



TextAnywhere Terms and Conditions of Service

TextAnywhere Limited
8 Brewery Court
High Street
Theale
Berkshire
RG7 5AJ
UK

UK tel: 08451 221 302
Intl tel: +44 8451 221 302
Email: Welcome@TextAnywhere.net

TextAnywhere Limited
Terms and Conditions of Service

Version 9.04, November 2011

© 2011 TextAnywhere Limited. All Rights Reserved.

Information in this document is subject to change without notice. Companies, names and data used in examples herein are fictional unless otherwise noted. No part of this document may be reproduced or transmitted in any form by any means, electronic or mechanical, for any purpose, without the express written permission of TextAnywhere Limited.

TextAnywhere™, TextOnline™, TextMail™, TextOMS™, TextPlugin™, TextEmail™, TextAlert™, TextCampaign™, TextPremium™, TextPartner™ and TextInbound™ are trademarks of TextAnywhere Limited. Microsoft, Windows, Windows NT and Microsoft .NET are trademarks of Microsoft Corporation. Other names are the trademarks of their respective owners.

TEXTANYWHERE LIMITED DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE INSTRUCTIONS CONTAINED IN THIS DOCUMENT.

IN NO EVENT SHALL TEXTANYWHERE LIMITED BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS), EVEN IF TEXTANYWHERE LIMITED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

TextAnywhere Terms and Conditions of Service

TextAnywhere™ enables organisations to send and receive text messages between web and email-based applications, and mobile and landline phones.

The TextAnywhere portfolio consists of the following range of services and associated software:

TextOnline™ enables you to send and receive SMS text messages to any mobile phone from any web-connected PC, and view the message delivery success, where you only pay for the messages that you send.

TextCampaign™ enables you to create and manage online your own bulk SMS message campaigns, enabling replies to be received and delivery status to be reviewed, where you only pay for the messages that you send.

TextMail™ enables SMS messages to be sent from any email system, with replies and delivery statuses returned to you by email, where you only pay for the messages that you send.

TextOMS™ enables SMS messages to be sent and received from within Microsoft Outlook 2007 using Microsoft's built-in OMS function, where you only pay for the messages that you send.

TextAlert™ enables IT system messages in email format to be translated into one or more text messages and then forwarded to one or more pre-defined mobile phones.

TextPremium™ enables you to create, manage and monitor your own short code service, used for marketing promotions, and as a means to run revenue-generating services.

TextInbound™ enables organisations to receive SMS text messages through your own dedicated phone number, with free-to-use applications to run quizzes, votes, and automated response services.

TextPartner™ enables organisations to offer a full white label suite of SMS services as their own, in their own livery, hosted and managed by TextAnywhere.

Developer Toolkit enables you to integrate a two-way text-messaging capability within your own applications and websites, where you only pay for the messages that you send.

In addition there is a TextAnywhere *Reseller Program* where partners can introduce clients to TextAnywhere and receive a commission on the introduced clients' monthly revenue.

1. Charges

Unless specified otherwise, all charges are in pounds sterling and exclude VAT, which will be applied at the prevailing rate, where applicable. Specific charges and volume discounts for the range of services and software can be found on our website.

Clients with a credit account who settle their account by Direct Debit will have a 2.5% discount applied. To settle your account by Direct Debit, please complete the Direct Debit form (click [here](#) to download the form) and post it to the following address:

TextAnywhere Ltd.
P.O. Box 7314
Poole
BH14 4DY

Clients can opt for an account to be charged and settled in a currency of their choosing. Please contact us for a non-Sterling account.

TextAnywhere reserves the right to vary pricing and volume discounts on giving you 28 days notice in writing.

