



PowerBoard Terms and Conditions to supplement the Merchant Agreement

Effective 25 July 2022

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1. About these PowerBoard Supplemental Terms and Conditions

This document sets out the terms and conditions that apply between you and us when you integrate and use PowerBoard with your eCommerce website or app (**PowerBoard Terms**). These PowerBoard Terms form part of the Merchant Agreement. To the extent of any inconsistency with other provisions of the Merchant Agreement, these PowerBoard Terms prevail.

Unless otherwise defined in these PowerBoard Terms, capitalised words used in these PowerBoard Terms have the meanings given in Part 5 of the Merchant Agreement.

For a copy of the Merchant Agreement and other useful information about your Facility, please refer to our Merchant services website at: commbank.com.au/merchantservices.

2. What is PowerBoard?

PowerBoard is a payment orchestration platform that allows eCommerce merchants, who have a Facility with us, to connect to multiple payment and value added services.

These services include, but are not limited to:

- (i) Payments by card;
- (ii) Alternative Payment Methods such as 'Buy Now Pay Later' payment services; and
- (iii) PowerBoard Value Added Services such as fraud detection tools.

To utilise these services, other than payments by card, you will be required to enter into separate commercial agreements with the relevant service providers. This may include a requirement to open accounts with the relevant service provider(s) for the Alternate Payment Methods or PowerBoard Value Added Services.

The list of services available within PowerBoard may change from time to time and we will notify you of such changes in accordance with clause 3.8.1 of the Merchant Agreement.

In addition, PowerBoard provides you with the ability to manage your ecommerce facility.

2.1 Connecting to PowerBoard

To utilise the services provided within PowerBoard, you will need to integrate your website or app into PowerBoard.

This integration can be achieved through a number of methods, including:

- (i) direct integration through APIs and SDKs provided by us;
- (ii) shopping cart plug-ins; or
- (iii) such other methods we may introduce or otherwise notify you of from time to time.

To integrate into PowerBoard from your eCommerce website or app, you will need to adhere to certain technical requirements as detailed in the PowerBoard integration documentation.

When connecting to PowerBoard using a Shopping Cart, you are responsible and liable for all transactions processed and any activity conducted on the Shopping Cart. We are not liable for any loss or cost incurred because of our act or failure to act on the Shopping Cart (except to the extent the liability is proven to have been caused by our negligence).

2.2 PowerBoard Portal

The PowerBoard Portal allows you to view and manage your transactions in a single portal, providing real-time insights into your eCommerce business.

You can manage staff access in the PowerBoard Portal with a variety of different permission levels to support different user profiles. You are responsible for any users granted access to any services provided within PowerBoard and must take precautions to prevent unauthorised access. This may include staff training or the use of software such as anti-‘spamming’, anti-‘key-logging’ and anti-‘virus’ software. You must ensure that your users granted access are aware of and follow these terms.

3. Payment Services

3.1 Payments by Card

PowerBoard may be used to accept payments by Card through your eCommerce website or app. The provisions of the Merchant Agreement applicable to Card payments made through your eCommerce Facilities continue to apply as supplemented by these PowerBoard Terms.

3.2 Payments by Alternative Payment Methods

PowerBoard also enables you to accept payments through Alternative Payment Methods.

In order to accept payments through an Alternative Payment Method, you will need to accept the terms of the relevant Alternative Payment Method Provider. They may also require you to establish and activate an Alternative Payment Method Account with them.

The Alternative Payment Method Provider' terms generally specify matters including but not limited to:

- your obligations to prevent fraudulent use or other misuse of your Alternative Payment Method Account including keeping passwords and other account credentials secure and reporting breaches of security;
- whether surcharging is permitted, and if so, how much you can surcharge;
- permitted transactions;
- transaction limits;
- settlement of Alternate Payment Method transactions;
- chargebacks and other circumstances in which a customer might require a transaction to be reversed;
- refunds to customers;
- any minimum balance or other security you are required to maintain in your Alternative Payment Method Account;
- information you display on your website, checkout page and elsewhere in relation to your acceptance of the Alternative Payment Method and any surcharges;
- receipts you must give your customers; and
- privacy and data protection.

