

## TERMS OF LOCAL AND LONG DISTANCE SERVICES

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THESE TERMS SHALL APPLY TO ALL LOCAL (RESIDENTIAL AND BUSINESS), LONG DISTANCE (RESIDENTIAL AND BUSINESS) AND 8XX SERVICE ORDERS AND ANY ATTACHMENTS THERETO (HEREINAFTER REFERRED TO AS AN "ORDER" OR "ORDERS"). AN ORDER COMBINED WITH THESE TERMS SHALL CONSTITUTE A SUBSCRIPTION AGREEMENT BETWEEN POWERCOM CORPORATION ("POWERCOM") AND SUBSCRIBER ("CUSTOMER").

**THESE TERMS AND THE POWERCOM FEATURES SCHEDULE MAY BE UPDATED FROM TIME TO TIME. UPDATED TERMS AND FEATURES SCHEDULE APPLY AND CAN BE FOUND AT [www.powercom.net](http://www.powercom.net) OR ARE AVAILABLE BY CONTACTING POWERCOM AT 1-800-444-4014.**

- 1. SERVICE.** The Service provided by Powercom shall be for the sole use of Customer. "Service(s)" shall mean service(s) specified on an Order and all additional service(s) requested by Customer in verbal or written form after the signing of the Order.
- 2. COMPANY EQUIPMENT PROVIDED FOR USE BY CUSTOMER.** If Powercom makes any software or equipment available for use by Customer, Customer shall use such software or equipment only for purposes of utilizing the Services provided by Powercom, and Customer agrees to protect and maintain said equipment, and Customer shall be responsible for any loss or damage resulting from vandalism, theft, fire or other casualty loss. Customer shall be responsible for maintaining full insurance coverage protecting such equipment from theft, vandalism and other casualty loss, for the benefit of Powercom.
- 3. SECURITY.** Customer shall maintain adequate security over any of its access facilities and shall be responsible for all charges or other liability arising from authorized or unauthorized usage.
- 4. PAYMENT; BILLING FEE.** Payment is due as indicated on Customer's statement. Customer assumes financial responsibility for use of the Service, for payment of all charges, including all one-time (non-recurring), monthly recurring, usage, other charges, late fees, service fees and taxes. All payments received shall be applied to the oldest outstanding balance first, including late fees, if any. Customer shall be charged a billing fee up to \$4.95 per month which shall be waived if long distance use by Customer in that month exceeds the product minimum use amount (up to \$30.00) net of discounts, rebates, other charges, late fees, service fees and taxes. Invoices for Services will be issued by Powercom monthly.
- 5. PAST DUE BALANCES; ANNUAL PERCENTAGE RATE ("APR").** Balances which are not paid by the due date as set forth on the statement or fifteen (15) days following the close of the billing period, whichever is later, are considered delinquent and are subject to late fees of 1.5% monthly (18% APR) for business Customers and 1% monthly (12% APR) for residential Customers.. Business Customers agree to pay all costs and expenses including actual attorney's fees incurred by Powercom in collecting past due balances unless not allowed by applicable state law. In the event Customer does not pay on a timely basis as defined in the Order or the terms set forth herein, Customer hereby authorizes Powercom to deduct payment from Customer's credit card account as provided on the Order or as provided verbally or in writing after the signing of the Order. Customer is subject to Service disconnection for nonpayment of outstanding balances. If, at Powercom's sole discretion, Service is reconnected after disconnection due to nonpayment, a reconnection fee shall be charged as follows: (a) a residential account shall be charged \$30.00; (b) a business account shall be charged \$30.00 per account or \$15.00 per line, whichever is greater. A \$50.00 fee shall be charged for all checks that are returned due to a closed account or insufficient funds.
- 6. CREDIT CARD PAYMENTS.** Customer must notify Powercom of new credit card expiration dates or change of card choice to avoid card rejection which may result in late fees, service fees, and/or Service disconnection for late payment on account. A \$20.00 fee shall be charged for all credit card declines.
- 7. OTHER CHARGES.** Customer shall be responsible for any taxes, tariffs, licensing fees, Presubscribed Line Charges, Universal Service Fund and Recovery Fees or other charges imposed by any governmental or quasi-governmental entity or other charges imposed by Powercom relating to providing the Service during the term of the Order. Other Charges are presented on the Powercom Features Schedule, which can be found at [www.powercom.net](http://www.powercom.net) or are available by contacting Powercom at 1-800-444-4014. Powercom shall provide notices to Customer in the event of changes to other charges imposed by Powercom.
- 8. CHARGES FOR PREMISE WIRE INSTALLATION AND/OR REPAIR SERVICES.** The installation and repair charges shall be calculated to include time incurred as a result of travel to and from Customer's premises. Charge is calculated per hour for time spent on premises or in transit and is rounded up to the next hour. Example: 45 minutes will be billed as 1 hour; 2 hours and 15 minutes will be billed as 3 hours. All service work to be completed for Customer must be requested of Powercom by Customer in advance of service call. Customer agrees not to request additional premise work from technical service person at Customer site. Should the need for additional service arise at that time, Customer agrees to call Powercom to place that request.
- 9. ACCESS TO PREMISES.** If a repair technician is unable to perform the Service(s) requested due to inability to obtain access to the Customer premises, Customer will be liable for the service charge whether or not a maintenance agreement is in place.
- 10. DISPUTES.** Unless written notice of a dispute is received from Customer within thirty (30) days of the date of the first statement containing the disputed charge, such statement shall be deemed to be correct and payable in full by Customer. Customer agrees to cooperate in any investigation of disputed matters. Payment of amount not disputed is required by statement due date to avoid late fees, service fees, and/or Service disconnection.
- 11. ARBITRATION.** Any claim or dispute arising between Customer and Powercom which cannot be resolved between the parties shall be resolved by binding arbitration at the request of either party. If arbitration is requested by either party, neither party shall have the right to litigate the claim or dispute in court (except that either party may bring a claim in small claims court). Neither party shall have the right to a jury trial. The arbitration proceeding shall be administered by the American Arbitration Association, pursuant to the American Arbitration Association's Commercial Arbitration Rules, and if applicable, the Supplementary Procedures for Consumer-Related Disputes. All claims shall be treated individually and there shall be no consolidation of claims or class

