

SOFTSOURCE VBRIDGE

Special Terms and Conditions

MICROSOFT CPS – OFFICE 365



These Microsoft CSP Special Terms and Conditions are an addendum to the Softsource vBridge Terms of Sale for Cloud Services, and set forth the terms and conditions that are specific to the Microsoft Cloud Services and related services being purchased by the Client pursuant to this Order. To the extent that these terms conflict with the Softsource vBridge Terms of Sale for Cloud Services, these Microsoft CSP Special Terms and Conditions will prevail with respect to the Microsoft Cloud Services and any related third party provided services described in this Order. Terms used but not defined herein will have the same meaning as given in Softsource vBridge's Terms of Sale for Cloud Services.

1 SCOPE OF CLOUD SERVICES

Softsource vBridge is re-selling the Microsoft Cloud Services and any related third party provided services described in this order. unless specifically identified as 'Softsource vBridge Services', Softsource vBridge itself will not be providing or performing the Cloud Services and any related third party offered services described in this order. Furthermore, Softsource vBridge is not responsible for the performance of such Cloud Services or third party offered services.

- 1.1 Sale of Cloud Services: the sale of the third party provided Cloud Services shall be governed by Softsource vBridge's Terms of Sale for Cloud Services located at <https://www.svbgroup.co.nz/assets/legal/special-terms-and-conditions-microsoft>
- 1.2 Softsource vBridge Services: Softsource vBridge Services will be subject to the Softsource vBridge's Terms of Sale for Services located at <https://www.svbgroup.co.nz/assets/legal/special-terms-and-conditions-microsoft>.
- 1.3 Microsoft Cloud Service Provider Terms: the Client's use of the Cloud Services ordered pursuant to this Order will be subject to and governed by, without limitation, the following Microsoft terms and conditions, which are incorporated herein by reference:
 - (a) Microsoft Online Service Terms for the applicable Cloud Services procured and consumed by Client, located at <https://www.microsoft.com/licensing/docs>; and
 - (b) Microsoft Cloud Agreement (Asia and Pacific/New Zealand: English) with Microsoft located at <https://msdn.microsoft.com/en-us/partner-center/agreements>; and
 - (c) SLAs, located at: <http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=37>, respectively.

2 FEES, INVOICING AND PAYMENT

- 2.1 The Client will pay Softsource vBridge all Fees for the Cloud Services that the Client provisions, allocates, enables and actually consumes during a relevant monthly billing period. The Client acknowledges that Softsource vBridge may vary the Fees from time to time during the Term.
- 2.2 Fees for Orders for Annual or Multiyear Cloud Services subscriptions shall be payable annually in advance or as otherwise agreed in writing between the Client and Softsource vBridge. The client commits to pay all subscription fees associated with this Order for the entire Term of the subscription, including any pricing changes as specified in clauses 2.3 and 2.4 below.
- 2.3 The Client acknowledges that Microsoft's default term for a subscription is annual and they charge an uplift for monthly subscriptions (currently charged at 20%, but subject to change from time to time in accordance with the Microsoft Cloud Service Provider Terms). Microsoft's terms offer a short window for changes or adjustments to orders and accepts no changes after this period (currently 72 hours, but subject to change from time to time in accordance with the Microsoft Cloud Service Provider Terms) and subscriptions auto-renew on the anniversary date for the period of the original subscription. The Client commits to pay all subscription fees associated with any auto-renewals and incorrectly ordered or amended subscriptions if instigated by the client, or caused by inaction of the Client. The Client acknowledges that Softsource vBridge are under no obligation to credit or refund any such subscriptions unless Softsource vBridge have received the corresponding credits from Microsoft as described in Softsource vBridge's standard Terms of Sale for Cloud Services.
- 2.4 The Client acknowledges that pricing for all Cloud Services procured pursuant to the Order is subject to change without notice based on any pricing or program changes imposed by Microsoft generally. Notwithstanding anything to the contrary in the Softsource vBridge Terms of Sale for Cloud Services, the Client may not receive any further written notice of Fees owed other than as set out in Softsource vBridge's invoice that will be based on actual reported use by Client in the applicable monthly billing period.
- 2.5 Unless otherwise agreed to in writing between the parties, the Client must pay all invoices in full within thirty (30) days of the invoice date.
- 2.6 Softsource vBridge may charge default interest on overdue amounts. Default interest will be calculated from the due date to the date of payment (both inclusive) at 22.5% per annum. The Client will be responsible for Softsource vBridge's costs of collection for any payment default, including, but not limited to, debt collection costs, court costs, filing fees and lawyer's fees.
- 2.7 Without limiting any other right or remedy available to Softsource vBridge, Softsource vBridge may, in its sole discretion, restrict or suspend the Client's access to the Cloud Services if the Client does not pay any Fees by the due date for payment.

