation distribution of a virus or denial of service attacks using the Control Kit Bundle;
- (iii) attempt to gain unauthorised access to Control Kit Bundles registered to others or to servers or networks connected to the Control Kit Bundles by any means other than the user interface provided by Automatic Technology;
- (iv) use any unauthorised third party software that accesses, intercepts or otherwise collects information from or through the Control Kit Bundle or that is in transit from or to the components of the Control Kit Bundles, including any software that reads areas of random access memory (RAM) or streams of network traffic used by the Control Kit Bundle;
- (v) use, facilitate, create, or maintain any unauthorised connection to the Control Kit Bundle, including any connection to any unauthorised server that emulates the Control Kit Bundle, or any connection which uses programs, tools, or software not expressly approved by Automatic Technology;
- (vi) reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any software or other intellectual property used to provide the Control Kit Bundle;
- (vii) copy, modify or distribute rights or content from the Control Kit Bundle; or
- (viii) otherwise use the Control Kit Bundle for a purpose other than the Authorized Purpose.

### 5. Suspension and Termination of Account and Smart Hub Services

(a) Automatic Technology may limit, suspend, terminate, modify or delete an Account or prohibit access to Automatic Technology services (including the Control Kit Bundle) if you are, or Automatic Technology suspects that you are, failing to comply with the Terms.

(b) Automatic Technology provides you with support for the Control Kit Bundle in its sole discretion. Automatic Technology reserves the right to stop supporting the Control Kit Bundle at any time. You will be given at least one month prior notice of when Automatic Technology will cease supporting the Control Kit Bundle. At the end of that notice period your license to use the Control Kit Bundle will be automatically terminated.

(c) You may discontinue your use of the Control Kit Bundle for any reason at any time.

### 6. Intellectual Property and Ownership

The Control Kit Bundle is protected by intellectual property rights. Unless indicated to the contrary, all right, title and interest in and to the intellectual property in relation to the Control Kit Bundle is and will remain the exclusive property of Automatic Technology and/or its related bodies corporate, including without limitation:

- (a) all copyright subsisting in the information, text, materials, graphics, software, names, logos and trade marks contained on the Control Kit Bundle; and
- (b) the trade marks contained on the Control Kit Bundle. Where a mark is indicated as a registered mark it is registered in Australia, the United States and/ or Canada and may also be registered in other jurisdictions.

Nothing contained in the Control Kit Bundle is to be construed as a licence or any right to use any intellectual property in relation to the Control Kit Bundle, other than as expressly set out in these terms and conditions, without the express written permission of Automatic Technology.

## 7. Privacy and Personal Information

- (a) When using the Control Kit Bundle, you are solely responsible for compliance with any legislation applicable to personal information, including legislation concerning the collection, use, disclosure, quality, security, retention, access, identification and transfer of such personal information. B & D does not collect or store personal information relating to your use of the Control Kit Bundle (unless you are provided with express notice from B & D informing you of collection and handling of personal information).
- (b) You must not use any information which would identify you or your address when registering a username, Smart Hub name, Compatible Product name, password, email or security question or answer to create and/or use an Account. Using identifying information compromises your security. To the extent that your email address contains personal information, such as your name and where you work, this information may be accessible to our third party cloud service providers.
- (c) B & D expressly excludes any liability for losses which arise as a result of your use of identifying information to create and/or use an Account.
- (d) The encryption applied to the Control Kit Bundle means that B & D does not have any access to the registration data transmitted through this system. B & D does, however collect and provide to its data analytics service providers de-identified and aggregate information relating to use of the Compatible Apps for research and reporting purposes.
- (e) Our Privacy Policy describes how we collect and use your personal information and how you can access, seek correction of, or complain about our handling of personal information. B & D is a member of the DuluxGroup and is covered by the DuluxGroup privacy policy. You can access this privacy policy here: <http://www.duluxgroup.com.au/Privacy-Policy/Privacy-Policy/default.aspx>

## 8. Terms and Conditions of Google and/or Apple

- (a) These Terms are concluded between you and Automatic Technology only. Neither Apple or Google have any obligation to provide any maintenance or support services with respect to the Compatible Apps.
- (b) By using the Compatible Apps, you agree that Apple, Google and their respective subsidiaries will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary to these Terms.
- (c) B & D, and neither Apple or Google, will be responsible, subject to the Terms, for addressing any claims instigated by you relating to the Compatible Apps, including, but not limited to:
  - (i) product liability claims;
  - (ii) any claim that a Compatible App fails to conform to any applicable legal or regulatory requirement; and
  - (iii) claims arising under consumer protection or similar legislation.
- (d) In the event of any third party claim that a Compatible App or your possession and use of a Compatible App infringes that third party's intellectual property rights:
  - (i) Automatic Technology will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim; and
  - (ii) neither Apple or Google will have responsibility for such investigation, defence, settlement and discharge of any such intellectual property infringement claim.
- (e) By using the Compatible Apps, you represent and warrant that:
  - (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a 'terrorist supporting' country; and
  - (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 9. INDEMNITY, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- (A) AUTOMATIC TECHNOLOGY ENDEAVORS TO ENSURE THAT THE CONTROL KIT BUNDLE IS RELIABLE, AND TRIES TO ENSURE THAT ANY DISRUPTION TO THE ACCESS AND USE OF THE CONTROL KIT BUNDLE IS RESTORED WITHIN A REASONABLE TIMEFRAME WHERE POSSIBLE. HOWEVER, AUTOMATIC TECHNOLOGY, ITS RELATED BODIES CORPORATE AND THEIR RESPECTIVE EMPLOYEES MAKE NO REPRESENTATIONS AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCLUDE ALL WARRANTIES AS TO THE PERFORMANCE, QUALITY, COMPLETENESS, RELIABILITY, SECURITY, TIMELINESS OR ACCURACY OF THE CONTROL KIT BUNDLE (WHERE APPLICABLE).**
- (B) B & D, ITS RELATED CORPORATE ENTITIES AND THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR:**
- (I) ANY ERROR, OMISSION OR DEFECT IN THE CONTROL KIT BUNDLE; OR**
  - (II) ANY EVENTUALITIES ARISING FROM THE USE OF, OR RELIANCE ON, THE CONTROL KIT BUNDLE, EXCEPT WHERE SUCH LIABILITY IS CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF AUTOMATIC TECHNOLOGY OR ITS RELATED CORPORATE ENTITIES.**

