



## TextAnywhere Terms and Conditions of Service

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TextAnywhere Ltd.  
**Terms and Conditions of Service**

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## **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:

**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 (and upwards) 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 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, 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 online 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 25 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**

This agreement shall be construed in accordance with English law and you and we 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.

You are liable to TextAnywhere for the services provided to your customers under the TextPartner white label service irrespective of any issue or dispute you may have with your customers.

## 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 outpayment terms

- *Outpayments* 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.
- *Outpayments* will be made once you have submitted an appropriate VAT invoice. Please send your invoices by email to [invoice@textanywhere.net](mailto:invoice@textanywhere.net) or by post to the following address:

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

- *Outpayments* 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.
- *Outpayments* must be claimed within twelve months of the Outpayment being posted to your account, otherwise it will be forfeited.

- The *Outpayment* schedules shown in the *TextPremium: A Guide to Short Code and Reverse Billing Services* document are the current *Outpayment* 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.

## **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:

<b>Product/Service</b>	<b>Commission %</b>
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 3.0p, excluding VAT	5%
Text Messages sent, where the unit price per Message Credit is less than 3.0p, excluding VAT	0%
TextAlert monthly charge	20%
TextInbound monthly charge	20%
TextPremium set-up charge – Shared code	20%
TextPremium set-up charge – Dedicated code	5%
TextPremium monthly charge – Shared code	20%
TextPremium monthly charge – Dedicated code	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**

14.1 Neither party's liability for:

- (a) death or personal injury caused by that party's negligence or the negligence of that party's employees or agents;
- (b) fraud or fraudulent misrepresentation; or
- (d) anything else that may not be excluded or limited by applicable law;

is excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.

14.2 We accept liability for reasonably foreseeable losses arising as a direct consequence of breach by us of our statutory duty. However we shall not be liable where the causes or potential causes of the loss: (a) were not reasonably foreseeable by both parties; and/or (b) were known by you, but not us, at the time that the agreement was entered into; and/or (c) arose from use of our products or services for purposes other than those for which they were intended; and/or (d) were reasonably foreseeable and preventable by you such as those arising from, by way of example only, loss of data or information where you have failed to back up copies of important data; or (e) where such loss is caused by your failure to follow our reasonable instructions or those of our authorised agent(s) to prevent such losses occurring.

14.3 You shall use all reasonable endeavours to mitigate any losses which you might otherwise incur.

14.4 Subject to Clauses 14.1 and 14.2, we do not accept any liability under or in relation to this agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:

- (a) loss of profits;
- (b) loss of or damage to reputation;
- (c) loss of contracts;
- (d) loss of customers;
- (e) wasted management or other staff time; or
- (f) indirect, special or consequential loss or damage;

and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

14.5 Subject to Clauses 14.1 and 14.2, our aggregate liability arising under or in connection with this agreement, whether in contract, tort or otherwise will not exceed:

- (a) an amount equal to 125% of the total amount paid or payable by you under this Agreement in the year in which the cause of action arose; or

- (b) if the amount referred to in (a) above cannot be calculated accurately at the time the relevant liability is to be assessed, or if it is less than £1,000, to £5,000.

14.6 No conditions, warranties or other terms apply to any products and/or supplied under this agreement except to the extent that they are expressly set out in this agreement and all terms, conditions, warranties and representations that might be implied by law or otherwise are excluded.

## 15. Intellectual Property Rights

You undertake to comply with the terms of any software licence agreement reasonably required by TextAnywhere in respect of any software made available to you under this agreement (“**Software Licence**”).

You acknowledge and agree that all intellectual property rights in the services and any associated software supplied in connection with this agreement are vested and shall remain vested in TextAnywhere, or the relevant third party licensors, as appropriate, and all such rights are expressly reserved. All rights and goodwill in and to the name, ‘TextAnywhere’ and any associated logos, trade marks, devices or designs used by TextAnywhere or referred to in any marketing or other materials used in connection with the services supplied under this agreement are strictly reserved to TextAnywhere or the applicable licensor. Accordingly, you may not refer to or use such marks without the prior written consent of TextAnywhere or the applicable licensor.