3 CLIENT RESPONSIBILITIES

- 3.1 The Client is responsible for all Microsoft licensing, use and policy requirements in connection with the use of the Cloud Services.
- 3.2 The Client will be solely responsible for ensuring only its authorised personnel are enabling Cloud Services directly through a management portal (where applicable) or through Softsource vBridge.
- 3.3 Unless otherwise expressly agreed to in writing, the Client is responsible for any data migration of its data and any other related services outside of the Cloud Services or any purchased Softsource vBridge Services.
- 3.4 The Client will provide information reasonably requested by Softsource vBridge, its suppliers or Microsoft, including, without limitation, any technical and related information, and any consents that Microsoft may need from the Client necessary for Microsoft to enable the Cloud Services and will otherwise undertake the responsibilities applicable to the Client set forth in the Service Provider Terms (as applicable).
- 3.5 The Client agrees to cooperate with Softsource vBridge in good faith by taking such further actions and/or executing such further agreements or instruments as may be reasonably required under the circumstances by Softsource vBridge or Microsoft.
- 3.6 The Client will use the Cloud Services for its own use and for legitimate business purposes and will not resell, sub-lease, sub-rent, or sub-license the Cloud Services to any third party.
- 3.7 The Client will designate Softsource vBridge as its Partner of record for Microsoft products and services.
- 3.8 3.8 The Client will be solely responsible for monitoring, validating and tracking all Cloud Services it enables, allocates and consumes. Usage and associated charges for excess usage will be determined based solely upon the collected usage information provided to Softsource vBridge.

4 PERSONAL PROPERTY SECURITIES ACT 1999

- 4.1 The Client grants to Softsource vBridge a security interest in the Order and their proceeds and accessions to firstly secure payment of the Fees and secondly to secure payment of all outstanding debts and obligations of the Client to Softsource vBridge from time to time.
- 4.2 The Client agrees to execute any documents, provide all relevant information and cooperate fully with Softsource vBridge to ensure that Softsource vBridge has a perfected security interest in the personal property charged in (a) above and, if applicable, a purchase money security interest.
- 4.3 The Client shall pay Softsource vBridge's costs of any discharge or amendment of any Financing Statement.
- 4.4 The Client will immediately notify Softsource vBridge in writing of any change in the Client's name or other material identifying characteristics of either the Client or the Order purchased.

5 EXCLUSIONS OF LIABILITY

- 5.1 To the maximum extent permitted by law, Softsource vBridge shall not be liable for lost profits, loss of goodwill or any incidental, special or consequential damages even if advised of the possibility of same. No warranty or condition shall be implied herein against Softsource vBridge by Statute, Common Law, regulation or otherwise other than the warranty by Softsource vBridge that it has the right to deal in goods.

Should Softsource vBridge be found liable to the Buyer for any reason notwithstanding the foregoing, the Client agrees that in no case shall the liability of Softsource vBridge exceed the total of Softsource vBridge's margin earned from the Fees paid by the Client to Softsource vBridge for the Cloud Services.

- 5.2 Softsource vBridge and the Client agree that they are supplying and acquiring goods and services for business purposes and pursuant to section 5D of the Fair Trading Act 1986 (FTA) they contract out of sections 9, 12A, 13 and 14(1) of the FTA and pursuant to s 43 of the Consumer Guarantees Act 1986 (CGA) they agree that the provisions of the CGA do not apply to these Terms.