## **(C) TO THE MAXIMUM EXTENT PERMITTED BY LAW, AUTOMATIC TECHNOLOGY AND ITS RELATED CORPORATE ENTITIES:**

- (I) DISCLAIM ANY LIABILITY TO ANY PERSON ARISING OUT OF ANY ACTION OR FAILURE TO ACT BY THAT PERSON OR ANY THIRD PARTY, IN ACCESSING, USING OR RELYING ON THE CONTROL KIT BUNDLE (EXCEPT WHERE SUCH LIABILITY IS CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF AUTOMATIC TECHNOLOGY OR ITS RELATED BODIES CORPORATE); AND**
  - (II) EXCLUDE ALL CONDITIONS, GUARANTEES, WARRANTIES AND LIABILITY IN RELATION TO THE CONTROL KIT BUNDLE OR YOUR USE OF THE CONTROL KIT BUNDLE WHETHER BASED IN STATUTE, COMMON LAW OR OTHERWISE.**
- (D) IF A STATUTORY CONDITION, WARRANTY OR GUARANTEE APPLIES IN YOUR JURISDICTION WHICH CANNOT BE EXCLUDED THEN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL LIABILITY FOR THE BREACH OF ANY NON-EXCLUDABLE CONDITION, WARRANTY OR GUARANTEE IS LIMITED TO THE SUPPLY OF THE RELEVANT SERVICES AGAIN OR PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.**
- (E) SUBJECT TO PARAGRAPHS (C) AND (D) AND TO ANY REMEDIES AVAILABLE TO YOU UNDER ANY NON-EXCLUDABLE STATUTORY GUARANTEES AND UNDER ANY NON-EXCLUDABLE INDEMNITY PROVIDED BY LOCAL LAW:**
- (I) YOU EXPRESSLY AGREE THAT YOUR USE OF THE CONTROL KIT BUNDLE IS AT YOUR SOLE RISK;**
  - (II) AUTOMATIC TECHNOLOGY AND ITS RELATED BODIES CORPORATE WILL HAVE NO RESPONSIBILITY OR LIABILITY IN RELATION TO:**
    - ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR**
    - ANY PERSONAL INJURY, ILLNESS OR DEATH (EXCEPT WHERE SUCH LIABILITY IS CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF AUTOMATIC TECHNOLOGY OR ITS RELATED BODIES CORPORATE); OR**
    - LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF CONTRACT, DAMAGE TO REPUTATION OR GOODWILL, INCREASED COST OF WORKINGS, DAMAGE TO SOFTWARE OR HARDWARE, LOSS OF USE, DATA CORRUPTION OR LOSS OF DATA ARISING FROM YOUR USE OF OR ACCESS TO THE CONTROL KIT BUNDLE;**
  - (III) AUTOMATIC TECHNOLOGY AND ITS RELATED BODIES CORPORATE DO NOT WARRANT THAT FUNCTIONS OF THE CONTROL KIT BUNDLE WILL BE SECURE, UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED OR THAT THE CONTROL KIT BUNDLE WILL BE FREE OF VIRUSES, WORMS, BUGS, OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES;**
  - (IV) YOU AGREE TO INDEMNIFY AUTOMATIC TECHNOLOGY, ITS RELATED BODIES CORPORATE AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AGAINST ANY ACTION, CLAIM, LOSS, DAMAGE, COST OR EXPENSE WHICH ANY OF THEM SUFFER OR INCUR WHICH ARISES FROM OR OTHERWISE IN CONNECTION WITH YOUR USE OF THE CONTROL KIT BUNDLE (EXCEPT WHERE SUCH LIABILITY IS CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF AUTOMATIC TECHNOLOGY OR ITS RELATED BODIES CORPORATE); AND**
  - (V) YOU AGREE THAT YOU WILL NOT BE ENTITLED TO COMPENSATION BASED ON ANY OF THE ISSUES REFERRED TO IN ITEMS ABOVE OTHER THAN AS EXPLICITLY PROVIDED IN THESE TERMS.**

## 10. Interpretation

In these Terms, the words 'including', 'for example', 'such as' or other similar expressions (in any form) are not words of limitation.

## 11. Survival

The following clauses of these Terms survive termination of service in relation to the Control Kit Bundle or discontinuance of use of the Control Kit Bundle: clauses 2, 5, 6, 7, 8, 9, 10, 11 and 13.

## 12. Severability

You and Automatic Technology agree that if any portion of these Terms are found to be illegal or unenforceable, in whole or in part by any court of competent jurisdiction, such provision will be ineffective solely to the extent of such determination of invalidity without affecting the remaining provisions of these Terms, which will continue to be in full force and effect.

## 13. Governing Law

These Terms are governed by and interpreted in accordance with the laws applicable in the State of Texas. You hereby agree to submit all disputes arising out of your use of the Control Kit Bundle or concerning these Terms to the jurisdiction of the courts of Texas, including any disputes arising out of claims you have made against any of Automatic Technology, its related bodies corporate, or their respective directors, officers, employees and agents