2. Discounts for certain qualifying organisations

Organisations belonging to the following industry sectors can take advantage of the TextAnywhere *Qualifying Organisation Discount* scheme:

- Academic organisations: schools, colleges and universities
- Armed Forces: Army, Navy, and RAF
- Charities
- Emergency Services: Ambulance, Fire, and Police
- Housing Associations
- NHS: including PCTs, hospitals, surgeries, and practices

All qualifying organisations are entitled to receive a 15% discount on all our products and services. This includes message charges, TextInbound, TextPlugin, TextAlert and TextPremium shared short code services. Some larger Message Packs and monthly message charges do not attract the full 15% discount.

The discount on message charges applies to both credit accounts (where each of the monthly volume-based price bands is discounted), and pre-pay accounts (where each of the pre-purchased message-packs is discounted).

A qualifying organisation settling their credit account by Direct Debit will also receive the additional 2.5% Direct Debit discount.

To receive the discount, the qualifying organisation must either tick the appropriate box during registration, or contact TextAnywhere directly who will apply the preferential terms to their account directly.

3. Invoicing

If you are a pre-pay client who purchases our services in advance of their use, an invoice will be automatically sent to your designated email address at the time of purchasing the relevant service.

If you are a credit account client, an invoice will be generated and sent to either your email billing address, or that of your nominated *Billing Contact* (optionally given during registration), at the end of each month. The individuals within your organisation with administrator rights can also review current usage levels, purchase additional services, and view your account statement on-line at any time.

All current and past invoices are available from your *Statement of Account*, accessed from your online account's *Administration Panel*.

4. Payment

Our usual terms of trade are prepayment of our services in advance of use.

Subject to credit clearance you may be eligible for a credit account in which case your payment can be made by monthly direct debit, monthly credit card or BACS transfer.

Payment is due 14 days after invoice date. Whilst reserving the right to close any overdue account and to take legal action for recovery of a due debt, our usual process is as follows:

1. Payment reminders will be sent by email 22 and 37 days after the invoice date.
2. If payment is not made within 51 days of the invoice date, then the account will be suspended.
3. The invoice will also be referred to our debt recovery partner, and will be subject to a surcharge of 15% plus VAT to cover the collection costs incurred. This surcharge, together with all other charges and legal fees incurred, will be the responsibility of the client and will be legally enforced.

Please note that you are charged for all free-to-receive messages that we send to the UK networks, on your behalf, for delivery to UK and international phones, regardless of whether a message is successfully delivered or not.

5. Free trial terms

TextAnywhere provides its clients with the ability to evaluate its message-sending services by means of a "Free trial". The "Free trial" enables a client, who has previously opened a TextAnywhere evaluation account, to send 20 free text messages from their TextAnywhere account.

These free messages can be sent through TextOnline, TextCampaign, TextMail, TextOMS, and the Developer Toolkit.

The “Free trial” does not include free use of TextInbound, TextAlert or TextPremium short code/keyword rental. Any online purchase of these services, or any text messages sent beyond the free messages, will be charged to the client’s account at the standard, published rates.

Should a client wish to formally evaluate the services that fall outside of the terms of the “Free trial” (TextInbound, TextAlert and TextPremium), then please contact TextAnywhere directly who will, on a discretionary basis, be happy to arrange an extended, tailored service evaluation.

Once a client has sent their 20 free text messages, a client can continue using their account, with additional sent messages being charged to their account, in accordance with the standard, published rates.

6. Governing Law

Under this agreement you agree to submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or in connection with the service.

7. Message Content

TextAnywhere processes messages on an automated basis. TextAnywhere is not responsible for the contents of a message or of its accuracy. TextAnywhere transmits messages in good faith and cannot be held responsible for the views or opinions of any message content, save for administrative messages generated by TextAnywhere. Examples of such administrative messages are account confirmation emails, service change emails and SMS messages, and monthly billing emails.

8. Appropriate Usage of Service

When you register, you must submit correct information regarding your identity, organisation and address details. It is not permitted to use any of the TextAnywhere services for illegal or unreasonable activities. Customers who send threatening or demeaning messages will have their account at TextAnywhere closed. TextAnywhere does not permit SMS “spam” and will close the account of any person or organisation who engages in unsolicited bulk messaging. Deliberate misuse of the TextAnywhere service, including obtaining message credits by deceit, will cause the customer account to be closed immediately. In the event of closure of the account any outstanding monies will fall due immediately.

