

Billpower Terms and Conditions - Clients

“**Billpower**” is a payments solution built, provisioned and managed by **Billpower Pty Ltd** (ABN: 28 618 266 881) (“we”, “us” and “our”). Billpower aims to facilitate easier online invoice payments so small and medium size businesses get paid faster.

1. About this Agreement

These terms and conditions (“**Billpower Terms**”) set out the contract between you, as our client (“you”), and Billpower Pty Ltd. You accept that your use of the Billpower platform will constitute your acceptance of these Billpower Terms.

Subject to clause 12 below, Billpower Pty Ltd reserves the right to change, update and amend these Billpower Terms at any time, effective immediately upon publishing them to the Billpower website. If at any time you do not agree with any changes we make, you may terminate your use of Billpower.

1.1 Definitions

Billpower has some specific definitions, including when referring to third parties:

Accounting Application means accounting software such as Xero (<https://www.xero.com>), MYOB (<https://www.myob.com.au>) and QuickBooks Online (<https://quickbooks.intuit.com/au/>).

Billpower means any of the services, features and functionality that form part of our Website or any of our applications and which we make available to you from time to time. This includes:

- i) the application that you use to access Billpower on your Mobile Device;
- ii) the Billpower dashboard that you use to administer your Billpower account; and
- iii) the Billpower Payment Page.

Billpower Dashboard means the part of Billpower where you can manage your Billpower account information such as your Payment Gateway details, name and address registered with Billpower.

Billpower Internet Address means an internet address or URL that directs a user to a Billpower Payment Page.

Billpower Payment Page means the payment website that enables you to take payments using Billpower.

Billpower Website means www.billpower.co.

Business means the business that has been approved the use of Billpower via the Billpower application process.

Business Day means a weekday, except for:

- i) a national public holiday;
- ii) a day on which banks in Victoria or New South Wales are generally closed; or
- iii) a public holiday in Victoria.

Chargeback is the term used for where Payment Gateways debits a merchant’s bank account with the amount of a transaction that had previously been credited.

Fees means the fees you pay to us for the use of Billpower and excluding Payment Gateway Fees.

Loss or Claim means any loss, liability, action, proceeding, damage, cost or expense (including all reasonable legal costs and expenses), including liability in tort and consequential and economic losses, and for the avoidance of doubt includes Chargebacks.

Mobile Device means any device, which may be used to access Billpower electronically from a remote site or while mobile, including mobile phones and other small-screen and/or portable electronic devices.

Partners are third parties that you have the option to engage to manage your Billpower account.

Payment Gateway means the financial institution that provides you with the use of a merchant facility for use with Billpower. Multiple Payment Gateways may be used with Billpower. Payment Gateways may charge you Payment Gateway Fees.

Payment Gateway Fees means the merchant service or transaction fees charged by Payment Gateways for the use of their merchant facility.

Payment Methods means the customer payment methods accepted by Payment Gateways, including credit cards, debit cards, electronic funds transfer (EFT), direct debit and PayPal.

Personal Information has the meaning given to it in the Privacy Act. This is basically information about an identifiable individual.

Privacy Act means the Privacy Act 1988 (Cth) as updated, replaced or amended from time to time.

Third Party means any person or entity that you or we have contracted with to help us provide Billpower. This includes Payment Gateways, any payment provider and all other service providers engaged for the delivery, maintenance and administration of Billpower.

User means a person authorised by you or us to use Billpower.

We, us, and our means Billpower Pty Ltd (ABN: 28 618 266 881).

You means the Business, including each User.

1.2 Billpower

Billpower is a payment solution for businesses, which allows you to accept payments by a variety of Payment Gateways using a variety of Payment Methods. Payment Methods accepted by Billpower are listed on the Billpower Website. The list of Payment Gateways and Payment Methods may be changed at any time.

Billpower also allows you to create Accounting Application invoices and update Accounting Application records for the payments you receive. This function is designed to help you manage your records more easily, however Billpower is not an accounting solution and we cannot accept any liability arising from the use of this functionality. Your use of an Accounting Application is covered by the Accounting Application's terms and conditions.

1.3 The Application and Approval Process

Billpower Pty Ltd reserves the right to approve, reject or terminate you as the client or Users of Billpower at its sole discretion. Both you and the Users apply via our online application process. Once approved, instructions on how to set up Billpower will be provided electronically.

