

Terms & Conditions

Hosted Services



The following are the Terms and Conditions under which PowerConnex Pty Ltd ABN 85 095 019 686 (PowerConnex) sells hardware, software, developed software, software licences, telecommunications carriage and hosted 'on-demand' services. (collectively referred to as "Products & Services"). The Products & Services are manufactured by Third Parties as well by PowerConnex, PowerConnex provides Products & Services on a time-and-materials, fixed price or usage basis to suit the requirements of the Client (Client) and the project (Project). Software Requirements Definitions (SRD), Software Product Descriptions (SPD), Proposals and Scope of Works (SOW) documents provide additional terms and conditions and form an integral part of the Terms and Conditions under which software products are sold and/or used by clients.

Definitions:

PowerConnex and PCXCom: Refers to PowerConnex Pty Ltd, the provider of hosted 'on-demand' services.

Client: Refers to party/s that enter into an Agreement with PowerConnex in order to gain access to the hosted 'on-demand' services.

Agreement: Refers to the Purchase Agreement and the Terms & Conditions in this document as the binding contractual arrangement between the Client and PowerConnex.

Terms & Conditions: Refers to the detail in this document that is agreed upon by both parties in the signing of the 'Hosted 'on-demand' Services Purchase Agreement'

Products & Services: Refers to the Hosted 'on-demand' Service provided by PowerConnex, including upgrades.

Project: Refers to the Client Set-up of Hosted 'on-demand' Services..

'Go-Live': Refers to the moment in time that the Client has been notified by PowerConnex that access to the Service has been granted.

Client Data: Refers to all data held or stored by the Client, including the software and the underlying systems. Data maybe created by or on behalf of the Client or arising out of or in connection with the Client's use of PowerConnex Products & Services; regardless of the source of data.

IT&T: Refers to Information Technology & Telecommunications.

Business Hours : 8 AM to 5 PM AEST Monday to Friday excluding Australian National Public Holidays

1. Purpose of Goods

1.1 Except where a purpose has been agreed to in writing between the Client and PowerConnex, PowerConnex does not warrant the suitability of Products & Services for any particular purpose made known to PowerConnex.

1.2 Products & Services are not intended for direct control of nuclear facilities, air traffic, mass transport or life support applications. For these applications, PowerConnex requires additional contractual safeguards which will be negotiated on a case by case basis.

2. Taxes

2.1 Unless otherwise stated in writing, prices are exclusive of Goods and Services Tax (GST), and the Client is responsible and liable for all customs and import duties, and taxes including GST, and like levies or taxes at their assessed value.

2.2 It is the Client's responsibility to obtain exemption from duty or tax.

3. Delivery

3.1 Products & Services provided to the Client by PowerConnex may include services provided by third parties. The risk of loss or damage to Products & Services passes to the Client upon delivery to the Client.

4. Terms

4.1 Agreement Terms

4.1.1 The initial Agreement period is stated in the Purchase Agreement and is for the full term; and without exception.

4.1.2 Both parties are obliged to meet their obligations in regard to the Agreement as of the date the Agreement is signed by both parties.

4.1.3 The commencement date of the Agreement term is deemed as the 'Go-Live' date.

4.1.4 At the completion of the initial contract period; the Agreement between the Client and PowerConnex and hence the Terms and Conditions outlined in this document will rollover for a further 12 months on an annual basis.

4.1.5 Following the end of the initial term, either party may terminate the Agreement by providing the other party with at least 30 days written notice.

4.2 Payment Terms

4.2.1 Upon receipt of the signed Purchase Agreement, the Client agrees to make payments as per the Price Schedule in the Purchase Agreement, including but not limited to upfront payments and on-going payments.

4.2.2 Invoices are raised on a monthly basis for the life of the Agreement and are payable 7 Days Net from the date of the invoice, unless other payment arrangements have been agreed upon between the two parties in writing.

4.2.3 Invoices are electronically distributed to the Client, unless another method has been agreed upon by both parties in writing.

4.2.4 Where The Client has provided written authority, PowerConnex has the authority to draw funds from the nominated account and/or credit card provided in the Agreement.

4.2.5 In the event that the Client provides PowerConnex with written notice of termination of the Agreement; either by executing clause 5.6 or for any other reason within the Terms and Conditions of the Agreement or otherwise, the Client agrees to pay PowerConnex any monies owing to PowerConnex at the termination date, including, but not limited to; outstanding invoices and software and telecommunication carriage usage. The Client is not required to pay the minimum monthly expenditure for the full term of the Agreement where the Client:

- Terminates the Agreement within the first 90 days: and
- After the initial term has ended (12 months from the date of the Agreement), either party can terminate by providing 30 days' written notice requiring the Client to only pay for services rendered up to the termination date: and
- If PowerConnex exercises its rights pursuant to clause 5.4 and either party terminates; and
- If PowerConnex terminates the Agreement in circumstances where the Client is not in default of the Agreement.

