



Bottomline Standard Terms and Conditions For WinBACS Subscription

In these Standard Terms and Conditions the following words shall have these meanings ascribed to them respectively as follows:

"Agreement" means these Standard Terms and Conditions the Sale Agreement and or Equipment Maintenance Agreement and /or Software Support Agreement

"Company" means Bottomline Technologies Europe Ltd whose registered offices are at 115 Chatham Street Reading RG1 7JX

"Customer" or "Group" means any person, firm, body corporate, association or independent department or organisation to whom equipment and or software and or Professional Services are supplied

"Equipment Maintenance Agreement" means the agreement by the Company to supply the Customer with the maintenance support described therein

"Professional Services" means those services related to the installation and/or consultation for any software or equipment supplied under the Agreement

"Sale Agreement" means the agreement for the Company to sell and the Customer to buy software and or equipment and Professional Services therein

"Software Support Agreement" means the agreement by the Customer with the support therein

"Standard Terms and Conditions" means these standard terms and conditions and any alterations or variations pursuant to clause 1 hereof

"User ID Log on" means the singular firm or organisation for which a software licence as set out in clause 6 of these Standard Terms and Conditions has been purchased

1. General

This Agreement shall apply to the Customer's purchase of equipment, periodic subscriptions, software licenses, and/or Professional Services from Company and shall apply to the exclusion of all oral representations and all other terms and conditions printed on any purchase order or other documents prepared by Customer. The parties agree that they have not relied upon any other representations, terms or conditions in entering in to this Agreement. Company may from time to time amend this Agreement and shall draw the Customers attention to any material changes.

2. Price

2.1. All prices shown on a relevant Sales Agreement for the equipment, periodic subscriptions, software licenses, and Professional Services are subject to annual variation by Company and are exclusive of value added tax and any other applicable taxes or duty. Charges shall be made for any taxes, duties or levies which the Company is required by law to collect.

2.2. If the Company arranges or undertakes the carriage, freight, insurance and other transport costs beyond its premises, such costs shall be for the Customer's account and shall not affect the passing of title in the equipment and/or software

2.3. Prices quoted are in Pounds Sterling unless otherwise agreed.

3. Invoicing and Payment

Payment for the goods or supply of services is at the Charges detailed on the Sales Agreement and will be collected as follows; for periodic subscriptions by direct debit; for all other services or equipment payment in full on receipt of a correctly presented invoice. The Customer agrees to enter into a direct debit mandate in favour of Company in respect of all charges to be made. Company shall 30 days after shipment raise an invoice in respect of the initial periodic subscription in advance and monthly thereafter. Payment for the installation services shall be upon successful installation. Payment of all invoices shall be due within 30 days of date of invoice. If payment is delayed for more than 30 days and the customer has not raised a reasonable dispute regarding the amounts invoiced, Customer agrees to pay interest at a rate of 2% per annum over the Bank of England base rate from the date payment was first due until payment is received in full. Alternatively the Company may request the Customer to immediately deliver up any equipment and /or software in good condition and complete.

4. Carriage

4.1. All equipment and software shall be shipped to the premises as indicated on the Sales Agreement. Risk in the equipment and/or software shall pass when they leave the Company's premises.

4.2. The dates for delivery of the equipment and/or software and any Professional Services are approximate only and time is not of the essence. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver the equipment and/or software and any Professional Services. If for any reason the Customer is unable to accept delivery of the equipment and/or software when they are due and ready for delivery, the Company may charge storage for the equipment and/or software at the Customer's risk and the Customer shall be liable to the Company to pay the reasonable costs of storage and insurance.

5. Security Interest

5.1. Company retains a security interest in all equipment and software licenses until paid for in full. All intellectual property rights in the software remains vested with the Company and, except for the software licenses expressly granted to Customer, no intellectual property rights to any software are transferred to Customer.

5.2. Until all equipment is paid for in full, Customer shall:

5.2.1. not remove the equipment supplied hereunder or allow them to be removed from the address to which they are delivered;

5.2.2. keep the equipment in good condition and complete;

5.2.3. not allow the equipment to become the subject of any charge or lien whether by operation of law or otherwise.