2. General Terms

2.1 Security

- 1) It is the User's responsibility to ensure security precautions are taken. It is possible that an unauthorised user may gain access to Billpower.
- 2) At all times it is advised to protect your username and password, do not create easy to guess passwords and do not share your password with anyone else.
- 3) You must not allow any unauthorised persons, including your accounting or business advisors, to use Billpower using your username and password.
- 4) If at any time you feel your security is breached, please reset your password immediately. If you need assistance with this please contact the Billpower customer service team.
- 5) It is advised that you not use Billpower on a Mobile Device such as a mobile phone or any other device that is not yours. Use of Billpower on another person's Mobile Device such as phone or other type of device is undertaken at your own risk, including any subsequent access to Billpower by the owner of that Mobile Device or any other device once it is not in your control.
- 6) You accept liability for any Loss or Claim as a result of your login details being used by an unauthorised person(s).

2.2 Availability of Service

- 1) Billpower Pty Ltd endeavours to provide 24/7 service availability of Billpower, however the service may become temporarily unavailable if system's failure occurs because of technology used by Billpower Pty Ltd or Third Parties involved in providing Billpower.
- 2) Billpower may not be available for use in all countries due to security measures.
- 3) From time to time there may be a need to temporarily make the system unavailable. If this happens we will try to inform you ahead of these scheduled outages.
- 4) Notwithstanding any other provision of these Billpower Terms and Conditions, to the extent permitted by law, Billpower Pty Ltd are not liable to you or the User or any other person for any:
 - i) error, omission or inaccuracy with respect to any information provided to or entered into the Billpower by you, the User or any 3rd party; and
 - ii) any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination or any other cause, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of Billpower.

2.3 Your Responsibilities and Responsibilities of User

2.3.1 General responsibilities – You will not:

- 1) purposely try and interfere with the operation of Billpower;
- 2) make a copy, decompile or reverse engineer the Billpower platform;
- 3) permit unauthorised access to Billpower or make Billpower available via any other web, app or software platforms;
- 4) re-use any of the Billpower source code or processes in respect of the software behind Billpower;
- 5) copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from Billpower;
- 6) use or permit the use of Billpower in a way which contravenes any applicable laws or regulations; or
- 7) use Billpower (or allow it to be used) for any purpose other than to take payments for your lawful business from your genuine customers.

2.3.2 You must:

- 1) follow reasonable security notifications that are given by us from time to time about the appropriate processes and safeguards to follow when using Billpower;

2.3.3 Cooperation and limited authority in relation to Third Parties:

- 1) You must do all things we reasonably consider appropriate to enable us to fulfill our obligations to Third Parties in relation to Billpower.
- 2) You and the User authorise us to give a Third Party, including Payment Gateways and Accounting Applications, any authority, consent or instruction in respect of Billpower, to enable us to provide Billpower to you and the User.
- 3) You must promptly let us know of any changes to your details which you have provided to us in relation to Billpower, and provide any proof of the change that we may require.

2.4 Use of Billpower and our intellectual property

- 1) Until your or any other User's use of Billpower is terminated by you or us, you have a non-exclusive and non-transferable licence to use Billpower in the way that we authorise from time to time.

- 2) We retain our intellectual property rights in full. Except as specifically set out in these Billpower Terms, they do not give you any intellectual property or other rights in any of our:
 - a) software, documents, templates, marketing material, trademarks, business names, logos, internet addresses, trading styles, setup, processes or methodologies; or
 - b) other intellectual property,and you (including your staff, agents or contractors) must not otherwise use, reproduce or modify these intellectual property rights.
- 3) You and the Users further acknowledge that the use or duplication of the Intellectual Property in any other way other than as approved and agreed to by us would constitute a breach of our intellectual property rights and would be a fundamental breach of these Billpower Terms. However, you and the User may download and print Billpower Terms and Conditions and our privacy policy for personal non-commercial use.

3. Billpower Internet Addresses

- 1) Billpower Pty Ltd may supply you any number of Billpower Internet Addresses, or URLs, for accessing your Billpower Payment Page.
- 2) Billpower Internet Addresses to the Billpower Payment Page are based on availability and subject to acceptable use.
- 3) New and existing Billpower Internet Addresses may be declined or revoked immediately if they are deemed to be:
 - a) inappropriate
 - b) misleading
 - c) in breach of trademark or copyright; or
 - d) in any way threaten the ability of Billpower Pty Ltd to conduct its business.
- 4) The right to use a Billpower Internet Address is of a temporary nature and does not convey a transfer of ownership.
- 5) Billpower Internet Addresses cannot be transferred or traded in any way except as conducted by Billpower Pty Ltd.
- 6) Billpower Internet Addresses may be modified or revoked by Billpower at any time and for any reason with 7 days' notice. A replacement address will be provided where possible.
- 7) No compensation is available for any loss as a result of a modification or revocation of a Billpower Internet Address and Billpower Pty Ltd disclaims any liability to you or any other party in relation to revocation of a Billpower Internet Address.

