

THESE TERMS AND CONDITIONS (THE "TERMS") SHALL APPLY TO AND BE DEEMED PART OF ALL WEB DESIGN SERVICE ORDERS, RELATED SERVICE ORDER ATTACHMENTS AND WEB DESIGN ADD/CHANGE FORM(S), (HEREINAFTER REFERRED TO AS AN "ORDER" OR "ORDERS") ENTERED INTO BETWEEN CUSTOMER AND POWERCOM CORPORATION ("POWERCOM").

THE TERMS AND CONDITIONS CONTAINED HEREIN MAY BE UPDATED FROM TIME TO TIME. THE CURRENT TERMS ARE AVAILABLE AT [www.powercom.net](http://www.powercom.net) OR UPON REQUEST BY CONTACTING POWERCOM AT 1-800-444-4014. ALL MODIFICATIONS SHALL APPLY AND BE BINDING ON CUSTOMER UPON THE RENEWAL DATE OF THE ORDER AND/OR UPON THE APPROVAL OF ANY WEB DESIGN ADD/CHANGE FORMS. CUSTOMER SHALL HAVE THE RIGHT TO TERMINATE THE ORDER WITHIN THIRTY (30) DAYS AFTER MODIFIED TERMS BECOME BINDING IF SUCH MODIFICATIONS ARE MATERIAL AND CUSTOMER PROVIDES POWERCOM WITH WRITTEN NOTICE (VIA EMAIL OR REGULAR MAIL AT THE ADDRESS LISTED ON THE ORDER) OF ITS INTENT TO TERMINATE THE ORDER.

**1. SERVICE.** "Service(s)" shall mean service(s) specified on an Order and all additional service(s) requested by Customer, whether verbally or in writing after the signing of the Order.

**2. NON-SOLICITATION OF EMPLOYEES.** Customer agrees not to hire Powercom Web design personnel during the term of the Order or for one (1) year after the termination of the Order. Any such solicitation shall entitle Powercom to cancel the Order immediately. Furthermore, if during the term of or within one (1) year after the termination of the Order, Customer hires or contracts with Powercom Web design personnel, Customer agrees to pay a placement fee to Powercom of thirty percent (30%) of the total annual compensation to be paid to such personnel by Customer.

**3. PAYMENT:** Customer agrees to pay Powercom all balances due no later than the due date set forth on any applicable statement.

**4. PAST DUE BALANCES; ANNUAL PERCENTAGE RATE ("APR").** Balances that 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, shall be deemed late and shall be subject to late fees of 1.5% monthly (18% APR) for business Customers and 1% monthly (12% APR) for residential Customers, or the maximum interest rate allowed by law Business Customers agree to pay all costs and expenses, including actual attorney's fees incurred by Powercom, in connection with the collection of any past due balances, to the maximum extent allowed under state law. If Customer has provided Powercom with credit card information, Customer further authorizes Powercom to deduct from Customer's credit card account any payment, late fees and/or interest not received on a timely basis as defined in the Order. Powercom reserves the right to charge a \$50.00 fee for all checks that are returned due to a closed account or insufficient funds.

**5. CREDIT CARD PAYMENTS.** Customer shall be solely responsible for notifying Powercom of any new credit card expiration dates or changes in credit card billing information to avoid card rejection, which may result in late fees, service fees, and/or termination fees. Powercom reserves the right to charge a \$20.00 fee for all credit card declines

**6. OTHER CHARGES.** Except for taxes based on Powercom's income, Customer shall be responsible for any sales taxes, tariffs, licensing fees or other similar charges imposed by any government or quasi-governmental entity in association with the goods or services provided by Powercom hereunder.

**7. BILLING DISPUTES.** Unless Customer provides Powercom with written notice of a payment or billing dispute within thirty (30) days 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 with Powercom for any investigation of disputed matter. Customer agrees to pay all amounts not in dispute by the applicable statement due date to avoid late fees, service fees and/or termination fees.

**8. 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.

**9. TERMINATION OF SERVICE.** Powercom shall have the right to terminate Service without notice for Customer's violation of the Order or of 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. A termination processing fee of \$25.00 will apply. All work completed prior to termination is billable at applicable hourly rate. Unused fees from advanced payment will be refunded less the termination fee. Said charges also apply if Customer cancels the project.