4.2.6 Upon termination of the Agreement, PowerConnex will refund the Client any unearned revenue within 30 days of the termination date.

4.2.7 Late Payment Fees and Interest fees apply to non-payment by the due date. Refer clause 6.

5. Pricing

5.1 Pricing is detailed in the Purchase Agreement any other subsequent documentation agreed to by both parties.

5.2 Any pricing provided in quotes and/or proposals by PowerConnex to the Client shall be fixed for a period of seven (7) days from the date of the sales documentation.

5.3 PowerConnex reserves the right to review prices at the end of the initial term and from time to time and alter the price structure without notice.

5.4 PowerConnex reserves the right to increase the price of its Products & Services to the Client. In this event, PowerConnex will provide the Client with 30 days written notice of any price increases other than increases related to clause 5.5.

5.5 PowerConnex reserves the right to increase the listed price in the Purchase Agreement on an annual basis; to the value no greater than the Consumer Price Index (CPI), which if applied will be automatically adjusted on July 1 each year.

5.6 Either party may terminate the Agreement with 30 days written notice to the other party in the event of clause 5.4 being executed other than price increases relating to clause 5.5.

Terms & Conditions

Hosted Services



5.7 A higher price rate may be applied to purchases of additional physical items such as but not limited to handsets or headsets, outside the original Purchase Agreement. Under no circumstance does this constitute the Client being able to terminate the Agreement under clauses 5.4 and 5.5.

5.8 All pricing and costs are in Australian dollars, unless otherwise stated.

6. Payment Delays

6.1 Withdrawal of Services

If the Client fails to make a payment properly due under the Agreement, PowerConnex reserves the right to suspend Product & Services without notice and for Products & Services to remain suspended until all outstanding monies (which may include late, reconnection and/or debt recovery fees) are paid to PowerConnex.

6.2 Late Payment, Reconnection Fees and Debt Recovery Expenses

Clients shall be liable for minimum Late Payment fees of \$15 or fees calculated at the prevailing overdraft reference rate of the ANZ Bank plus two percent for fair debts unpaid to PowerConnex by their due date – whichever is the greater. Such charges will be calculated on a daily basis beginning on the due date. Suspended accounts may incur a Reconnection Fee. The Client shall be liable to PowerConnex for all costs and disbursements incurred by PowerConnex for recovery of any debts not paid by the due date including any legal costs incurred by PowerConnex.

7. Title of Goods

7.1 Title of Products and Services provided to the Client by PowerConnex does not pass-on to the Client under any circumstance.

7.2 Non Transferable

Title of Products and Services sold to the Client by PowerConnex is non-transferable in any event or circumstance. No party may sell or provide PowerConnex Products & Services to another party without written consent from PowerConnex.

8. Jurisdiction

The Agreement shall be governed by and construed in all respects in accordance with the law for the time in force in the State of Queensland in Australia. PowerConnex shall, however, have the right to institute proceedings in any competent jurisdiction for the recovery of unpaid debts.

9. Service of Notices

The respective addresses of service and notices under these Terms and Conditions ("the notice address") shall be the registered offices of PowerConnex and the Client provided that either of the parties may by giving written notice to the other party substitute another address that will then become the notice address.

Notices may be given by being:

- left at the notice address,
- sent to the notice address by post, email or facsimile,
- delivered by hand to either of the parties to the Agreement.

Any notice posted shall be deemed to have been received as follows ;

- Personal service - on delivery;
- Left at the notice address – 5pm on the business day it was left at the notice address or if left on a day other than a business day or after 5pm, 5pm the next business day;
- Post - 3 days after posting;
- Facsimile will be served on receipt of a transmission report by the machine from which the facsimile was sent indicating that the facsimile had been sent in its entirety to the facsimile number specified in the Agreement or such other number as may have been notified by the receiving party. If the facsimile has not been completely transmitted by 5:00 pm on a Business Day (determined by reference to the time of day at the recipient's address) it will be deemed to have been served on the next Business Day;

Email is deemed received provided no message is received by the sender indicating that the recipient has not or may not receive the message before close of business on the day sent.

10. Severance

10.1 If any provision of these Terms and Conditions is void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

10.2 Notwithstanding clause 10.1, a provision of these Terms and Conditions is still void or voidable or unenforceable or illegal:

- a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed: and
- b) in any other case, the whole provision is hereby severed, and the remaining Terms and Conditions have full force and effect.