If you have not followed the above guidelines, you agree to indemnify us against any costs, fines or other losses we may incur as a result of any claims or legal proceedings that are brought or threatened against us by any third party.

9. TextPartner White Label Service Indemnity

Where you are running a TextAnywhere white label service (known as TextPartner) it is part of your TextPartner responsibilities to ensure your customers make appropriate use of the service only. If your customers have not followed the guidelines set out in clause 8 you agree to indemnify us against any costs, fines or other losses we may incur as a result of any claims or legal proceedings that are brought or threatened against us by any third party as a result of the actions of your customer.

10. Security

During registration of your account we will issue you with an administrator password which will enable you to set up other user names and passwords. These are essential for your organisation's secure use of the service. You will be responsible for keeping this information confidential and agree to take all necessary steps to ensure that it is kept secure and not disclosed to any unauthorised person.

If you believe that your username or password has been discovered or is being misused by someone else, then you must tell us immediately and take all steps necessary (or requested by us) to prevent such use. If we think there is likely to be a misuse of the Services because of a breach of security we may either suspend your use of the Services or change your password and then notify you of this.

Your TextAnywhere account provides you with a facility to set a maximum daily number of messages that can be sent through your account. We recommend that you use this facility to minimise any loss through the misuse of your account. TextAnywhere will not be held responsible for any misuse of your account.

11. TextPremium additional contract terms

All *Short Code* services outlined in this document cover the UK networks only.

11.1 TextPremium payment terms

- The set-up fee is payable in advance, on registration.
- Your monthly *Short Code* and *Keyword* rental fee is payable in advance.

11.2 TextPremium Out-payment terms

- *Out-payments* are only paid to you in respect of messages successfully delivered and then paid for by the mobile phone user, subject to any retention imposed by the mobile network operator.
- *Out-payments* will be made once you have submitted an appropriate VAT invoice. Please send your invoices by email to invoice@textanywhere.net or by post to the following address:

TextAnywhere Ltd
P.O. Box 7314
Poole
BH14 4DY

- *Out-payments* due to you will appear on your online account during the month following the month in which the transactions have taken place. Payment will be made to you when payment has been received from the mobile network operators. This will generally be 60 days after the end of the month in which the transactions have taken place.
- *Out-payments* must be claimed within twelve months of the Out-payment being posted to your account, otherwise it will be forfeited.
- The *Out-payment* schedules shown in the *TextPremium: A Guide to Short Code and Reverse Billing Services* document are the current *Out-payment* schedules. TextAnywhere reserves the right to change the schedule without notice in response to mobile network operator changes.

- Automated messages sent when subscribers subscribe and unsubscribe from a TextAnywhere-managed subscription service, will be charged to your TextAnywhere account at your agreed or prevailing monthly rate.

11.3 TextPremium appropriate usage of service

- You must agree to conform to the relevant legislation associated with the provision of premium rate telecommunications services. For more information we recommend that you review guidelines issued by PhonepayPlus, the governing body for premium rate telecommunications services. The specific *Code of Practice* relating to *premium rate services* can be downloaded [here](#).
- In running a premium rate service you agree to abide by the *TextAnywhere Terms and Conditions of Running Premium Rate Services*, available [here](#).

11.4 TextPremium termination

- The minimum contract rental period for a TextPremium Shared Short Code is one month. Termination thereafter is by serving not less than one month's written notice.
- The minimum contract rental period for a TextPremium Dedicated Short Code is three months. Termination thereafter is by serving not less than one month's written notice.

12. TextInbound numbers

A TextInbound number is rented on a monthly basis, with a minimum contract term of one month, with one month's written notice, except for Golden numbers, for which the minimum contract term is twelve months, also with a minimum of one month's written notice.