5.3. Each part of this clause 5.2 is separate, severable and distinct and accordingly in the event of any of them being for any reason whatever unenforceable the others shall remain in full force and effect.

6. Licence

6.1 For each software component shipped to the Customer, the Company grants to the Customer subject to clause 15 below a non-exclusive, non-transferable, licence to use the software subject to the use restrictions as follows:

Department Licence. The Customer shall use any software supplied for its own use only and shall not permit any third party (including members of the same group) to use such software nor shall it use the software on behalf of or for the benefit of any third party. The use of the software is limited to the benefit of one customer site/division/location only as specified below. In the event that the Customer is a member of a group of companies any software supplied may be transferred to any subsidiary or holding company of the Customer provided that at no time may any more than one copy of the software supplied be used and also the Customer agrees with Bottomline in advance and in writing that they wish to transfer the licence.

6.2 In the event that the equipment for the software is provided by Bottomline, then the software shall only be used in conjunction with that equipment.

7. Warranty

7.1. The Company warrants that in accordance with this agreement:

7.1.1. it has title to the equipment and the software and has the right to sell the equipment and grant the software licences purchased by the Customer; and

7.1.2. the equipment will, on delivery, be free from material defects in materials and workmanship; and

7.1.3. any software supplied materially conforms to its standard specification; and

7.1.4. the services shall be provided using reasonable care and skill.

7.2. The Customer's sole and exclusive remedy in the event of breach of the above warranty is the correction of any failure reasonably determined by the Company as a failure by the Company to comply with such warranty provisions. Correction may comprise, at the Company's sole discretion, replacing, repairing or adjusting the equipment and /or software without charge to the Customer or refunding any relevant fees. All remedies for any breach of the warranty provisions are available only if such breach is reported to Company in writing within thirty days of shipment of the defective equipment or software or within thirty days of completion of the defective services.

8. Maintenance, Software Support & Professional Services

Maintenance of the equipment, provision of Professional Services and support for the software is available and is provided subject to the Company's applicable Equipment Maintenance Agreement, Software Support Agreement and Professional Services Agreement. A copy of each is available on www.bottomline.co.uk/terms&conditions

9. Limits of Liability

9.1. Notwithstanding any other provisions in this Agreement the Company's liability to the Customer for death or injury resulting from the Company's negligence or the negligence of its employees agents or sub-contractors shall not be limited.

9.2. Subject to Condition 9.4, the Company's maximum aggregate liability for any damage to the tangible property resulting from the negligence of the Company or its employee's, agents or sub-contractors shall not exceed £1,000,000.

9.3. Subject to Condition 9.4 the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to clause 9.2, shall be limited to £100,000 or, if greater, the amounts paid by Customer for equipment, software licenses, and Professional Services hereunder.

9.4. In no event shall the Company have any liability:

9.4.1. for loss of profits goodwill or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action brought by a third party);

9.4.2. in respect of any liability (including breach of warranty) which arises as a result of the use of the software and/or equipment supplied hereunder in combination with any equipment not approved by the Company or as a result of any defect or error in any equipment and/or software not supplied by the Company;

9.4.3. unless the Customer shall have served notice in writing of any facts which may give rise to a claim against the Company hereunder within six years of the date it either became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware.

9.5. Except as expressly provided in this Agreement all warranties (express or implied statutory or otherwise) including, without limitation, any implied warranty of satisfactory quality are hereby excluded to the fullest extent permitted by law.

10. Intellectual Property

10.1. Company agrees to defend, at its expense, any suit against Customer based upon a claim that any software licensed to Customer under this Agreement infringes any patent or copyright, and to pay any settlement, or any damages finally awarded in any such suit.

10.2. Company's obligations under this section shall not be effective unless Customer notifies Company in writing of any claim or threatened or actual suit within 10 days of knowledge thereof and Customer gives full control of the defence and settlement, along with Customer's full co-operation, to Company.