When entering into an agreement with an Alternative Payment Method Provider or establishing an Alternate Payment Method Account, you will need to satisfy the requirements imposed by the Alternative Payment Method Account to collect and verify information about you including about your identity and your agents and beneficial owners. You authorise us to share with the Alternative Payment Method Provider any information we hold about you for such purposes and as set out in the *CommBank Group Privacy Statement*.

When you elect to receive payments through an Alternative Payment Method, you authorise the relevant Alternative Payment Method Provider to hold, receive and settle funds with respect to the Alternate Payment Method Provider's transactions. The settlement of your Alternate Payment Method transactions will be with that particular Alternate Payment Method Provider and we are not responsible for this process. You will need to direct any claims or concerns you have in relation to settlement of any Alternate Payment Method transaction to that particular Alternate Payment Method Provider.

4. PowerBoard Value Added Services

PowerBoard Value Added Services include services such as fraud detection and other services we may notify you of from time to time.

4.1 Fraud Detection Services

When you integrate your eCommerce system with PowerBoard, you will have the ability to access fraud management features with certain third parties providers (Fraud Management Providers) subject to entering into terms with them directly. These Fraud Management Providers have various services that may include real-time decisioning and intelligence that is intended to reduce fraud.

While PowerBoard provides the means for you to access various Fraud Management Providers' solutions, we do not have any responsibility to you in relation to their performance. You will need to direct any claims or concerns you have in relation to the solution, to that particular Fraud Management Provider.

5. PowerBoard Technology

5.1 Use of PowerBoard Technology

Once PowerBoard is integrated with your eCommerce Facility, you may use it solely for receiving payments, or you may also choose to use the PowerBoard Value Added Services in respect of such payments (**Approved Purpose**).

If we give you secret API keys for live and test transactions using PowerBoard, you are responsible for keeping those keys secret. We have no liability, and you indemnify us for, any losses arising from unauthorised transactions or other losses to the extent they are the result of your failure to keep secret API keys secure.

You agree that we may periodically collect and use technical data and related information, to facilitate the provision of the software updates and any services related to PowerBoard.

5.2 Ownership of PowerBoard Technology

- (a) All Intellectual Property Rights over and in respect of the PowerBoard Material are owned by us and our licensors. You do not acquire any rights of ownership in the PowerBoard Materials.
- (b) We represent and warrant that:
 - (i) we are authorised to license the Intellectual Property Rights to you in accordance with these PowerBoard Terms; and
 - (ii) the exercise in accordance with these PowerBoard Terms of any Intellectual Property Rights licensed to you under these PowerBoard Terms will not infringe the rights of any third party.

5.3 Licence to use PowerBoard Material

We grant you a non-exclusive, non-transferable, revocable license to use the PowerBoard Material for the Approved Purpose, subject to the terms and conditions set out in these PowerBoard Terms. This licence is automatically revoked when we cease to provide you with access to PowerBoard or the Facility is terminated in accordance with clause 3.8 of the Merchant Agreement.

We do not sell to you, and you do not have the right to sub-license, the PowerBoard Material.

We may update or add to the PowerBoard Material and PowerBoard Portal automatically and remotely, but we may require you to take some action to give effect to such changes.

5.4 Use of PowerBoard Material and PowerBoard Platform

- (a) You may only use the PowerBoard Materials and PowerBoard Platform for the Approved Purposes.
- (b) You may permit your employees and any third party contractors to use the PowerBoard Materials and PowerBoard Platform for the Approved Purposes, provided you take all necessary steps and impose the necessary conditions to ensure that all employees and any third party contractors using the PowerBoard Materials and PowerBoard Platform do not commercialise or disclose Confidential Information in relation to the PowerBoard Materials and PowerBoard Platform to any third persons, or use them other than in accordance with these PowerBoard Terms.
- (c) You must not distribute, sell, license or sub-license, let, trade or expose for sale the PowerBoard Materials to a third party.
- (d) You agree that we may use and disclose any information in connection with your Facility that we obtain from any third-party to provide you with access to the PowerBoard Platform and other services in relation to your Facility.
- (e) You acknowledge that we rely on third parties to provide you with certain services in relation to your Facility. You consent to us sharing your information with such third parties as required, to provide you with PowerBoard and other services in relation to your Facility.
- (f) No copies of the PowerBoard Materials are to be made other than as expressly approved by us or as otherwise agreed.
- (g) No changes to the PowerBoard Materials may be made by you or by any third party at your direction or on your behalf.