## 16. Intellectual Property Rights Indemnities

TextAnywhere will indemnify you against all costs, liabilities, damages, losses and expenses suffered and/or incurred by you in connection with any third party claim in respect of an infringement of intellectual property rights arising directly out of those services and software supplied by TextAnywhere to you, on condition that you undertake to:

- (a) notify TextAnywhere promptly in writing of any allegation of infringement;
- (b) make no admission relating to the infringement or do anything which may prejudice in any way our ability to defend such a claim on our products or services;
- (c) allow TextAnywhere or its agents to have sole conduct of all negotiations and proceedings and give all reasonable assistance in doing so (TextAnywhere will pay your reasonable expenses for such assistance).

(“**Claim**”). If we receive prompt notice of such a Claim that, in our reasonable opinion, is likely to result in an adverse ruling, we may at our option: (a) obtain a right for you to continue using the products or software in question or allow us to continue performing the services; (b) modify the software or the services to make them non-infringing; (c) replace such software or services with something materially similar which is non-infringing (provided that the modification does not materially affect the performance of the services or the software, as applicable); or (d) refund any pre-paid fees for the allegedly infringing services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing services or software.

The provisions of this Clause shall be your sole and exclusive remedy in respect of any Claim.

This indemnity does not apply to infringements caused: (a) by the use of the services in conjunction with other software not supplied by TextAnywhere; or (b) designs or specifications made by you, or on your behalf; or (c) by third party software or materials licensed by you from third parties (regardless of whether TextAnywhere recommended such software) ("**Third Party Software**") or any services or products supplied by third parties; or (d) use of any software other than in accordance with our instructions and the relevant user manuals and documentation supplied. You undertake to comply with the terms of any applicable licence terms and restrictions in respect of any Third Party Software.

You will indemnify TextAnywhere and its agents against all claims, costs, damages, losses, liabilities and expenses arising from any third party claim or action arising out of: (a) any material or data supplied by you or on your behalf; (b) your failure to obtain any appropriate licence or clear any intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by you, or (c) associated with software or other components directed or requested by you to be installed or integrated as part of the services; or (d) your breach of this agreement or failure to comply with the terms of any Software Licence

## 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

You represent, warrant and undertake that:

- (a) you are notified as a data controller in accordance with the provisions of the Data Protection Act 1998 (the, "**Act**"); and
- (b) you are entitled to process and supply any personal data to us in connection with the services to be provided under this agreement pursuant to the Act and any applicable data privacy laws.

The terms, "**personal data**", "**data controller**" and "**data processor**" shall have the meanings given to them in the Act. It is acknowledged that you are a data controller of any personal data which is processed in connection with the services provided under this agreement. As such, TextAnywhere is a data processor processing such data on your behalf. Accordingly, TextAnywhere shall:

- (a) only process such personal data to provide the services provided or to be provided under this agreement;
- (b) only process such personal such data in accordance with your prior written instructions; and

- (c) implement and employ such technical and organisational measures as are commensurate and commercially reasonable given the nature and value of the personal data in question to prevent its unauthorised disclosure and/or accidental loss or destruction.

You grant us the non-exclusive right to publish your company name and logo in our marketing material by way of reasonable publicity. 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. Customer Service and Complaints**

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 to your designated email address supplied at the date of ordering the service in question.

TextAnywhere may terminate this agreement in the event that any of the following occurs in relation to you: you pass a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or ceases, or threatens to cease, to carry on business or any analogous event occurs in relation to you in any territory.

In the event of termination or suspension of service any monies owing become due immediately and all rights and licences granted under this agreement shall come to an end. Termination shall not affect all rights and duties that have accrued up to and including the effective date of termination.

## **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 email, 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](mailto: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

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