4. Payment Gateways

- 1) Payment Gateways provide the merchant facility to enable payments that you take using Billpower to be transferred into your nominated bank account.
- 2) You agree to give Billpower Pty Ltd the authority to initiate payments and act on your behalf in regard to Payment Gateways. It is your responsibility to ensure that any actions made on your behalf using Billpower adhere to the agreements and responsibilities you have in place with Billpower, Payment Gateways, Accounting Applications and any other third parties, including your customers.
- 3) Your use of merchant facilities is governed by the respective Payment Gateway's Terms & Conditions, Direct Debit Agreements and any other agreements you entered into directly with them.
- 4) You must be approved as a merchant by Payment Gateways before you can take payments using Billpower. You will be required to complete a Billpower application form, and any other documents required by Payment Gateways, as part of your registration for Billpower. If you do not receive merchant approval from Payment Gateways you will not be eligible to participate in Billpower.

- 5) Billpower does not come into contact with your customers' Payment Method credentials or full credit card details at any time. These are passed directly to the respective Payment Gateways without making contact with Billpower's servers.
- 6) Billpower does not come in to contact, receive or transfer funds belonging to you at any time.
- 7) By registering for Billpower you are giving Payment Gateways permission to transfer any payments that you take using Billpower to your nominated bank account.
- 8) You must disclose all surcharges to your customers before allowing your customers to use Billpower.
- 9) You may use Billpower (and the Payment Gateways) to enter your customer's Payment Method for payment and for direct debits, and in such event you acknowledge and undertake that you have the customer's express authority to do so.
- 10) Billpower Pty Ltd may receive commissions from third-parties for your use of Billpower.
- 11) Payment Gateways are not a party to any agency, partnership, joint venture or other type of similar relationship with us, and are not responsible for the actions of us or any other Third Party.

5. Accounting Applications

1. You authorise Billpower Pty Ltd to display invoices & payments data from your Accounting Application on your Billpower payment page and you allow your customers to import this data to their own Accounting Applications.
2. You authorise Billpower Pty Ltd to access all Accounting Application data, including and not limited to company details, logo, chart of accounts, invoices and payments.
3. Your use of Accounting Applications is governed by the respective Accounting Applications' Terms & Conditions, Direct Debit Agreements and any other agreements you entered into directly with them.
4. Accounting Applications are not a party to any agency, partnership, joint venture or other type of similar relationship with us, and are not responsible for the actions of us or any other Third Party.

6. Partners

- 1) You can opt to engage a Partner to access and manage your Billpower account.
- 2) Partners will have the same access to your Billpower as you do.
- 3) Partners are not endorsed in any way by Billpower Pty Ltd and your engagement of a Partner is at your own risk.
- 4) You remain responsible for all actions that take place in your Billpower account, irrespective of the involvement of a Partner.

7. Payment of Fees and Credit Card/Debit Authority

- 1) You must pay all Fees due to us and Payment Gateways in relation to your use of Billpower by the due date.
- 2) Transactional fees may be charged against each transaction. Settlement is initiated to your nominated bank account by Payment Gateways.
- 3) The Billpower fees are published on the Billpower Website and are subject to change at any time. Fee changes are applicable from the beginning of the next calendar month once changes are advised via the Billpower Website. Billpower will also advise via email prior to the change of any relevant transactional fees.
- 4) If you believe there are any discrepancies, you should contact Billpower Support at support@billpower.co.

8. Goods and services tax (GST) and duties

All payments due to Billpower Pty Ltd by Australian entities are GST inclusive, including any transaction fees.

9. Suspension and Termination

9.1 How can you end your participation in Billpower?

- 1) If your account has no subscription, you can stop using Billpower at any time you wish without further action.
- 2) If you have a Billpower subscription, your formal termination of Billpower occurs once you give notice via support@billpower.co and you receive confirmation that your account has been terminated by us. You will then be billed a final payment for any outstanding Fees.
- 3) Any outstanding transaction balances that Payment Gateways owe to you are covered by Payment Gateways' terms and conditions.

9.2 Billpower Pty Ltd may terminate your use of Billpower without prior notice

There are situations in which we or Payment Gateways can terminate your participation in Billpower without prior notice including (without limitation) the following:

9.2.1 A breach occurs

If you fail to remedy a material breach of these Billpower Terms or any terms and conditions of the Payment Gateways within 5 Business Days after we notify you of the breach.

