

# Terms and Conditions

## **No Cost, No Obligation Trial**

We invite all registrants to trial our service for 90 days with no cost and no obligation. For every registration, we allocate 20 messages at no charge to enable you to test the service.

## **Purchasing**

The cost of a message is dependent upon the quantity of messages purchased.

We refer to purchased messages as message credits. For the purpose of pricing, one message is deemed to be one text message sent to one destination address. One such message costs one message credit to send. The cost of a message credit is given in the table above, and depends on the quantity of messages you purchase. Should a customer send the same text message to two people simultaneously, then they will be charged two message credits for the transaction. Emails sent from our sites at the rate of one half (0.5) message credits per recipient. No other charge is made by Sybase365 for the opening, maintenance or closure of your account with us. No charge is made for the transmission of validation codes to you. There are no other hidden service charges, usage charges (beyond the per message cost) or any other form of charges. The first messages are made available to you with no charge.

## **Ways of Paying**

Sybase 365 accepts any major credit card, and any UK debit card for payment. Payment can be made online, or via phone. You may also request an invoice, with terms of 30 days from the invoice date. Online Payment is made using Worldpay and Barclays Merchant Services technology.

Further to this Sybase 365 withholds the right to refuse or limit the credit extended to customers and may require payment before receipt of message credits from all customers who do not fulfil our credit requirements.

## **Delivery**

Delivery of message credits follows automatically from the purchase of message credits. Customer accounts are updated, and the customer can view their balance in the reports section of the web site. Also, a summary of account is displayed to the customer each time a message is sent.

## **Security**

Our site is secured using Verisign / BT Trustwise Secure socket layer (SSL) technology. Customer information is held on a secure Microsoft Windows 2000 advanced server, running SQL server 2000. Our firewall is Microsoft ISA server. Sybase 365 is registered with the data protection registrar (UK), and operates the WebTraderUK scheme.



**Advertising**

All your advertising must meet the conditions of the Advertising Standards Authority code which you can see at [www.asa.org.uk](http://www.asa.org.uk). Where our site contains advertising material from other people or organisations we clearly identify this material. Much of our advertising is dynamically generated by external organisations. We therefore cannot guarantee the authenticity of the third party material, and alert our customers to this fact.

**Promotions**

Any promotions we do must meet the conditions of the Sales Promotion Code. ([www.asa.org.uk](http://www.asa.org.uk).) We will verify prior to any promotional activity that we comply with this code.

**Consumer Law**

We recognise, and seek to meet our obligations under the consumer protection laws currently in force in the UK, including:

- the Sale of Goods Act 1979;
- the Supply of Goods and Services Act 1982;
- the Consumer Credit Act 1974;
- the Trade Descriptions Act 1968;
- the Unfair Contract Terms Act 1977 and the 1994 Regulations; and
- the Consumer Protection Act 1987.

**Contracts**

The Terms of Service do not affect your statutory rights, as defined by UK law. As a customer of a multinational business, you are protected by UK, US and EU consumer law.

**Usage Policy**

When you register, you must submit correct information regarding your identity. It is not permitted to use Sybase 365 for illegal or unreasonable activities. Customers who send threatening or demeaning messages will have their account at Sybase 365 closed. Sybase 365 do not permit SMS spam, and will close the account of any person who engages in unsolicited bulk messaging. Deliberate misuse of the Sybase 365 service, including obtaining message credits by deceit, will cause the customer account to be closed immediately. (Sybase 365 seek to act fairly and impartially in deliberating over any suspected abuse of our service.)

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**Account Suspension**

As a corporate text messaging service, Sybase365 reserve the right to suspend or 'archive' any trial account which is deemed to be for personal use. Users may request re-activation, which will be actioned at the discretion of Sybase 365. This does not apply to accounts with a purchased balance, although all accounts must adhere to the Usage Policy, regardless of status.

**Message Content**

Sybase 365 processes messages on an automated basis. Sybase 65 is not responsible for the contents of a message, or the accuracy of it. Sybase365 transmits messages in good faith, and cannot be held responsible for the views or opinions of any message content, save for admin messages generated by Sybase 365. Examples of such admin messages are password confirmation emails, validation code transmissions to emails and sms, and monthly service update emails.

**Limitation of Liability**

Sybase 365 is liable for ensuring that the text message is processed and delivered to your mobile telephone operator. It is not responsible for the final delivery of the message by your operator to your mobile phone, as this is out of our control. There are various reasons for message delivery failure, including technical problems, or that the recipient mobile phone has been inactive for a considerable period, or that the recipient mobile phone had been outside of a valid GSM/CDMA coverage area for an extended period. Sybase 365 will however provide real time information on the status of any message sent, and will not charge for messages that have not been accepted by the recipient mobile phone operator. Any message delivered to the recipient mobile phone operator, without an error code from the recipient mobile phone operator, is deemed to have been delivered. Sybase 365 is not liable for any loss incurred by the failure of a message to be delivered. It is a condition of usage of this service that message contents are deemed to have zero value. It is a further condition of service that damages for financial or other loss resulting from delivery failure cannot be claimed from Sybase 365. Customers are strongly advised to ensure that sensitive and valuable information is communicated by a number of communication methods.

