



# Terms and Conditions

v2

# 123-TXT TERMS AND CONDITIONS

Please read these Terms and Conditions (this “Agreement”) carefully, as they form a binding legal Agreement between You and Us “ProcessFlows UK Ltd”. If you do not accept this agreement, do not proceed with using our Services.

- 1. AGREEMENT.** These Terms and Conditions apply to all Orders, Incidents, Service Level Agreements, and other Contracts, Agreements and Invoices between, ProcessFlows UK Limited of Gateway House, Tollgate, Chandler’s Ford, Hampshire, SO53 3TG, registration number 2120661 (“ProcessFlows”) and any customer (the “Customer”) relating to the Services as defined herein.

By completing the registration process and checking the box indicating that you “Accept the Terms and Conditions of Service” associated with the ProcessFlows Services, you acknowledge that you have read of all of the terms and conditions of this Agreement, understand all of its terms and agree to fully comply with and to be legally bound by them. We reserve the right to amend or modify this Agreement at any time, or to cease providing the Services. Such modifications shall become effective immediately upon the posting thereof or by other means of electronic communication to you. You are responsible for reviewing this Agreement regularly to keep yourself apprised of any changes. If you do not agree to the revised Agreement, your sole recourse is to immediately cease all use of the Services addressed under this Agreement. Your continued access or use of the Services following the posting of modifications will constitute your acceptance of the revised Agreement.

## 2. DEFINITIONS

- SMS or Text Message:** Means a single part (up to 160 ASCII single byte chars) of a SMS (Short Message Service) text message.
- Keywords:** Means alphanumeric values assigned to a Customer account for the purpose of routing and receiving inbound Text Messages.
- AlphaID/SenderID:** Means an 11 digit alphanumeric value that can be assigned to a sent Text Message which replaces the mobile number on the recipients device (or software).
- Numbers:** Means Keywords, Short Codes, Short Numbers, Long Numbers / MSISDN Numbers and Aphid’s / Sender ID’s and Mobile phone numbers that are provided to the Customer in order to use these Services.
- Feedback:** Means any ideas, suggestions, recommendations or Feedback You provide to Us.

<b>Security Token:</b>	Means a password value that is used to authenticate a user or message.
<b>We, Us, Our:</b>	Means ProcessFlows UK Limited.
<b>You and Your:</b>	Means the user of this Service.

3. **ALLOCATION OF NUMBERS.** All Numbers that are provided as part of this Service, remain the property of ProcessFlows at all times. The Customer has no right to retain, transfer, or attempt to transfer any of the Numbers without the written agreement from ProcessFlows.
  
4. **DELIVERY.** During the delivery of a Text Message, the message may be relayed across numerous systems, networks and mobile operators. Text Messages sent on this Service are considered to be Delivered once they have been successfully relayed to the next service provider in the chain, ProcessFlows are not responsible for the entire end-to-end process and therefore will not be held responsible for issues outside of their control. All messages that are Delivered will be charged for at our prevailing "Sent" message rates.
  
5. **EMERGENCY SERVICES.** The Services detailed herein are not a replacement for your ordinary mobile or fixed line telephone communications. The Services provided do not allow you to make emergency calls to emergency services. You must make alternative arrangements to ensure that you can make emergency calls.
  
6. **SUSPENSION.** We reserve the right to temporarily suspend the Service for any reason we deem appropriate, this includes, but is not limited to, the following:
  - 6.1. Where payment to ProcessFlows is overdue for the Services we have provided.
  - 6.2. Where scheduled down-time or unforeseen system maintenance work is deemed necessary.
  - 6.3. If we are required to by UK law.
  - 6.4. If we have reason to believe that SMS traffic generated to or from your account contravenes, regulatory or industry code of conduct.
  - 6.5. If you breach these Terms and Conditions or our Acceptable Use Policy.
  - 6.6. Your account has not sent any messages within a 6-month period.
  - 6.7. If we are requested to do so by the mobile network operators or any other third party that is intrinsically involved in the delivery of a Text Message.

In the event of a Suspension we will reinstate the Service once we are satisfied that the cause no longer exists.

- 7. TERMINATION.** We may terminate this Service immediately on notice to you, if:
- 7.1. You fail to pay any amount due to Us.
  - 7.2. You commit a breach of this Agreement;
  - 7.3. You commit an act of insolvency, are placed in provisional or final liquidation or are placed under judicial management.
  - 7.4. Upon Termination:
    - 7.4.1. You must immediately stop accessing Our Services and systems.
    - 7.4.2. You must immediately pay all amounts due to us.
    - 7.4.3. You will forfeit any unused credit on Your account.
    - 7.4.4. All licences and rights granted under these Terms and Conditions will terminate immediately.
- 8. NOTICES.**
- 8.1. Notices to you: Notices will be provided to you via the registered email address you have provided in your account. It is your responsibility to keep your email address current.
  - 8.2. Notices to Us: Notices should be sent to us via email to [Contracts@ProcessFlows.co.uk](mailto:Contracts@ProcessFlows.co.uk) or by recorded delivery to The Contracts Manager, ProcessFlows UK Limited of Gateway House, Tollgate, Chandler's Ford, Hampshire, SO53 3TG.
- 9. DATA & INFORMATION.** In order to deliver the Service, we will maintain certain key personal information about You. We agree to only use that information for the purposes you originally provided it, that being; for access and for authentication onto our Services; direct communication between these Services and You and for communicating information regarding services that We provide. We agree to not pass on any of your information to any third parties unless instructed to by a UK court of law. You warrant that the information you provide to Us is complete and accurate and that if information changes you will update your account or notify Us immediately.
- 9.1. When users use and access the Service, we may place a number of cookie files in their web browser.
  - 9.2. We use cookies for the following purposes: to enable certain functions of the Service and to provide analytics.
  - 9.3. We use session cookies on the Service and we use different types of cookies to run the Service:
  - 9.4. Third-party cookies
    - 9.4.1. We may use various third-party cookies to report usage statistics of the Service and provide the chat facility embedded within the site.