10.3. Company may, at its own expense, (i) procure for Customer the right to continue to use the licensed software; (ii) make the licensed software non-infringing; or (iii) terminate the software licenses and refund the applicable license fee (subject to three-year straight line depreciation) received from Customer.

10.4. Company shall have no liability for any claim based on (i) Customer's continued use, after written notification, of a non-current release of the applicable licensed software so long as a current release was made available to Customer without additional charge, (ii) Customer's use of the licensed software other than in accordance with the rights granted under this Agreement, (iii) Customer's combination of the licensed software with any other equipment or software not provided by Company, where such infringement would not have occurred, but for such combination; or (iv) intellectual property rights owned by Customer or any of its affiliates.

10.5. This Section 10 states Customer's sole remedy and Company's exclusive liability in the event that Customer's use of any software provided under this Agreement infringes on the intellectual property rights of any third party.

10.6. The indemnity provisions of this Section specifically do not apply to equipment or third party software (e.g. software which may be provided to the Customer by the Company wherein the Company is operating as a distributor for the third party licensor). Company's sole obligation in the event that Customer's use of equipment or third party software infringes on the intellectual property rights of any third party is to provide reasonable co-operation to the Customer, as necessary, for the Customer to benefit from any intellectual property indemnity that may be provided by the equipment manufacturer or the third party licensing such software to Customer.

11. Copying

One copy of any media on which the software supplied may be made without the prior written consent of the Company, provided such copy is used for non-installed backup or archival uses only.

12. Alterations

The Customer hereby undertakes not to alter or modify the whole or any part of any software supplied nor, without the prior written consent of the Company, to permit the whole or any part of the software supplied hereunder to be combined with or become incorporated in any other software.

13. Customer's Obligations

13.1. To enable the Company to efficiently provide the Professional Services, the Customer agrees:

13.1.1. to give the Company's staff, contractors, agents all access to its computer system (including but not limited to equipment and software) reasonably needed by the Company to perform the Professional Services;

13.1.2. to make available suitable technically competent staff, contractors, agents to assist the Company and to promptly provide reasonably required data and information;

13.1.3. that all personnel will follow the Company's reasonable advice and will be properly trained in the operation of any equipment and/or software and that all security and other procedures outlined in the operator manuals will be adhered to.

13.2. The Customer shall reimburse the Company in respect of any increased costs or expenses incurred or suffered by the Company as a result of the failure by the Customer to comply with its obligations under Clause 13.1.

14. Confidentiality

Each party shall treat as confidential information all information (including software) obtained from the other pursuant to the contract between them and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the order (and not subject to any confidentiality undertakings), which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this condition and ensure that it is observed and performed by them.

15. Termination

15.1 This Agreement shall commence on the date first signed on the Sales Agreement and shall continue for a period of 3 years and then until terminated by either party giving not less than 6 months written notice to the other that it wishes to terminate the Agreement such notice to expire no sooner than the expiration of the three year period.

15.2 Either party may without prejudice to its other rights, terminate the Agreement forthwith on giving notice in writing to the Customer if:

15.2.1 either party commits any serious breach of any term of these terms and conditions and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing so to do, to remedy the breach; or

15.2.2 either party has an interim or bankruptcy order made against it or enters into or becomes subject to a scheme, composition or voluntary arrangement with its creditors or becomes subject to a winding-up, dissolution, administration or receivership proceedings;

15.3 Any monies whatsoever owing from the Customer to Company under these terms and conditions or otherwise shall remain outstanding and become due following termination.

16. BACS

16.1. Insofar as any software provided to Customer operates in conjunction with any application, test, or upgrade of systems associated with BACS Limited ("**BACS**"), BACS liability to the Customer or any third party shall be limited as follows:

16.1.1. BACS shall have no liability to the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any indirect, consequential or special loss or damage suffered by the Customer or any third party arising from, or in relation to:

16.1.1.1. the re-allocation or cancellation of BACS tests in respect of any application (or any upgrade or any software as the case may be);

16.1.1.2. the use of, inability to use, or reliance upon any application or upgrade (whether such application or upgrade becomes BACS approved software or not).