## 10. CUSTOMER APPROVAL OF SITE.

**10.1 Changes to Site.** Customer may request changes to the scope of work by submitting a request for such changes to Powercom. Customer agrees and acknowledges that any requested changes to the scope of work may result in delays of final completion dates and/or changes to the total cost for Services under the Order. Changes to the scope of work will not commence without a valid Web Design Add/Change Form provided to Customer by Powercom, which must be signed by Customer and approved by Powercom. The Add/Change Form will describe the changes and the cost impact of those changes to the original Order.

**10.2 Completion of Site.** Upon Powercom's completion of the services set forth in any Order or Add/Change Form, Powercom will notify Customer of completion via fax. Customer shall have ten (10) days from date of notification to review the site and notify Powercom of acceptance or rejection of site. If Customer does not respond to the notification within ten (10) days, Customer shall be deemed to have accepted the site in its entirety and Powercom will issue a final invoice to Customer for any remaining balance due.

**11. LINKS.** Powercom shall have the right to insert a reference link at the bottom of all Web pages designed by Powercom. This reference link shall connect to Powercom's home page. Customer shall not remove or alter this link for any reason, whether the Web site is hosted by Powercom or any other Web site host.

**12. LANGUAGE and/or IMAGES (including PHOTOS).** Powercom agrees to incorporate into the Web site such language, custom graphics and/or images provided to Powercom by Customer. Customer expressly warrants that all such language, graphics and/or images provided by Customer shall not infringe upon or otherwise violate the copyright, trademark, right of publicity or other proprietary or confidential right of any third party. Customer shall be solely responsible for obtaining and paying for any and all releases or licenses necessary to use such content on the website.

## 13. INTELLECTUAL PROPERTY RIGHTS.

**13.1 Copyright Ownership.** If and to the extent that Powercom develops any copyrightable language, graphics, images or other material for and on behalf of Customer as part of the Services, Powercom agrees to assign all rights in and to such materials to Customer upon Customer's satisfaction of all of its duties and obligations set forth in the Order including full payment of all charges for site creation. If Customer fails to meet all of its duties and obligations, the copyright of such materials will be retained by Powercom. The above transfer expressly excludes the copyright in and to any Web site template source code for programs developed by or licensed by Powercom and expressly excludes Powercom's "Chamber Connection" and/or "Small Business Sites" that may be incorporated into the Customer Web site. To the extent that Powercom incorporates any template source code into the Customer Web site, Powercom shall grant to Customer a non-exclusive, perpetual right and license to use such source code solely in connection with the Web site created by Powercom. Nothing in this license shall prevent or otherwise affect Powercom's right to use, license or sell the same or similar template source code to third parties. This nonexclusive license does not include a license to use the "Chamber Connection" and/or "Small Business Site".

**13.2 Trademarks.** All trademarks, trade names and service marks (collectively "marks ") of Customer shall remain the property of Customer. Powercom grants Customer a limited nonexclusive license to use the Powercom trademark as set forth in the "Links" section of these Terms.

**13.3 "Chamber Connection" and/or "Small Business Site" Hosting.** If the Order includes the "Chamber Connection" and/or "Small Business Site", Customer acknowledges and agrees that such sites must be hosted by Powercom. Customer shall not host the "Chamber Connection" and/or "Small Business Site" with any other company except as allowed under the Termination Of "Chamber Connection" section. Powercom grants to Customer the right and license to use the "Chamber Connection" and/or "Small Business Site" for the term of service stated in the Order. Customer further acknowledges and agrees that the minimum term for the "Chamber Connection" and/or "Small Business Sites" is one (1) year.

**14. CONFIDENTIAL INFORMATION.** Each party acknowledges that it may, in the course of performing under the Order, be exposed to or acquire information which is proprietary or confidential to the other party. "Confidential Information" means any and all information pertaining to the disclosing party's business and not publicly known, other than that which is: (a) known to the recipient party prior to disclosure by the disclosing party or its personnel; (b) publicly available through no act or omission of the recipient party; or (c) lawfully obtained by the recipient party from a third party (other than the recipient party's former or current personnel) that is not under any confidentiality obligation to the disclosing party. The recipient party hereby agrees that any Confidential Information provided by the disclosing party pursuant to the Order will be used solely to fulfill the recipient party's obligations under the Order. The recipient party agrees to protect any Confidential Information in a manner that it would use to protect its own Confidential Information, but in no event with less than due care. Unless authorized to do so in writing in advance by the disclosing party, the recipient party will not, for any reason at any time, use or disclose to any third party any of the recipient party's Confidential Information.

