

## Terms and Conditions

### 1. Contract Formation And Terms

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1.1 These terms and conditions (**these Conditions**) apply to each service (**the Service**) for which you register with Prompttext Limited (**Prompttext** or **we** or **us**) via our website.

1.2 If you complete the Registration Form (as defined below) on behalf of your company or organisation then, by sending that form to us, you are confirming that you are authorised to register for the Service on behalf of that company or organisation, and that you are not exceeding your authority.

1.3 If you complete the Registration Form on behalf of your company or organisation, you are agreeing, on its behalf, to these Conditions and, on its behalf, you are making an offer to enter into a contract with us to take the Services listed on that form.

1.4 If you are registering for the Service on your own behalf, you are offering to enter into a contract with us on these Conditions.

1.5 Following receipt of the Registration Form we will contact you by e-mail to confirm the details on the form, or to let you know if we cannot, for any reason, accept and process the registration.

1.6 If we accept the registration, we will confirm that acceptance to you by e-mail and, on our sending that confirmatory e-mail to you, a contract for the supply of the Service (**the Contract**) will be created. The parties to that contract will be Prompttext and the Subscriber (as defined below).

1.7 We reserve the right to reject any registration, as we see fit, and without having to give any reason.

1.8 We may revise these Conditions at any time by publishing a revised version of them on our website. Any revision will apply to any service for which you register with us after that revision has been published on our website. Therefore please read our Terms of Trading each time you are about to submit a Registration Form to us.

1.9 We reserve the right at any time to add to or delete from the services for which you may register via our website.

1.10 Prompttext Limited is a company registered in England under company number 4133876. Our registered office is at Harvestway House, 28 High Street, Witney, Oxon OX28 6RA, United Kingdom.. We are registered for VAT and our VAT number is 768 4419 88.

1.11 **You will not have the right to cancel the Contract under regulation 10 of the Distance Selling Regulations 2000 once the provision of the Service has begun with the your agreement. You agree that the provision of the Service may begin before the expiry of the cancellation period given by those Regulations.** (Note: This Condition applies only where you are acting for purposes outside your business, that is where you are a consumer.)

### 2. Definitions

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In these Conditions the following terms have the meaning set opposite:

**our Charges** - Message Credits, any set up charges, administration and other charges for the Service as set out in our Price List and as amended in accordance with these Conditions;

**our Price List** - the price list for the Service as it appears on our website from time to time;

**Sent** - for the purposes of Condition 6.2 a Message is sent when it has passed through our network and is delivered to the recipient;

gateway and is delivered to the network;

**a Message** - any text or other message sent by the Subscriber or a User via the Service;

**the Registration Form** - our on-line order form which you have completed and sent to us;

**a Message Credit** - a unit of payment purchased by the Subscriber in advance;

**the Subscriber** - if you have registered on behalf of your company or organisation, the company or organisation named on the Registration Form or, if you have not registered on behalf of a company or organisation, the individual named in the Registration Form (**you**);

**the Subscription Term** - the period of time (if any) stated in the Registration Form, or until all Message Credits have been used;

**a User** - any individual authorised by the Subscriber to use the Service; and

**writing or written** - includes text stored or transmitted electronically.

### 3. The Service

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3.1 We will try to make the Service available 24 hours a day, 7 days a week during the Subscription Term, but we do not undertake or warrant that the Service will operate continuously or without interruption, or that any Message will reach the intended recipient. In particular, we will not be liable if the Service is unavailable or if a Message is not received or delivered because of circumstances outside our control, including, for instance, the unavailability of the internet or a fault or interruption in any communications network.

3.2 We reserve the right at any time to suspend the Service for the purposes of repair, maintenance or support, or if we believe or suspect that the use of the Service infringes the intellectual property rights or other rights of any third party, is in any way unlawful, or is likely to lead to any third party instituting or threatening legal proceedings against us or anyone else, or if we know or suspect that the Subscriber is in breach of its obligations under the Contract.

3.3 The Subscriber will ensure that all user log-ins, PINS, IDs and passwords are kept secure and confidential and will inform us immediately if it becomes aware of, or suspects, any breach of security or unauthorised use of any user log-in, PIN, ID or password. We may, at our discretion, suspend or change any user log-in, PIN, ID or password.