11. Delays

11.1 PowerConnex shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, government regulations superimposed after the signing of the Agreement, fire, communication line failures, power failures, earthquakes or other disasters.

11.2 PowerConnex shall not be responsible for the delay in delivery or functionality of Products or Services from any 3rd party suppliers or vendors.

PowerConnex shall not be responsible for any delay caused by any failure on behalf of the Client. This includes failure to meet responsibilities and in particular, sign-off at any agreed Project milestone and obligations. Under the Agreement, any delayed signoff shall be deemed to be agreed to by the Client by default if the Client has not signed off fourteen (14) days from written notification by PowerConnex. In this event, PowerConnex reserves the right to demand payment as per clause 4.2.5 and recover any related costs and/or out of pockets costs.

12. General Provisions

12.1 The Agreement for the sale of Products & Services shall be subject to these Terms and Conditions and prevail under any circumstances for the term of the Agreement; notwithstanding amendments agreed to by both parties.

12.2 All rights and remedies conferred under a Contract or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any Agreement term shall not be deemed a waiver of future enforcement of that or any other term, unless the provisions of the Agreement are declared to be severable

12.3 It is the Client's responsibility to provide and maintain a suitable IT&T infrastructure in order for PowerConnex to provide its Products & Services to the Client. Under no circumstance is PowerConnex responsible nor obliged to assist the Client in relation to any aspect whatsoever of the Client's IT&T environment.

12.4.1 It is the Client's responsibility to provide PowerConnex remote access to its IT&T environment for the provision of PowerConnex Products & Services, including but not limited to;

- a) System set-up
- b) Client activation – 'Go-Live'
- c) Service Support
- d) Upgrades

12.4.2 In the event that the Client denies PowerConnex access to its IT&T environment, PowerConnex will be under no obligation to provide Products & Services, nor Service Support to the Client.

12.4.3 Under Clause 12.4.2, The Client is not in anyway relieved from the terms and conditions or any other aspect of the Agreement.

13. Confidentiality

13.1 PowerConnex and the Client agree to keep confidential information obtained about the other which is not in the public domain confidential, and restrict such information to those within each organisation who have a need to know in order to perform their responsibilities under the Agreement, and to allow such confidential information to be included in any standard data back up procedures run as a matter of course.

13.2 Intellectual Property

13.2.1 PowerConnex is and shall remain the owner of all proprietary rights (including, without limitation, patents, trademarks and know-how) in any intellectual property relating to the Products, the upgrades or the provision of Products & Services and nothing in the Agreement operates to transfer any rights in that intellectual property to the Client.

13.2.2 Any reference in the Agreement to a license to the Client is a reference to an entitlement to use the Products & Services or Upgrades by a particular number of people, and not an entitlement to any intellectual property in them.

Terms & Conditions

Hosted Services



13.2.3 PowerConnex is the sole and exclusive owner of all proprietary rights (including, without limitation; patents, trademarks and know-how) in any intellectual property of any improvement developed by PowerConnex in relation to the Services.

14. Warranties

14.1 PowerConnex warrants that it is the owner or authorised distributor of the Products & Services and Upgrades and has the right and authority to provide Products and Services to the Client in accordance with the Terms and Conditions of the Agreement

14.2 Except to the extent that any Product & Service or update or the results of the Products & Services are modified by any person other than PowerConnex and subject to the other provisions of the Agreement, PowerConnex warrants that the Service;

- i. will be properly installed
- ii will perform in accordance with the specifications referred to in the Agreement and any other specifications agreed to by PowerConnex in writing.

14.3 PowerConnex limits its liability to the Client for breach of a warranty to repairing or replacing the Products & Services or Upgrade or resupply of Products & Services as PowerConnex may in its discretion determine.

14.4 Subject to the other provisions of this Agreement, if the Products & Services or any Upgrade or results of the services respectively are found to not comply with the Terms and Conditions of the Agreement, PowerConnex will rectify within 30 days or, if necessary remedy that non-compliance or substitute the Products or Services at its own expense.

14.5 3rd Party hardware and software supplied as part of the Products & Services shall be covered by their respective warrantees.

14.6 PowerConnex will not be liable for any defects, errors or non-compliance with respect to any Products or upgrades or any particular aspect of the services that are provided by 3rd parties.