**Amendments to Terms and Conditions**

Sybase 365 reserves the right, following a 7 day email notice to the customer, to amend the terms and conditions for use of the Sybase 365 Service. Cancellation of contract Sybase 365 reserves the right to terminate a customer account in the following circumstances:

1. If the customer is breaching the usage policy guidelines
2. If a customer obtains by deception message credits
3. If a customer fails to pay for message credits, e.g. a credit card payment is rejected
4. If a customers message content is deemed to have caused unreasonable offence to a message recipient
5. If required by law

In any circumstance, Sybase 365 communicate by email its intention to close an account, and will place the account in suspension. The customer may appeal the decision, but Sybase 365 decision will be final.

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**Force Majeure**

All parties to these terms and conditions will be exempted in circumstances of force majeure, subject to reasonable notice, from these conditions. Circumstances of force majeure shall be deemed to include, inter alia, the actions of governmental authorities or the failure of governmental authorities to take action, new or amended legislation, retirement of personnel, illness or other reduction in work capacity, death, labour market conflicts, blockades, lightening, fire, flooding, loss or destruction of data or property of material significance, restrictions on availability of fuel, shortage of transportation, goods or energy, or defects or delays in the delivery of goods or services by suppliers, defects in the public data or telephone or mobile telephone network and defects in hardware or software.

**Cancellation Rights**

The customer has the right to cancel their order within 7 working days without giving a reason. The 7 days will start from when the contract is concluded. Where the customer exercises their right to cancel, monies will be returned within 30 days of cancellation.

**Refunds**

Sybase 365 will provide a full refund for any message not successfully transmitted to a recipient mobile phone. Sybase 365 defines a successful transmission as a message that has been accepted into the SMS network. Given the store and forward nature of our service, there can be a time delay between message transmission and receipt. For example, if a recipient phone is switched off, the sms network will hold the message until the phone is switched on again. Likewise, if a recipient handset has reached its memory capacity, messages will be queued by the recipients Short Message Service Centre (SMSC) until the handset memory is cleared for message receipt. While at all times, our customers can review the status of messages sent, we limit our refunds to those messages that we fail to deliver to the sms network. We regard a message as successfully sent once it is handed over to the recipient SMSC for delivery. Refund requests will be reviewed and responded to within 24 hours of receipt of the request at support.

**Guarantees**

Sybase 365 does not offer a guarantee beyond its refund policy. Sybase365 customers are protected by our membership of the WebAssured.com program. This will insure a customer to the limit of US\$200 (approx. £120) should Sybase365 default on their obligations.

**Receipts, Bills and Settlement Mistakes**

A receipt for the purchase of message credits is available at the time of purchase. This is supplied in the form of an email. Furthermore, customers can access their account details, and view a report detailing payments they have made to Sybase365. Sybase365 aims to resolve bills and settlement queries within 24 hours of receipt of the request at support.

**Legal Advice and Help**

Subscribers to Which? Online who have problems after buying online from a trader in the scheme will be entitled to legal advice and help from Which? Legal Service. Sybase365 will cooperate with Which? Legal Service to solve the problem.

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## Handling Complaints

Sybase 365 aims to provide a complaint handling service that is :

- fair
- confidential
- effective
- easy to use and well-publicised
- speedy - you should have time limits for taking action and telling customers what you are doing
- informative - so that you know which services you need to improve
- simple to understand and use
- checked - to make sure that it is working well and getting better

Our complaint handling process invites customers to log their complaint with WebAssured.com if they feel that they are not getting the problem resolution they deserve. This process ensures that an independent third party reviews our performance. WebAssured.com will make available summary statistics on our complaint handling performance (no personal information is disclosed)

## Solving Disputes

1. We are registered with the data protection registrar
2. As a provider of telecommunication services, we are regulated by OfTel
3. Sybase365 is governed by UK law.
4. We use the WebAssured.com dispute handling procedures to ensure that we provide customer service.

## Data Protection and Privacy

Sybase365 meets the conditions of the Data Protection Act 1984. We operate a privacy policy, and do not send our consumer marketing material, or pass the consumer's details to others. We give consumers the option to refuse marketing material. We limit our email material to a maximum of one message a month, using this to update our customers on developments in our service. Customers have the option to opt in or out of this service. All other marketing material is distributed on our web site. We do not engage in direct marketing campaigns.

## Customer Support and Service

Our principle customer support and service mechanism is email. We find that email offers the most efficient way to respond to our customers. We usually respond to emails within 2 hours of transmission, and a customer will rarely wait for more that 24 hours before we respond. We reply to all queries on a personal basis. (with the exception of password requests.) All bugs reported on our site are logged in our bug report, and available for customer to view. We regularly update our news web page, and detail updates to our web site at our update pages.

## Website Promotions

From time to time Sybase 365 may offer promotional items such as extra test messages on registration or purchase. These promotions are subject to demand, our usual usage policy and all regular terms and conditions listed above apply. Sybase 365 reserve the right to remove any promotional offer at their discretion.

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