9.2.2 Something threatens Billpower Pty Ltd

If:

- 1) in our opinion, a change to any Third Party arrangement necessary for Billpower renders the ongoing operation of Billpower substantially unworkable or non-functional;
- 2) in our opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of Billpower substantially unworkable or non-functional; or
- 3) we believe this is necessary either to protect the security, integrity or reputation of Billpower Pty Ltd, or to otherwise protect our interests.

9.2.3 We have concerns about your Business

If:

- 4) you don't respond to repeated attempts by us to contact you with important instructions relating to your use of Billpower;
- 5) we receive notification of a dispute from one or more of the directors or principals of your Business;
- 6) you go into liquidation, administration, insolvency, bankruptcy or such other similar arrangement with creditors, or in our opinion, it is reasonably likely you will do so; or
- 7) there is a change in who owns or controls your Business.

9.3 Notification

- 2) We will make reasonable attempts to notify you in writing (which includes by email) of the termination.
- 3) We can reinstate a termination at our absolute discretion by written notice to you, and this takes effect on receipt or any later time specified in the notice, subject to you meeting any conditions set out in the notice.
- 4) If you become aware that a circumstance which would permit us to terminate your participation or use under section 9.2 has arisen or may arise, you must let us know as soon as possible.

9.4 What happens on the effective date of termination?

- 1) If you or we cancel your participation in Billpower, or if Payment Gateways cancel your merchant facility, you will have no further access to Billpower after the effective date of termination.
- 2) Any limitations of liability that you have accepted under these Billpower Terms will continue after termination in relation to your use of Billpower.

10. Liability, warranties, representations and indemnities

10.1 Limitation of Liability

- 1) Billpower is a generic service and its capabilities are likely to change over time. This means that Billpower may not be, or may not remain, suitable for your needs.
 - a) You must assess the ongoing suitability of Billpower for you and your Business. We are not aware of your individual business needs and cannot provide any specific recommendations regarding your use of Billpower.
 - b) We will not be liable if you do not set up your account in a proper fashion, including but not limited to the configuration of surcharges and ensuring surcharges conform to relevant legislation.
- 2) We will not be liable for any malfunction of Billpower outside of our control, including failure of any charges to work, such as configuration of surcharges and ensuring surcharges conform to relevant legislation.

10.2 Liability for other guarantees, conditions or warranties

- 1) In the event of any breach of a statutory condition or warranty, if the legislation permits, our maximum aggregate liability to you:
 - a) for failure to comply with a consumer guarantee in respect of the supply, failure to supply or unavailability of Billpower; or
 - b) for any Loss or Claim suffered by you as a result of any misrepresentation, negligence, default or breach of these Billpower Terms by us;is limited, at our option, and at our sole discretion to:
 - a) the resupply of Billpower; or
 - b) the payment of the cost of resupply of Billpower,and all representations, conditions, warranties and terms (including claims in relation to our performance, the performance of Billpower or any service associated with Billpower) that would otherwise be expressed or implied in these Billpower Terms by general law, statute or custom are expressly excluded (to the extent that such representations, conditions, warranties and terms can be excluded at law).

10.3 When we and Third Parties will not be liable to you

We and Third Parties (including Payment Gateways) are not responsible or liable to you or the Business for:

- 1) delays, regardless of how they are caused, in the processing of payments made or received or to be made or received, or in bank transfers or in other data information exchange, relating to your use of Billpower;
- 2) any Loss or Claim relating to your use of, or reliance upon, the payment information provided to you or transaction effected through Billpower. This includes any fraudulent, unauthorised or mistaken transaction, payment instruction, reversal, Chargeback or error correction;
- 3) the actions or inaction of Third Parties or other persons (including those which may be negligent or unauthorised) relating to Billpower; or
- 4) any Loss or Claim arising from a failure by us to comply with the Terms for any cause which could not reasonably be controlled or prevented by us.

10.4 Indemnity to us and Third Parties

- 1) You indemnify us, our directors, employees, or contractors and Third Parties (including Payment Gateways) (“**Indemnified Parties**”) against any Loss or Claim suffered or incurred by the Indemnified Parties or any of them arising from your action including negligence, misrepresentation, fraud, breach of law or breach of the Billpower Terms. You indemnify the Indemnified Parties for any Loss or Claim suffered or incurred from the unauthorised use of your username or a password.
- 2) If the Indemnified Party caused or contributed to a Loss or Claim, then your liability under the paragraph above is limited to the amount of the Loss or Claim which is directly attributable to your conduct.