3.4 The Subscriber will not circumvent or try to circumvent the security of the Service or tamper with, hack into, or otherwise disrupt or disable any computer system, server, website, router, firewall, encryption or other security device used to provide the Service, or any Message.

3.5 The Subscriber is responsible for ensuring that its equipment and systems are suitable to access and use the Service. The Subscriber acknowledges that Users who do not accept cookies may not be able to use the Service.

3.6 Prompttext does not warrant that any Message or other material received through the Service will be free from viruses or harmful elements (as defined in Condition 4.5).

### 4. Messages

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4.1 The Subscriber will ensure that Messages it sends:

4.1.1 do not contain any material that is pornographic or obscene;

4.1.2 are not abusive, menacing or an invasion of privacy;

4.1.3 are not defamatory, a malicious falsehood or seditious libel, a contempt of court, or incite or are capable of inciting violence, racial hatred, sadism, cruelty or encourage any unlawful or illegal act or omission;

4.1.4 do not infringe intellectual property rights or breach any data protection or privacy...

4.1.4 do not infringe intellectual property rights or breach any data protection, or privacy legislation or regulation or are in any other way unlawful.

4.2 We reserve the right at any time and from time to time to remove any Message from the Service, or not to send any Message, if we have reasonable grounds for doing so. In particular we may do so in order to avoid liability for any unlawful or infringing Message.

4.3 We are not obliged to monitor any Message.

4.4 The Subscriber will not use the Service vexatiously

4.5 The Subscriber will not introduce or attempt to introduce any harmful element into any system. (By harmful element we mean any virus, worm, time bomb, time lock, drop dead device, trap and access code or anything else that might disrupt, disable, harm or impede the operation of any information or communications system, or that might corrupt, damage, destroy or render inaccessible any software, data or file on, or that may allow any unauthorised person to gain access to, any system or any software, data or file on it.)

4.6 The Subscriber is responsible for the content of all Messages and will ensure that all Users comply with these Conditions.

## **5. Intellectual Property Rights**

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5.1 All intellectual property rights in the Service are the property of Prompttext or its licensors. We allow the Subscriber to use the Service strictly in accordance with these Conditions.

5.2 Material on our website or received via the Service is protected by copyright, database rights and other intellectual property rights.

5.3 Each User may read, print and download parts of the material on our website or received through the Service for his private use or use in the ordinary course of the Subscriber's business, but neither the Subscriber nor any User may make any profit from the use of that material and/or republish, disseminate or transmit any of that material, or exploit it for commercial purposes, or copy it for any other purpose without first obtaining our written permission, or that of the rights owner.

If you wish to seek such permission please contact: [user@prompttext.co.uk](mailto:user@prompttext.co.uk).

5.4 Prompttext™ is an unregistered trade mark of Prompttext Limited.

## **6. Charges And Payment**

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6.1 Our Charges for the Service are those in our Price List at the date and time the Registration Form was submitted, but we may change our Charges at any time before the Registration Form is submitted to us, or under Condition 6.7.

6.2 Where our Charges are on a per Message basis they are payable for each Message sent.

6.3 Unless the Subscriber has purchased Message Credits for the Service, we will invoice the Subscriber for our Charges every month. The Subscriber will pay each invoice within 14 days after the date of that invoice.

6.4 Our Price List and the procedures for payment are displayed on our website. If purchasing Message Credits, the Subscriber must pay by credit or debit card at the time of submitting the Registration Form, and the payment will cover use of the Service for the Subscription Term.

6.5 We try to ensure that our Price List is up to date but we will need to validate the charges at the time you submit the registration form. (See Condition 6.6 below.) We will inform you if our Charges are higher than those stated in our Price List, and you may cancel the order and decide whether or not to subscribe to the Service at the correct charges.

6.6 The Subscriber undertakes and warrants that all details provided to us on the Registration Form will be correct, that the credit or debit card used belongs to the Subscriber and that there are sufficient funds or credit facilities to cover our Charges. We reserve the right to obtain validation of any credit or debit card details before providing the Service.

6.7 Our Charges are exclusive of Value Added Tax and all similar taxes or duties, and these must be added to the prices in the Price List unless the Price List gives a VAT inclusive figure.

6.8 Except in relation to Message Credits already paid for, we may increase Our Charges provided that we give the Subscriber at least 30 days' advance written notice of the intended increase. The Subscriber may, at any time before the expiry of that notice, terminate the Contract by giving us written notice of termination but unless it does so it will be deemed to have accepted the increase in our Charges and the Contract will continue in full force and effect.