16.1.1.3. BACS granting (or refusing to grant), suspending or terminating an approval for any application(s) or upgrade(s) or BACS approved.

16.1.2. In addition BACS shall have no liability to the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any indirect, consequential or special loss or damage suffered by the

Customer or any third party arising from or in relation to the use of, or inability to use, or reliance upon:

16.1.2.1. the BACS test environments; or

16.1.2.2. any BACS materials in the development and testing of applications.

16.1.3. The entire liability of BACS under or in connection with this agreement, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, is limited to direct loss and damage to the Customer or any third party, which shall be capped at a sum equal to £250,000 (two hundred and fifty thousand pounds), in respect of all acts, omissions, facts, circumstances or events occurring in any year.

16.1.4. BACS shall not be liable to the Customer or any third party, whether for negligence, breach of contract, misrepresentation (unless fraudulently made), or otherwise, for any direct loss and damage to the Supplier in excess of the cap provided in Condition 16.1.3, or for any indirect, consequential or special loss or damage suffered by the Customer or any third party (including, without limitation, any loss of profit, loss of bargain, loss of interest, goodwill, business opportunity, anticipated saving or data) arising out of or in connection with this agreement.

16.1.5. For the avoidance of doubt, in no circumstances shall BACS owe any duty of care, express or implied, to the Customer or any third party, in respect of the performance of BACS testing or the accuracy, completeness, suitability, or fitness for purpose of applications and upgrades (whether such applications or upgrades become BACS approved software or not), BACS materials, the test environments, and/or the technical specification.

16.1.6. Nothing in this Agreement shall operate to exclude or restrict BACS liability for death or personal injury resulting from BACS' negligence or fraud.

16.1.7. The Customer and any third party acknowledges and agrees that the limitations on, and exclusions of, BACS' liability to the Customer and any third party are fair and reasonable in the context of the commercial relationship between the parties.

16.2. Any approval granted by BACS for any software does not constitute any warranty, representation, guarantee, term, conditions, undertaking or promise to the Customer or any third party in respect of the software that it will be error free or free from any inaccuracies or defects or will operate in accordance with the Customer's or any third party's requirements.

16.3. This Clause 16 is for the benefit of BACS and shall be fully enforceable by BACS and BACS shall be entitled to assign the benefit of this Clause 16.

17. Assignment

The Customer shall not be entitled to assign, sub-licence or otherwise transfer the rights and obligations granted hereunder, or under any software license, whether in whole or in part unless otherwise agreed in writing by a duly authorised representative of the Company. The Company shall be entitled to sub-contract any work relating to the sale order without the consent of the Customer or giving notice but shall indemnify the Customer in respect of any liability arising from such sub-contracting of any work.

18. Force Majeure

Neither party shall be liable for any delay in performing any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party which include but are not limited to acts of war, plane crash or embargo; riot or civil commotion; Act of God - e.g. earthquake, cyclone, storm, flood, fog

19. Notices

19.1. Any notice or other communication to be given under this Agreement must be in writing and may be delivered or sent by pre-paid first class letter post to the Company at its registered address or facsimile transmission.

19.2. Any notice or document shall be deemed served: if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission at the time of delivery.

20. Invalidity

The invalidity, illegibility or unenforceability of any provision shall not affect any other part of these Standard Terms and Conditions.

21. Entire Agreement

These Standard Terms and Conditions, Sale Agreement and any relevant Equipment Maintenance Agreement and/or Software Support Agreement comprise the entire agreement and understanding between the parties in relation to the subject matter referred to herein.

22. Third Party Rights

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This condition does not affect any right or remedy of any person which exists or is available otherwise pursuant to the Act.

23. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

The Company agrees to sell and the Customer agrees to purchase the above Equipment and Software and any Professional Services and Equipment Maintenance and Software Support subject to terms of this Agreement. Software Support, Equipment Maintenance and Professional Service Agreements each published in pdf format and are available on the following web site:

www.bottomline.co.uk/terms&conditions