- (h) You must take reasonable steps to ensure that access to and use of the PowerBoard Materials and PowerBoard Platform is physically and electronically secure from unauthorised use or access.
- (i) You must ensure that the PowerBoard Materials retain all copyright notices and other proprietary legends and all trademarks or service marks of us or our licensors.
- (j) To avoid any doubt, and notwithstanding any other term of these PowerBoard Terms, we agree and acknowledge that the PowerBoard Materials may be built into your third party back-end payment system(s) and that, as a result, such third party provider(s) may require access to and use of Confidential Information and Intellectual Property Rights for the sole purpose of enabling you to receive the benefits of these PowerBoard Terms. For the avoidance of doubt, you must ensure that your third party provider(s) do not commercialise any Confidential Information or Intellectual Property Rights in relation to the PowerBoard Materials and you must ensure that at all times each third party provider is subject to binding obligations of confidentiality which require it to keep such Confidential Information confidential on terms no less onerous than those imposed on you under these PowerBoard Terms.
- (k) We may immediately remove or disable your access to the PowerBoard Platform or PowerBoard Materials, at any time, if you are in breach of the PowerBoard Terms or where we consider it necessary to maintain the integrity of the operation of the PowerBoard Platform or to address security concerns. We shall give you notice at or before the time we remove or disable your access.

6. Confidentiality.

- (a) You may not use, disclose or make available to any third party our Confidential Information, unless such use or disclosure is authorised under these PowerBoard Terms.
- (b) You must hold our Confidential Information secure and in confidence, except to the extent that such Confidential Information:
 - (i) is required to be disclosed according to the requirements of any law, judicial or legislative body or government agency, provided you give us notice of the requirement as soon as practicable before such disclosure is made;
 - (ii) was approved for release in writing by us, but only to the extent of and subject to such conditions as may be imposed in such written authorisation;
 - (iii) is required by your professional advisers, auditors or bankers for a proper purpose; or
 - (iv) disclosed to your related companies, directors and personnel as appropriate and strictly necessary for the proper performance by such individuals of their duties and roles in respect of these PowerBoard Terms,provided that you ensure that any such recipient complies with the restrictions in this clause 6 as if such recipient were bound by this clause in the same manner that you are bound.
- (c) You must securely dispose of or return the Confidential Information disclosed to you upon termination of the application of these PowerBoard Terms.
- (d) This clause 6 will survive termination of the Merchant Agreement.

7. Your Obligations

7.1 General

You are accountable for all usage and activity on the PowerBoard Platform and acknowledge that we are not responsible for any services you may provide through the PowerBoard Platform.

You must:

- only use the PowerBoard Platform for the Approved Purposes and in a manner that is consistent with the Agreement;
- not impose any minimum transaction amount for any Alternative Payment Method transactions;
- comply with all applicable laws, regulations, Card Scheme requirements, and third party agreements that are binding on you, in connection with your integration and use of the PowerBoard Platform at all times;
- comply with any reasonable direction we may issue or condition we may impose on you from time to time in connection with your integration and use of the PowerBoard Platform;
- not, and not attempt to, make any representation, warranty, or commitment on our behalf; and
- not use or knowingly permit the use of the PowerBoard Platform in a manner that is fraudulent, unlawful, deceptive or abusive, or where we have not given express authorisation or such authorisation has been withdrawn.

8. Using the PowerBoard Platform

To the maximum extent permitted by law, except as expressly provided for in these PowerBoard Terms, we provide the PowerBoard Platform to you on an "as is" "as available" basis, without any warranties, express, implied or statutory.

8.1 Responsibilities

In some situations we may incur a loss or cost specifically relating to: (i) a breach of these terms and conditions; (ii) a dispute between you and the Alternative Payment Provider, Fraud Management Provider or other third party, or (iii) your use of the PowerBoard Platform. You will be liable for any such loss or cost and must compensate us on demand (except to the extent the loss or cost is proven to have been caused by our negligence).

You are responsible for any activity initiated by you, on your behalf, or using your credentials, on the PowerBoard Platform. You will be liable for any loss directly incurred by us or a relevant third party, relating to any unauthorised activity initiated by you, your employees, or your agents and you must compensate us on demand (except to the extent the loss or cost is proven to have been caused by our negligence).