6.9 If the Subscriber fails to make any payment when due under these Conditions, we may charge the Subscriber interest at the rate of 8% above the base rate of Barclays Bank Plc from time to time in force in England from the due date for payment until the date we receive the payment. We may suspend the Service until the payment is made, without prejudice to any other rights or remedies we may have.

## **7 Warranties**

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7.1 We warrant to the Subscriber that we will provide the Service with reasonable skill and care.

7.2 If the Service does not comply with its description on our website, and the Subscriber notifies us in writing to that effect, we may, at our option, cancel the Contract and provide the Subscriber with a refund, or we may re-supply the Service. **This does not affect any rights the Subscriber may have as a consumer.**

7.3 Where materials and information made available as part of the Service are supplied by third parties, we do not control or endorse their contents in any way. All information and materials supplied by third parties are made available in good faith but we do not (to the extent permitted by applicable law) accept responsibility for their accuracy or use.

7.4 We make no representation and give no warranty that the Service is appropriate or available for use in any location outside the United Kingdom.

7.5 If making the Service, or any part of it, available in the Subscriber's country or to any User (by reason of nationality, residence or otherwise) is prohibited, the Service or the relevant part of it are not offered. The Subscriber accepts that if any User is resident outside the UK, the Subscriber must satisfy itself that that User is lawfully able to use the Service. Prompttext accepts no liability, to the extent permitted by applicable law, for any costs, losses or damages resulting from or related to the access or attempted access of the Service by anyone outside the UK.

## **8 Liability**

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8.1 Nothing in these Conditions excludes or limits our liability for death or personal injury caused by our negligence or for any fraud on our part or for any liability which cannot be excluded by law.

8.2 Subject to Condition 8.1, Prompttext will not be liable for any indirect or consequential loss or for any loss of business, profit, revenue, goodwill, or data, lost or wasted management time or the lost time of other employees incurred by the Subscriber or by any third party arising from or as a result of the Service or its provision or non-provision (whether direct or indirect and whether in contract or negligence, for misrepresentation or otherwise).

8.3 The Subscriber assumes all risks of using the Service and any information and materials made available through it. Prompttext will have no liability for any disruption

materials made available through it. Prompttext will have no liability for any disputes between the Subscriber and any third party or arising from the Subscriber's or any User's use of the Service.

8.4 Prompttext accepts no liability for the inability of anyone to access the Service, or for the unavailability of or any fault or interruption in any communications network.

8.5 Prompttext will have no liability in connection with any unauthorised use of the Service. Prompttext is not responsible for and will have no liability for any error, corruption or breach of security resulting from the transmission of any Message or data over any telecommunications network.

8.6 Except as expressly set out in these Conditions, Prompttext excludes to the fullest extent permitted by law all warranties, representations, terms, conditions and undertakings on its part, whether implied by statute, common law, custom, trade usage, course of dealing or otherwise (including any implied warranty, representation, term, condition or undertaking of satisfactory quality or fitness for a particular purpose).

8.7 The Subscriber will indemnify Prompttext and keep Prompttext indemnified against all losses, damages, liabilities, costs and expenses incurred by Prompttext arising in connection with or as a result of either or both of:

- a) the Subscriber's or any User's breach of the Contract; and
- b) any claim by any third party arising from, or as a result of, the Subscriber's or any User's use of the Service.

8.8 Prompttext's total liability (whether in contract or tort, including but not limited to negligence, or arising in any other way, and whether or not of a kind foreseeable by Prompttext) will be limited to damages which will not exceed, in aggregate, the charges paid to Prompttext by the Subscriber under this Agreement during the 12 months before the event giving rise to the claim, or £100, whichever is greater.

8.9 We make no representations whatsoever about any other websites which may be accessed through the Service or our website. Other websites are independent we have no control over their content or availability. A link to any other website does not mean that we endorse or accept any responsibility for the content, or the use of, that website and we will not be liable for any loss or damage caused by or in connection with use of or reliance on any content, goods or services available on or through any other website.

## **9 Term And Termination**

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9.1 Subject to Conditions 9.2 and 9.4 the Contract will last for the Initial Subscription Term. We will send you an invitation to renew your subscription in return for our Charges then in force. If you do not respond within 30 days after the date of that invitation, you will be deemed to have terminated the Contract and we will stop providing the Service.