11. PPSA

You agree that these Billpower Terms and conditions may constitute one or more security interests for the purposes of the *Personal Properties and Securities Act 2010* (Cth) (“**PPSA**”) and that:

- 1) to perfect any such security interest, Billpower Pty Ltd may register a financing statement(s) on the Personal Property Securities Register;
- 2) you waive any rights you might have under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- 3) you waive your right to receive notice of a verification statement under section 157 of the PPSA; and
- 4) you must promptly on our request provide any such information and execute and deliver any such documents as we may reasonably require to protect the security interests granted to us under or in relation to these Billpower Terms and conditions.

12. Changes to Terms

We will give you at least 14 days’ prior notice (longer if required by legislation or any other code of conduct we subscribe to) of any change we make to these Billpower Terms that is likely to materially affect or disrupt the manner in which you use Billpower. If however we need to restore or maintain the security of Billpower immediately, we may change your use and access to Billpower without advance notice.

13. Notices

- 1) You agree that all communications between you and us in relation to Billpower will be by email or by us posting a notification on the Billpower Website, unless another method is agreed to by you.
- 2) Any notice or other communication by us by email is regarded as being given by the sender and received by the addressee when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee’s email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee).
- 3) If the delivery or receipt is on a day which is not a Business Day, is after 5.00pm (addressee’s time) or no delivery confirmation report is received by the sender, it is regarded as received at 9.00am on the following Business Day. We may provide a notice or other communication to you by a posting to the Billpower Website. That notice or other communication is regarded as being given by us and received by you when the posting is made to the Billpower Website. We recommend that you bookmark and regularly check the Billpower Website for notices or other communications.

14. Legal

You should note a few things about these Billpower Terms:

- 1) This is our complete agreement – these Billpower Terms and the documents incorporated by reference contain the whole of the agreement between us and you in relation to Billpower. Any representations or warranties made by our staff before you are accepted for participation in Billpower are not effective unless expressly set out in these Terms.
- 2) If any part or provision of these Billpower Terms are void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of these Billpower Terms continue in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case we can terminate your use of Billpower at our election.
- 3) No waiver by us – If we do not insist upon strict performance of any part or provision of these Billpower Terms, that waiver will not be deemed to be a waiver of a subsequent breach or default of the Billpower Terms. Any waiver of our rights or powers under these Billpower Terms may only be given in writing signed by our authorised officer.
- 4) Assignment – You cannot assign or otherwise transfer the benefit of the agreement between us and you without our prior written consent. We can assign or otherwise transfer the benefit of the agreement between us and you.

15. Your privacy

- 1) We collect, disclose and use your Personal Information to provide the products and services you have asked for and associated support, respond to your enquiries or feedback and to promote the products and services offered by us and Third Parties. We may collect Personal Information from you, from public sources such as social media websites, and from Third Parties that provide us with marketing leads.
- 2) To do these things, we may provide your Personal Information to our related companies, Third Parties and to people to whom we outsource functions. Some of the entities may be located in Australia, New Zealand, the United States or other countries. If you do not provide your Personal Information, it may affect our ability to do business with you.
- 3) You consent to us collecting, using and disclosing your Personal Information for the purposes set out in section 14.1 above. You can ask us not to use your information to promote products and services by following the process outlined in the Billpower Pty Ltd Privacy Policy.
- 4) The Billpower Pty Ltd Privacy Policy contains information on how to:
 - a) update your preferences about the marketing and promotional material we send to you;
 - b) request access to and seek correction of the Personal Information we hold about you;
 - c) make a privacy complaint; and
 - d) how we will deal with your complaint.
- 5) You can contact us about your privacy by email at support@billpower.co.
- 6) You consent to the sharing of information including your Personal Information between us, Payment Gateways and other Third Parties in relation to your application for, and if you are approved, the ongoing administration of your use of Billpower.
- 7) You authorise us and Payment Gateways to use your personal information for marketing purposes and to send you and your customers emails from time to time and if you do not wish to receive any further marketing emails from us or Payment Gateways, you must notify us and the Payment Gateways of your intention to unsubscribe.
- 8) Notwithstanding our Billpower Pty Ltd Privacy Policy, we may observe your use of Billpower and access all information you input or can access through Billpower. This will enable us to assist you with problems and make improvements for future versions of Billpower and other products and services.

- 9) You must ensure that all Users read this 'Your privacy' section and the policies described above before using Billpower or providing their Personal Information to us.
- 10) If you provide any Personal Information about third party individuals to us, you must take reasonable steps to ensure that those individuals are aware of the matters in this 'Your Privacy' section and that we may collect, use and disclose their information to provide you with Billpower.
- 11) The privacy policy and refunds policy displayed on your Billpower payment page form part of the Billpower Terms. You acknowledge that you have provided a copy of the privacy policy and refunds policy to your customers.