We are not responsible for: (i) any acts or omissions in connection with your use of the PowerBoard Platform including the delivery of goods or services to your customers or any other third parties; (ii) compliance with laws and obligations related to your offering; or your use of the PowerBoard Platform; and (iii) providing customer service, notifications, receipts, handling refunds or consumer complaints, or taking other actions related to your offering.

Neither of us is responsible to the other for any lost profits, or any indirect, punitive, incidental, special, consequential, or exemplary damages arising out of, in connection with, or relating to the PowerBoard Platform, including the use of, inability to use, or unavailability of the PowerBoard Platform.

This clause 8.1 applies to the maximum extent permitted by law, and applies regardless of the legal theory or cause of action on which the claim is based, including contract, tort (including negligence, product liability, or otherwise), strict liability, or any other basis.

8.2 Communication or Service Failure

In addition to the apps created by a third party developer on the App Marketplace or Pi AppBank, or the CommBank Small Business Application we provide, as set out in clause 4.4.8 of the Merchant Agreement, we do not warrant that the PowerBoard Platform will be fault free or that any problem can be solved immediately or quickly. We do not warrant continuous, uninterrupted access to the PowerBoard Platform. You acknowledge that the PowerBoard Platform may rely on factors outside our control. We will use reasonable endeavours to overcome any fault in the PowerBoard Platform as quickly as possible. Except to the minimum extent imposed by law, we have no liability to you for any direct or consequential losses which arise from disruptions to our systems or processes, including the PowerBoard Platform.

8.3 Suspension and termination

Our rights to suspend your Facility under clause 3.8 of the Merchant Agreement, include a right to suspend your access to the PowerBoard Platform.

Our rights to terminate the Facility under clause 3.8 extend to the PowerBoard Platform.

9. Meaning of words

This part lists the key terms in these terms and conditions and what they mean.

Agreement

The agreement between you and us regarding your Facility and any related services, as set out in the Merchant Agreement and this document.

API

Any application programming interface provided by us to facilitate integration of your website or app into PowerBoard or as otherwise provided by us for the purposes of live and test transactions using PowerBoard.

Alternative Payment Method

Any method of payment approved by us for use with PowerBoard from time to time, other than a Transaction completed by the use of a Card or Card Details.

Alternative Payment Method Account

The account that you open with the Alternative Payment Provider in order to be able to access their Alternative Payment Method.

Alternative Payment Method Provider

Any party approved by us to provide an Alternative Payment Method.

Approved Purpose

A purpose described as such in clause 5.1.

Confidential Information

Information that:

- (a) is by its nature confidential;
- (b) is designated in writing by you or us as confidential before being disclosed;
- (c) either you or we know or reasonably ought to know that the information is confidential;
- (d) information comprised in or relating to any Intellectual Property Rights of either Party unless otherwise publicly available, but does not include information that:
 - (i) was known by the receiving Party before the information was disclosed;
 - (ii) is disclosed to the receiving Party on a non-confidential basis by a third party who has the right to make such disclosure without requiring the information to be kept confidential by the receiving Party;
 - (iii) is generally available to the public through no fault of the receiving Party; or
 - (iv) is developed by the receiving Party independently of the information disclosed.

Intellectual Property Rights

All rights in and to any copyright, trademark, trading name, design, patent, know how (trade secrets) and all other proprietary rights, whether registered or unregistered, resulting from intellectual activity in the industrial, scientific, literary or artistic field and any application or right to apply for registration of any of these rights and any right to protect or enforce any of these rights.

Merchant Agreement

The agreement between you and us regarding your Facility and any related services, dated 11 October 2021, as updated from time to time.

PowerBoard Portal

A single portal accessible through the PowerBoard Platform that allows you to view and manage all your transactions.

PowerBoard Material

All rights, title and interest in the patents, copyright, (including rights in derivative works) moral rights, rights of publicity, trademarks, logos and designs, trade secrets, marketing material, file specification, technical specifications, software and other intellectual property embodied in, or contain in the PowerBoard technology including the PowerBoard Portal and APIs.

PowerBoard Platform

Payments system connecting you to a variety of payment gateways, other online supported services and the PowerBoard Portal.

PowerBoard Value Added Services

The PowerBoard Value Added Services described in clause 4.

SDK

Any software development kit provided by us to facilitate integration of your website or app into PowerBoard.

Shopping Cart

Any software on your site approved by us to facilitate the purchase of a product or service.