actions. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. For additional information on invoking arbitration and how the arbitration process works, you may call the American Arbitration Association at 800-778-7879.

12. **TERMINATION OF SERVICE.** Powercom shall have the right to terminate Service without notice for Customer's violation of the Order or the terms set forth herein, or for nonpayment of any amounts due under the Order at any time, unless notice is required by applicable state law. Customer understands that termination of local service cancels Customer's ability to access 911 service.
13. **RATES; MODIFICATION OF RATES AND OTHER TERMS OF THIS AGREEMENT.** All calls round up to the nearest whole cent. Powercom shall have the right at any time to increase the charges for any Service under the Order, and to modify the Service in any respect, upon thirty (30) days advance notice to Customer. Continued use of Service after notification of rate change constitutes consent to the change. Rate information can be found at [www.powercom.net](http://www.powercom.net).
14. **LIABILITY FOR NETWORK INTERRUPTIONS.** Powercom purchases connectivity from other vendors and as a secondary connectivity provider shall not be responsible for network interruptions. Powercom shall not be liable for any losses or damages associated with network interruptions, deficiencies or failures of any kind, including, but not limited to, direct, actual, special, incidental, consequential or indirect damages. Customer shall indemnify and hold harmless Powercom and its affiliates, shareholders, directors, officers, agents, and employees from and against all claims, demands, actions, causes of actions, damages, liabilities, losses and expenses (including reasonable attorney fees) incurred as a result of any network interruptions.
15. **LIABILITY FOR DAMAGES TO CUSTOMER PROPERTY.** Powercom is not liable for any defacement or damage to Customer's Premises resulting from the existence of Powercom's apparatus and associated wiring on such Premises, or from the installation or removal thereof, when such defacement or damage is not the result of the negligence of Powercom.
16. **LIABILITY FOR DAMAGES.** With respect to any claim or suit, by a Customer or by any others, for damages associated with the installation, provision, termination, maintenance, repair, or restoral of Service, Powercom's liability, if any, shall not exceed an amount equal to the proportionate part of the monthly recurring charge for the Service for the period during which the Service was affected. Under no circumstances shall Powercom be liable for any indirect, incidental or consequential damages, including lost profits, sustained or incurred in connection with the installation, provision, termination, maintenance, repair or restoral of Service, regardless of the form of action, whether in contract, tort, strict liability, or otherwise, and whether or not such damages, injuries, losses or expenses are foreseeable.
17. **LIABILITY OF CUSTOMER.** Customer shall indemnify and hold Powercom harmless against claims for libel, slander or infringement of copyright from the material transmitted over its facilities; against claims for infringement of patents arising from combining with, or using in connection with facilities of Powercom, apparatus and systems of Customer; and against all other claims arising out of any act or omission of Customer in connection with facilities provided by Powercom. Customer shall be liable for damages to facilities of Powercom caused by the negligence or willful act of Customer or authorized user. Customer or authorized user may not rearrange, disconnect, remove or attempt to repair, or permit others to rearrange, disconnect, remove or attempt to repair any equipment installed by Powercom except upon written consent of Powercom.
18. **CANCELLATION OF UNNEEDED SERVICES; CONTINUING CHARGES.** Customer shall be responsible for the cancellation of existing switched or dedicated facilities, services or equipment with Powercom or any other vendor. Customer acknowledges any line that remains assigned to Powercom will generate charges. Customer is responsible for the charges.
19. **CUSTOMER RESPONSIBILITY.** Customer is responsible for the maintenance and proper operation of Customer's equipment. Customer is responsible for assisting Powercom in the resolution of technical problems through timely notification, proper problem descriptions and cooperation during problem resolution.
20. **LETTER OF AUTHORIZATION ("LOA").** The Customer appoints Powercom to act as Customer's communications representative in matters related to local service, as well as intraLATA and interLATA long distance service unless otherwise specified. The signature on the Order authorizes Powercom to notify the local telephone company to switch Customer's local service, as well as long distance carrier for both intraLATA and interLATA long distance service to Powercom (unless otherwise specified). This LOA allows Powercom to obtain copies of Customer's: a) Network service and equipment records; and b) Other (additional information must be attached to the Order). If the name of Customer on the related Order is not exactly as it appears on the local carrier bill, a separate LOA is required.
21. **Residential Customers Only: Customer's right to cancel: A Residential Customer may cancel this agreement by mailing a written notice to Powercom Corporation, 1807 N. Center Street, Beaver Dam, Wisconsin, 53916-1031, or faxing notice to 1-800-945-0241 before midnight of the third business day after this agreement has been signed. Customer may use this page as that notice by writing "I hereby cancel" and adding Customer name and address.**