**15. ACCEPTABLE SITES.** Powercom does not design or modify sites that would violate Powercom's Acceptable Use Policy if hosted by Powercom. The current version of the Acceptable Use Policy is accessible on Powercom's Web site at <http://www.powercom.net/internet>.

**16. WEB SITE DISPLAY.** Customer acknowledges that the visual appearance and performance of Customer Web site may vary depending on the end-user's Web browser, software, hardware and/or type and speed of Internet access. Powercom agrees to create Web pages suitable for the most commonly used Web browsers, hardware and monitors.

## **17. LIMITED WARRANTY AND LIMITATION OF LIABILITY.**

**17.1 Warranty.** Powercom warrants that it will perform all Services in a professional workmanship-like manner and that the Services will substantially comply with scope of work agreed upon by the Customer and Powercom in the Order.

**17.2 Data or Formulae of Customer.** In the event that the Web site includes functions based on algorithms, computations or formulae provided to Powercom by Customer, Powercom disclaims all warranties, express or implied, with respect to results or output generated by such algorithms, computations or formulae. In the event that the Web site includes data provided to Powercom by Customer, the accuracy of such data shall be the responsibility of Customer, and Powercom shall have no responsibility whatsoever for any damage or loss caused by the use of inaccurate data provided by Customer.

**17.3 Proprietary Rights, Warranty and Indemnity.** Powercom warrants that any component of the Web site, which is created by Powercom, is owned or licensable by Powercom and will not infringe any copyright, patent, trade secret or other proprietary right of any third party. In the event of any claim by a third party against Customer asserting or involving a copyright, trade secret or other proprietary right infringement involving any component of the Web site created by Powercom, Powercom will defend at its expense, and will indemnify Customer against any cost, expense or damages awarded against Customer; provided that Customer notifies Powercom in writing within a reasonable time after Customer first receives written notice of any such claim. Powercom may fully participate in the defense or agree to any settlement of any such claims. In the event an injunction shall be obtained against Customer's use of the Web site by reason of the allegations, or if in Powercom's opinion the Web site is likely to become a subject of a claim of infringement of a copyright, patent, trade secret or other proprietary right of a third party, Powercom will, at its option and at its expense (a) procure the Customer the right to continue using the Web site, or (b) modify the Web site so that it becomes noninfringing, or (c) refund the amounts paid by Customer for the Web site. In the event that only portions of the Web site are infringing and Customer may still make use of the non-infringing portions, Powercom shall be obligated to refund only a pro rata portion of the amounts paid. Provided, however, that Powercom shall have no obligation to indemnify Customer or take any other action with respect to infringement claims related to any material or information provided by Customer for inclusion in the Web site.

**17.4 Web Hosting.** In the event that Powercom is hosting Customer Web site on a computer server provided by Powercom, Powercom makes no warranty that the Web site will be accessible at any particular speed or throughput from any other site on the Internet. Powercom makes no performance or other warranty, express or implied, with respect to the adequacy of hardware or connection for Customer's purposes for the Web site. It is the Customer's responsibility to maintain a current backup of Customer's site. Powercom is not responsible for lost data

**17.5 WARRANTY DISCLAIMER.** EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 17.1 AND 17.3 OF THESE TERMS, UPON ACCEPTANCE OF THE WEB SITE BY CUSTOMER, POWERCOM MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO ANY OF THE SERVICES AND/OR ACCESS TO OR USE OF THE POWERCOM SERVICES PROVIDED TO CUSTOMER UNDER THE ORDER. POWERCOM SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. POWERCOM ALSO DOES NOT GUARANTEE THAT THIRD PARTY ACCESS TO CUSTOMER'S WEB SITE OR OTHER SERVICES PROVIDED UNDER THE ORDER WILL BE UNINTERRUPTED, ERROR FREE OR SECURE.

**17.6 LIMITATION OF LIABILITY.** IN NO EVENT WILL POWERCOM BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO CUSTOMER CONTENT OR CUSTOMER DATA, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE POWERCOM SERVICES OR OTHER DELIVERABLES PROVIDED OR SERVICES PERFORMED UNDER THE ORDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF POWERCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, POWERCOM WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY REASONABLE DELAY IN DELIVERY OR FURNISHING THE POWERCOM SERVICES, OTHER DELIVERABLES OR OTHER SERVICES PERFORMED UNDER THE ORDER. EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 17.3 AND 18.2 OF THESE TERMS, POWERCOM'S LIABILITY UNDER THE ORDER FOR ANY DIRECT DAMAGES OF ANY KIND WILL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO POWERCOM UNDER THE ORDER.