TextAnywhere reserves the right to replace a client's TextInbound number under such circumstances as, for example, a network operator demands the return of a number or if the quality of the TextInbound service is not, in the opinion of TextAnywhere, at a satisfactory level. A replacement TextInbound number will always be provided.

All TextInbound numbers are UK numbers. Messages sent to standard TextInbound numbers (and as replies to outbound messages) are charged at the sender's standard text message rate for sending messages to Guernsey-based mobile numbers. Some UK networks (3 and T-Mobile, for example) can charge more for sending messages to Channel Island numbers. Any additional charge is not passed back to TextAnywhere.

Should you wish senders only to be charged their standard network rate for sending a message to a UK mobile, then TextAnywhere can provide a Vodafone UK number as your TextInbound number at an additional charge. Please contact us if this is a requirement.

13. Reseller relationships

Organisations appointed by TextAnywhere are able to resell TextAnywhere products and services to UK-based organisations. These organisations are known as “Resellers”. A Reseller is not able to operate exclusively in any geographic or vertical market.

In selling a TextAnywhere service or product to a client, a Reseller is entitled to receive a commission on net revenue generated by the client.

The commission rate is as follows:

Product/Service	Commission %
Text Messages sent, where the unit price per Message Credit is greater than 6.0p, excluding VAT	20%
Text Messages sent, where the unit price per Message Credit is less than 6.0p and greater than 4.5p, excluding VAT	10%
Text Messages sent, where the unit price per Message Credit is less than 4.5p and greater than 3.5p, excluding VAT	5%
Text Messages sent, where the unit price per Message Credit is less than 3.5p, excluding VAT	0%
TextPlugin licence	20%
TextAlert monthly charge	20%
TextInbound monthly charge	20%
TextPremium set-up charge – Shared	20%
TextPremium set-up charge – Dedicated	5%
TextPremium monthly charge – Shared	20%
TextPremium monthly charge – Dedicated	5%
TextPremium Outpayments	0%

A Reseller signs up as a client, is assigned Reseller status and is provided with a unique Reseller Code. This Reseller Code must be entered by any clients introduced to TextAnywhere by the Reseller during their registration on the TextAnywhere website.

From within the Reseller’s account, TextAnywhere makes available high level details of products and services used by the clients introduced by the Reseller. This includes the number of messages sent and products purchased or rented. It does not include details of any message content.

Also available online is the value of the commission earned by the Reseller in previous months against each client. To claim the commission a Reseller must submit a VAT invoice to TextAnywhere for the amount being claimed. The invoice can be submitted when either the commission reaches £500, exclusive of VAT, or on a quarterly basis, whichever is soonest. TextAnywhere will pay the commission earned within 14 working days of receipt of a valid invoice. Commission needs to be claimed by the Reseller within 12 months of being earned, otherwise it will be forfeited.

TextAnywhere reserves the right to withhold commission until the Reseller's client has settled their invoices with TextAnywhere, against which the commission has been calculated.

TextAnywhere reserves the right to withdraw a Reseller's right to sell TextAnywhere products and services where in the opinion of TextAnywhere a Reseller is misrepresenting TextAnywhere or is acting in a manner inappropriate to TextAnywhere's professional image.

TextAnywhere reserves the right to withdraw a Reseller's right to sell TextAnywhere products and services without cause on giving 90 days' notice.

14. Limitation of Liability

We do not limit our liability if you die or are injured as a result of our negligence or you suffer loss as a consequence of any fraud by us.

We shall not be liable to you in contract, tort (including negligence) or otherwise for any damage or loss arising from the consequences of viruses received by you via the Services or of our failure to provide the Services in accordance with these Terms and Conditions; or any economic losses (including loss of business, contracts, profits, revenues, capital or anticipated savings), any indirect, special or consequential loss, loss of data, goodwill or reputation or for any wasted expense including but not limited to the cost of using any other service or losses caused by viruses.

Except for our liability for death or injury as a result of our negligence any liability we may have to you whether in contract, tort (including negligence) or otherwise for any loss or damage suffered by you in relation to the provision of the Services is limited to £1,000 in any 12 month period.