**10. SECURITY.** You Agree to;

- 10.1. keep your username and password information confidential;
- 10.2. not circumvent, or attempt to circumvent, our user authentication systems;
- 10.3. advise us immediately if there is any unauthorised use of your account or any other breach of security;
- 10.4. to be entirely responsible for all payments and any activities that occur on your account;
- 10.5. be liable for any damage, loss or costs that we or any third party sustain as a result of any of your actions, or any actions of a third party using your password, account name or account information;
- 10.6. indemnify us against any claim from any use of your password, account name or account information by a third party or as a result of your violation of this section.

**11. EMAIL SECURITY.** By enabling the SMS to Email gateway feature on the 123-txt.com SMS platform You agree to be entirely responsible for all payments and all activities that occur via the Email to SMS gateway through Your account; be liable for any damage, loss or costs that We or any third party sustain as a result of any of Your actions, or any actions of a third party using Your account. For Your security, by default, a Security Token system is enabled with our Email services, whereby each sent SMS message must have an embed password (Security Token) embedded in the email. This allows our Email to SMS Service to authenticate the email as having originated from You. If You choose to disable the Security Token security, You accept and understand the potential risks associated with that. Should you require clarity on the risks associated with disabling this security feature You must contact our Helpdesk before disabling the feature.

**12. ACCEPTANCE.** If You use Our services on behalf of your employer or another person, you confirm that you have the consent of Your employer or that person to act on their behalf. You may not accept these Terms or use Our Services if you are not of legal age to form a binding contract.

**13. LIABILITY.**

- 13.1. Our Services are not specifically designed to meet your individual requirements. We do not make any warranties or representations, other than those specifically contained in these Terms and Conditions, regarding our services or the systems and technology we use to provide the services. We do not warrant that the content and technology available from our website are free from errors or omissions or that the services will be uninterrupted and error free.
- 13.2. We do not accept liability for any damages or losses arising out of or related to the use, inability to use or unauthorised use of the services. This includes any direct, indirect, special, consequential, punitive or incidental damages, whether such damages or losses arise in contract, delict (tort), under statute, in equity, at law or otherwise.
- 13.3. You agree to hold Us and Our suppliers harmless and to indemnify Us, our associated companies, and Our respective officers, directors, employees, agents and suppliers fully against:

- 13.3.1. any claim by any third party resulting from any systems failure, service delivery failure, corruption, interruption or termination of services, breach of privacy or breach of data security.
- 13.3.2. all damages, awards, penalties or legal costs claimed or imposed by any party as a result of any action, commission or omission by you that constitutes a breach or contravention of these terms, any applicable legislation, regulations, industry code of conduct or mobile network code of practice.
- 13.3.3. We do not modify the content of electronic communications sent or received through our systems or the selection of the addresses of the recipients. We do not accept any liability for any content transmitted and full responsibility for content shall rest on You. You must observe all relevant legislation and regulations applicable in your jurisdiction and in the jurisdiction of all persons to whom you direct communications when using our services. By using Our Services, You also agree to be bound by the Acceptance of Use and all the Terms and Conditions herein.
- 13.3.4. You shall be responsible for answering and defending any complaints that we receive from any relevant regulatory body resulting from your use of any of Our Services. We will forward any complaints to you as soon as practical. You must follow the applicable complaint procedures and respond to each complaint within the timeframes specified by the relevant regulatory body and must forward a copy of your response to Us immediately. You will be liable for any fines or penalties imposed by any regulatory body on you or us or any of our associated companies, due to your contravention of these Terms.

**14. INDEMNIFICATION.** You will indemnify, defend, and hold harmless ProcessFlows, its affiliates, and their respective officers, directors, employees, agents, contractors, licensors, partners and suppliers (collectively, the “ProcessFlows Parties”) from and against any and all liabilities, damages, losses, costs and expenses (including but not limited to reasonable legal fees) arising out of or related to your use of Our Services.

