

TERMS OF CONSULTING SERVICES

THESE TERMS SHALL APPLY TO ALL CONSULTING SERVICE ORDERS (HEREINAFTER REFERRED TO AS AN "ORDER" OR "ORDERS") THAT CUSTOMER HAS ENTERED INTO WITH POWERCOM CORPORATION ("POWERCOM").

THESE TERMS, THE POWERCOM FEATURES SCHEDULE AND THE CONSULTING PRICING SCHEDULE(S) MAY BE UPDATED FROM TIME TO TIME. UPDATED DOCUMENTS APPLY AND CAN BE FOUND AT 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 verbally or in writing after the signing of the Order.
2. **LOCATION.** Services will be performed at sites designated by Customer unless otherwise agreed to on the Order.
3. **NON-SOLICITATION OF EMPLOYEES.** Neither party will attempt to hire the personnel of the other party during the term of the Order or for one (1) year after the termination of the Order. Any such solicitation shall entitle the aggrieved party to cancel the Order immediately. If, during the term of or within one (1) year after the termination of the Order, either party hires or contracts with the other party's personnel, the hiring party agrees to pay a placement fee to the other party of thirty percent (30%) of the total annual compensation to be paid to such personnel by the hiring party.
4. **TERMINATION.** The Order shall be terminable at will of either party. Upon termination Customer shall remain liable for payment of Services rendered through date of termination.
5. **PAYMENT.** Powercom shall be paid at the billable rates set forth on Consulting Pricing Schedule. Customer agrees to pay Powercom all balances due no later than the due date set forth on any applicable statement.
6. **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. A \$50.00 fee shall be charged for all checks that are returned due to a closed account or insufficient funds.
7. **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.
8. **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.
9. **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.
10. **TAXES.** Customer shall be responsible for payment of all taxes, if any, levied upon the Services provided under the Order.
11. **PER DIEM EXPENSE REIMBURSEMENT.** Customer agrees to reimburse Powercom for any out-of-pocket expense actually incurred by any Powercom employee to complete Service requested by Customer under the Order. Upon request, Powercom will supply Customer with supporting documentation.
12. **INSURANCE.** Powercom agrees to maintain the following insurance for its employees: (a) Worker's compensation insurance covering all Powercom employees; (b) Employer's liability insurance; (c) Comprehensive automobile liability insurance for combined bodily injury and property damage, and (d) Comprehensive general liability insurance for combined bodily injury and property damage. Powercom agrees to provide Customer with certificates of insurance upon request.
13. **INDEPENDENT CONTRACTOR RELATIONSHIP.** It is expressly understood and agreed that the personnel assigned by Powercom to consult with Customer under the Order are Powercom's employees or agents. Under no circumstances are such personnel to be considered Customer employees or agents. Powercom shall be in an independent contractor relationship with Customer.
14. **WARRANTIES AND REMEDIES.** Powercom represents and warrants that all employees assigned to Customer under the Order shall be qualified personnel. Powercom shall replace any employee who is not qualified. Powercom shall not be liable for any damages whether indirect, special, or general, consequential or incidental arising from lost profits, or from furnishing Services under the Order, whether in an action based on contract or tort, including negligence and strict liability, Customer agrees that Powercom's liability for damages, if any, shall not exceed those charges paid to Powercom by Customer for the Services rendered by the Powercom employee(s) who caused such damage. The warranties given in this section are in lieu of all other warranties whether written, oral, expressed, or implied, including, without limiting the generality of the foregoing, warranties of merchantability or fitness for a particular purpose.