15. Intellectual Property Rights

You agree to enter into any software license agreement reasonably required by TextAnywhere in respect of any software made available to you under this agreement. Appendix 1 details the software license agreement for the TextPlugin Microsoft Outlook software.

You acknowledge and agree that all intellectual property rights in the services and any associated software are vested and shall remain vested in TextAnywhere, or its suppliers, as appropriate.

16. Intellectual Property Rights Indemnities

TextAnywhere will indemnify you against all claims and proceedings arising from the infringement of any intellectual property rights by reason of TextAnywhere's provision of the services and associated software to you.

As a condition of this indemnity you must:

- (a) Notify TextAnywhere promptly in writing of any allegation of infringement;
 - (b) Make no admission relating to the infringement;
 - (c) Allow TextAnywhere or its agents to conduct all negotiations and proceedings and give all reasonable assistance in doing so (TextAnywhere will pay your reasonable expenses for such assistance);
- and;

- (d) Allow TextAnywhere or its agents to modify the services or associated software, or any item provided as part of the services or associated software, so as to avoid the infringement provided that the modification does not materially affect the performance of the services.

This indemnity does not apply to infringements caused by the use of the services in conjunction with other software not approved by TextAnywhere, or to infringements caused by designs or specifications made by you, or on your behalf. You will indemnify TextAnywhere and its agents against all claims, proceedings and expenses arising from such infringements or alleged infringements.

17. Force Majeure

We are not liable for any failure to perform our obligations if we are prevented from doing so by an event beyond our reasonable control (which may include, without limitation, strikes; labour disputes; acts of God; war; riot; civil action; malicious acts or damage; compliance with any law, governmental or regulatory order, rule, regulation or direction; any act or omission of any government or other competent authority; accident; equipment or services failure, including the unavailability of third party telecommunications services, lines, or other equipment; fire; flood or storm).

18. Data protection and privacy

TextAnywhere undertakes to comply with all applicable UK Data Protection legislation. We operate a privacy policy and reserve the right to publish the names and logos of our customers in our marketing material. We do not pass on your organisation's details to others except where necessary for the purpose of credit checking and setting up continuous payment authority.

19. Complaints/customer service

We care about our customers and endeavour to provide a complaints process that is fair, confidential and effective. TextAnywhere strives to provide a quality service to its clients at all times. If, however, we fail to meet our obligations or we disappoint you in some way, we encourage you to share with us our failings as soon as you are able to. We will then make all reasonable efforts to address your concerns within one working day.

20. Termination

You may cease use of the TextAnywhere service at any time without notice, except for the TextPremium and TextInbound services, where a previously stated written notice period is applicable.

TextAnywhere reserves the right to suspend your use of any of the services without notice in the event of inappropriate use of the service.

In the event of non-payment of overdue invoices TextAnywhere reserves the right to suspend the service on serving 7 days notice via email.

In the event of termination or suspension of service any monies owing become due immediately.

21. Variation

Except where explicitly stated in this agreement, TextAnywhere reserves the right to vary the terms of this Agreement or the nature of the Service at any time. TextAnywhere will inform you of any such changes through email, or such other medium, as TextAnywhere considers appropriate.

22. Notices

Any notices must be sent by receipted e-mail, post or delivered by hand as follows:

- To you, at the address you have given us or the email address given to us in your registration details
- To us by email by post to the contact details below

In the case of notices sent by email, such notices shall have been deemed to be received when capable of being accessed by you. In the case of notices sent by post, such notices shall have been deemed to be received on the second business day after posting.

23. Contacts

Email: customercare@textanywhere.net

Phone UK: 08451 221 302
Intl: +44 8451 221 302

Address: Customer Care Team
TextAnywhere Ltd.
8 Brewery Court
High Street
Theale
Berkshire
RG7 5AJ
United Kingdom

TextAnywhere Limited is a limited company, registered in England, with company registration number 04208390 and VAT registered with number GB 781 7907 88.