15. Limited Liability:

To the extent lawfully permitted:

- (a) under no circumstances is PowerConnex liable to the Client for any damage or loss whatsoever arising from the sale of the Products and Services to the Client, including any indirect or consequential losses, loss of data or loss of profit.
- (b) under no circumstances is PowerConnex liable to a third party claiming under or through the Client for any indirect or consequential losses, loss of data or loss of profit; and
- (c) if PowerConnex's liability is not otherwise excluded or limited to a lesser amount by any other provision of the Agreement, then the total liability of PowerConnex and its officers, employees, agents and contractors, to the Client for all claims made by or against the Client (whether under the Agreement or otherwise at law, in tort or in equity) or for any loss or damage paid, suffered or incurred by the Client, including interest on any claim accruing from the date on which the claim first arose to the date of judgement, settlement, deduction or set off, arising out of or in any way connected with the Agreement or the Products & Services or Upgrades, is limited in the aggregate to the total amount payable by the Client. Refer Purchase Agreement.

16. Data Management:

16.1 The Client is solely responsible for the management and update of their own contact data; whether provided to PowerConnex or otherwise.

16.2 The Client agrees to comply with all legislation issued by governing bodies in relation to contact data. Furthermore, the Client agrees to make every reasonable effort to comply with guidelines issued by governing bodies, in relation to:

- a) Washing data in compliance with Do Not Call Registers
- b) Updating Contact Databases
- c) Data Source

16.3 PowerConnex is under no obligation to rectify client data related issues during installation and/or thereafter. In the event that PowerConnex does provide this service to the Client, fees may be incurred.

16.4 Contact data supplied by the Client to PowerConnex remains the property of the Client; and under any circumstance.

16.5 PowerConnex agrees to not knowingly provide customer contact data to a third party, nor use any contact data for any purpose other than as per the specific instructions from the Client.

PowerConnex is not liable for either the content or dialog between the Client and recipients of calls and/or any electronic means of communication whilst the Client is using PowerConnex Products & Services, regardless of the source.

16.7 It is the Client's responsibility to instruct PowerConnex with caller identification requirements.

17. Grant of Support Service:

17.1. PowerConnex will provide the Client with a Support Service. Refer Clause 18.

17.2 The Support Service will commence on the date of the Agreement and on the proviso that all monies due to PowerConnex have been received in accordance with the Terms and Conditions of the Agreement.

17.3 PowerConnex is under no obligation to provide Support Services to the Client during any period the Client has not met the terms and conditions of the Agreement.

17.4 PowerConnex reserves the right to request payments in advance in order to provide any services outside the Agreement, in the event that PowerConnex agrees to provide Support Services to the Client notwithstanding clause 17.3, the PowerConnex service default rates will apply.

18. Support Service:

18.1. The Support Service shall comprise of the following

Telephone and email based technical support Helpdesk; providing remote site access; in order to assist in functionality and remedy Service errors. The service will be offered between 9am and 8pm AEST unless otherwise agreed.

18.1.2. Helpdesk requests will receive a response within 1 hour during business hours. Support requests received after 3pm AEST may not receive a response until the following work day.

18.1.3. PowerConnex is under no obligation to rectify client data related issues during installation, go-live and/or thereafter.

18.1.4. Prior to 'Go-Live', PowerConnex will provide the Client with access to online training modules, and a single remote Supervisor Training session at no charge. Additional training presentations are priced @ \$195 GST excl per one hour session.

19. Force Majeure:

With the exception of any obligation to pay charges, failure or omission by either party to carry out or observe any terms and conditions of the Agreement shall not give rise to any claim against the party in question or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of the party seeking to rely upon such failure or omission, including but not limited to acts of God, flood, drought, storm, fire, acts or omissions of any government agency, war, acts of terrorism, labour disturbances outside the party's own organisation and acts or omissions of other operators beyond the reasonable control of that party. If PowerConnex is unable to provide the Products & Services because of the Force Majeure event, then the client will not be liable to pay to PowerConnex any fees associated with those services.

20. Whole Agreement:

The Client acknowledges that the Agreement, which includes the Purchase Agreement; and any related Schedules; and the Terms and Conditions of this document contain all the terms upon which the parties have agreed to trade and replaces all other prior Agreements or statements oral or written.

21. Waiver:

Any time or other indulgence granted by either party, or any failure of either party to exercise in any respect any rights provided for herein shall not be deemed a waiver of any rights hereunder.

22. Interpretation:

22.1. In the Agreement, unless inconsistent with or repugnant to the context:

- (a) Reference to any particular number shall include the plural number & vice versa.
- (b) Reference to any particular gender shall include both genders.
- (c) The word 'person' shall include an incorporated company and vice versa.

Terms & Conditions

Hosted Services



22.2. In the construction of the Agreement and its Terms & Conditions, each Clause shall be construed separately and, in the event of any Clause or any part of any Clause being declared by a Court of competent jurisdiction to be invalid or inoperative for any reason, then the rest of this Agreement shall remain in force to the fullest possible content and application.

22.3. This Agreement and the rights and obligations of the parties hereto shall be construed and take effect in all respects in accordance with the laws of the State of Queensland.

END DOCUMENT