## **18. INDEMNIFICATION**

**18.1 Indemnification by Customer.** Customer agrees to indemnify, defend (at Powercom's sole option and at Customer's sole expense) and hold harmless Powercom, its shareholders, directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim arising out of or relating to Customer's: (a) material breach of the Order; or (b) use of and/or access to the Powercom Services in a manner materially inconsistent with the Powercom Services documentation provided hereunder. Customer agrees to indemnify, defend (at Powercom's sole option and at Customer's sole expense) and hold harmless Powercom, its shareholders, directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, involving a claim based on infringement of any copyright, trade secret, trademark or other proprietary right involving any component of the Web site provided by Customer.

**18.2 Indemnification by Powercom.** Powercom agrees to indemnify, defend and hold harmless Customer, its shareholders, directors, officers, employees and agents, and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim arising out of or relating to any infringement of a copyright, trademark, trade secret, patent or other intellectual property right of any third party as a result of Customer's use of the Powercom Services in accordance with the Order. Customer agrees to furnish Powercom with prompt notice of such infringement claim, whereupon Customer hereby authorizes Powercom to defend such claim and agrees to cooperate and assist Powercom fully in such defense, at Powercom's expense.

**18.3 Compliance with Laws.** Customer shall be responsible for verifying that all content on the Web site complies with any applicable law, rule or regulation relating to such content. Customer acknowledges that Powercom does not have expertise with respect to the laws and regulations concerning Customer's business and Customer shall not rely on Powercom in this regard. Customer shall indemnify, defend and hold harmless Powercom, its shareholders, directors, officers, employees and agents from any and all claims, loss, expense or damages arising out of the failure of the Web site to comply with any applicable law, rule or regulation to the extent such non-compliance is caused by Customer's actions or omissions.

## **19. USER INFORMATION**

**19.1 Non-Disclosure.** Customer shall retain all right, title and interest in and to any and all individual, unique, and/or personally identifiable information, including but not limited to financial and credit information, related to Customer, its business, operations, customers, members or other entities engaged with or by Customer that is input into, transmitted by, and/or generated through use of the Services or equipment provided by Powercom ("User Information"). Except as is required to perform its obligations to Customer hereunder, Powercom shall not disclose, sell or otherwise use or exploit any User Information.

**19.2 Objectionable Content.** Powercom does not monitor information entered to the Customer databases, posted to forums and displayed on the customer Web pages and takes no responsibility for this information. Powercom reserves the right to remove any information which Powercom finds objectionable or which is in conflict with the Order or the Powercom Internet Acceptable Use Policy.

## **20. TERMINATION OF "CHAMBER CONNECTION"**

**20.1 Purchase of "Chamber Connection" License.** After one (1) year of paid Service or upon severe and prolonged Service outages experienced during two (2) consecutive months, a "Chamber Connection" Customer may opt to purchase a non-exclusive, perpetual right and license for the "Chamber Connection" software. The cost of such license shall be the product of the average standard monthly Service fee over the past six (6) months times twenty-four (24). Such license shall allow Customer to make changes to the software and host the software with an alternate provider but does not allow Customer to duplicate or resell the software. The license shall not include any rights in and to any Powercom trademarks or service marks. At such time that Customer purchases a "Chamber Connection" license Powercom shall remove all visual branding from the software. The license does not include access to any updates or support from Powercom.

**20.2 Transitional Services.** Powercom Customer and "Chamber Connection" Customer shall cooperate to minimize disruption of Service upon a termination of Service for reasons other than non-payment by Customer of charges not the subject of a valid dispute. Powercom will provide transitional services for a period not to exceed sixty (60) days from Customer's written notice (by regular mail or by email) of termination of Services. At Customer's request, Powercom shall provide a copy of any Customer data hosted on Powercom servers to Customer via FTP or CD-ROM. Upon purchase of a "Chamber Connection" license, Powercom shall provide Customer a copy of the software via FTP or CD-ROM. Powercom will provide any available consulting services and hosting services at then current rates.