**15. PRIVACY.**

- 15.1. We will process Your personal information in accordance with The EU Data Protection Directive. We may intercept and disclose any data submitted to our systems in order to protect Our property rights, the efficient operation of Our systems or to comply with requests from competent authorities or court orders, or to compile, analyse and publish statistical data. You agree that subject to applicable laws we may intercept, filter, lock, read, delete, disclose, and use data submitted to Our systems or website.
- 15.2. The recipient of an electronic communication has the right to know the identity of the sender and we will disclose this on the recipient’s request.
- 15.3. Neither We nor Our suppliers will be liable to you or anybody else for any damages or losses suffered due to these actions.
- 15.4. You explicitly consent that we may collect and disclose data relating to your use of Our Services and website for the purpose of analysis, reporting, service quality assessment or research.

**16. MODIFICATIONS; MAINTENANCE.** We reserve the right to modify, update, or remove the features and functionality of the Services provided from time to time, in Our sole discretion, with or without notice. We are not obligated to provide any maintenance, technical or other support for the Services provided under this Agreement.

**17. WAIVER.** The waiver by Us of a breach of any provision set forth herein or of any right contained herein shall not operate as or be construed as a continuing waiver or a waiver of any subsequent breach or right granted herein.

**18. CHARGES.**

- 18.1. Charges due, must be paid either;
- 18.2. Pre Pay - In advance by PayPal, Bank Transfer or other agreed method or
- 18.3. Post Pay - monthly in arrears, by arrangement with Us in advance.

**19. PAYMENT.**

- 19.1. Payment terms are 30 days from date of invoice.

**20. PRICING.**

- 20.1. Our pricing is the current pricing published at: <http://123-txt.com/pricing/>
- 20.2. We reserve the right to provide 30 days Notice of a change to Our pricing.
- 20.3. Prices are exclusive of VAT.

**21. ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes any and all prior proposals, agreements, understandings and contemporaneous discussions, whether oral or written, between the parties with respect to the subject matter of this Agreement.

**22. INTELLECTUAL PROPERTY.** All content, trademarks and data on our website or Services, including software, databases, text, graphics, icons, hyperlinks, private information, and designs are the property of or licensed to Us, and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights afforded to You in these Terms and Condition, all other intellectual property rights on this website are expressly reserved.

**23. LICENSE.** We may grant you an individual, personal, non-exclusive and non-transferable license (“the License”) to use our proprietary software or Service, in object code form only, and only in accordance with the applicable Service Specific terms and other documentation, if any, and only in conjunction with the relevant Services. You may not reverse engineer, de-compile, disassemble or otherwise attempt to establish the source code or underlying ideas or algorithms



of our software; modify, translate, or create derivative works based on the software or application; copy, rent, lease, distribute, assign, or otherwise transfer rights to the software or application; or remove any proprietary notices or labels with regard to our Services. We retain ownership of all propriety applications, software, intellectual property and any portions or copies thereof, and all rights in it.

These Licenses terminate when our Contract with you ends and you must destroy and stop using all of our software and applications in your possession. The software is provided and applications are offered “as is” and subject to the service warranty disclaimers and limitations of liability found elsewhere in these Terms. It is your responsibility to test the services before entering into this contract.

**24. OWNERSHIP.** Except for the express licenses granted herein, no other licenses are granted, by implication or otherwise, and all rights not expressly granted herein are reserved by Us. You acknowledge that We retain all sole and exclusive ownership of all right, title and interest in and to the Services and any and all intellectual property rights contained therein. At no time will you dispute or contest Our exclusive ownership rights in the Services. You agree to cooperate with Us to maintain Our ownership of the Services, and, to the extent that you become aware of any claims relating to the Services, you agree to use reasonable efforts to promptly provide notice of any such claims. In the event You provide any ideas, suggestions, recommendations or Feedback to Us regarding the Services, or any other products, services, or properties of Ours, We will own all right, title, and interest in and to such Feedback and is free to retain, use and incorporate such Feedback in its own and/or its affiliates' products and/or services, without payment of royalties or other consideration to You.

**25. ASSIGNMENT.** You may not assign this Agreement or any rights or obligations hereunder, without the prior written consent from Us. Any attempted assignment without such prior written consent shall be null and void.

**26. FORCE MAJEURE.** We shall not be deemed to be in breach of this Agreement and shall have no liability hereunder if its obligations are delayed or prevented by any reason of any act of God, war, terrorism, fire, natural disaster, accident, riots, acts of government, shortage of materials or supplies, failure of any transportation or communication system, non-performance of any of your agents or your third party providers (including, without limitation, the failure or performance of common carriers, interchange carriers, local exchange carriers, internet service providers, suppliers, subcontractors) or any other cause beyond its reasonable control.

**27. MISCELLANEOUS CONDITIONS.**

27.1. **Conflicting terms:** If there is a conflict between these terms and any Service Specific Terms, the Service Specific Terms will apply.

27.2. **Severability:** If a particular term is not enforceable, this will not affect any other terms.



- 27.3. Successors and Assignees. This contract will be binding upon the parties and their respective successors and assignees.
- 27.4. No Agency or third party beneficiary rights. These Terms do not create any partnership, contract of employment, agency, joint venture or franchise relationship between us or any third party beneficiary rights.

**28. GOVERNING LAW.** This Agreement shall in all respects be governed by and construed in accordance with the provisions of the Law of England and the Parties agree to submit to the non-exclusive jurisdiction of the English courts.