If the Subscriber is taking the Service on a free trial basis, this Agreement will automatically terminate at the end of the trial period.

9.2 Either the Subscriber or Prompttext may terminate the Contract at any time by giving written notice to the other if:

9.2.1 the other is unable to pay its debts as they fall due or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if the other party ceases or threatens to cease to trade, or if the other party makes an assignment for the benefit of, or a composition with its creditors or other arrangement of similar import or has a receiver, administrative receiver, administrator or a similar officer appointed over all or a substantial part of its assets or if a petition is presented or an order is made by a court of competent jurisdiction or an effective resolution is passed for winding up of the other party otherwise than for the purpose of a bona fide reconstruction or amalgamation on terms previously approved in writing by the terminating party; or

9.2.2 the other commits a breach of any term of the Contract which, in the case of a breach capable of being remedied, is not remedied within 30 days after receipt of a written request to remedy the same

request to remedy the same.

9.3 Without prejudice to its rights under Condition 9.2, Prompttext may suspend the Subscriber's right to use the Service by written notice to the Subscriber at any time if the Subscriber has not paid any sum due or owing to Prompttext by the due date, or if the Subscriber is in breach of the Contract.

9.4 We may terminate this Agreement at any time by giving at least 7 days' written notice to the Subscriber provided it refunds to the Subscriber on a pro rata basis those Message Credits or other charges paid by the Subscriber and not used before termination.

9.5 The termination or expiry of the Contract will not affect any accrued rights or liabilities of either party.

9.6 Conditions 1, 2, 3.1, 3.2, 5, 7.2, 7.3, 7.4, 7.5, 9.5, 9.6 and 10 will survive the termination or expiry of the Contract and will continue indefinitely.

## 10 General

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10.1 No delay, neglect or forbearance on the part of Prompttext in enforcing any of these Conditions will be, or be deemed to be, a waiver or in any way prejudice any right of Prompttext.

10.2 If any of these Conditions is, for any reason, held to be unenforceable, illegal or otherwise invalid in any way, the unenforceable, illegal or invalid provision will not affect any other Conditions and those Conditions will continue in full force and effect.

10.3 All notices given to Prompttext must be sent to: PO Box 45, Headington, Oxford OX33 1LW or any other address that Prompttext may notify to the Subscriber from time to time. All notices given to the Subscriber must be sent to the address, fax number or e-mail address of the Subscriber set out on the Registration Form, or any other address that the Subscriber may notify to Prompttext from time to time in accordance with this Condition. All notices must be [delivered personally, or sent by first class prepaid post, by fax or by e-mail] and will be deemed to have been served: [if by hand, when delivered; if by first class post, 48 hours after posting; if by fax, when despatched provided that the sender's fax machine produces automatic confirmation of error free transmission to the intended recipient; and if by e-mail when despatched provided that the sender's computer system produces an automatic confirmation of delivery to the intended recipient].

10.4 These Conditions together with our Privacy Policy and the Registration Form and any payment method instructions in our Price List contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of the Contract. The Subscriber acknowledges and agrees that it does not enter into the Contract on the basis of any statement, representation, warranty or other provision made, given or agreed to by Prompttext except those expressly contained or referred to in these Conditions. Nothing in this Condition will operate to limit or exclude Prompttext's liability for fraud.

10.5 Prompttext will not be liable for any loss or damage caused by any delay or failure to perform any of its obligations if that delay or failure is beyond its reasonable control.

10.6 The Subscriber may not assign, sub-license or otherwise transfer any of its rights or obligations under the Contract, whether in whole or in part, without the prior written consent of Prompttext. Prompttext may assign, sub-license and transfer its rights and obligations under the Contract to any third party.

10.7 The Contract is governed by English law and the Subscriber agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales. The place of performance will be England.

10.8 Nothing in these Conditions confers or purports to confer on any person who is not a party to this Agreement any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term or provision of the Contract.

10.9 Except as set out in these Conditions, no addition to or modification of any provision of the Contract will be binding on the parties unless made in writing and signed by each

of the Contract will be binding on the parties unless made in writing and signed by each party or its duly authorised representative.

10.10 The headings in these Conditions are for ease of reference only and do not affect their interpretation.