



BT's Conditions for MusicLine 2000 Services

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BT's Conditions for MusicLine 2000 Services

1. DEFINITIONS

“**BT**” means British Telecommunications plc;

“**Bankruptcy or insolvency proceedings**” means bankruptcy proceedings, or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure; and if the Customer is a company being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purposes of either amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed;

“**Charges**” means the Charges payable by the Customer to BT under the Contract;

“**Commencement Date**” means the date from when Service is to be provided to the Customer;

“**Connecting Point**” means the point at which a terminal or any other BT device is connected to the Customer's Equipment in order to provide the Service;

“**Contract Letter**” means the agreement that the Customer and BT sign agreeing the Service, Charges, Commencement Date, Contractual Delivery Date and Minimum Period;

“**Contractual Delivery Date**” means the date by which BT undertakes to provide Service;

“**Customer**” means the Customer with whom BT makes this contract and by whom Charges are payable;

“**Customer's Content Signals**” means video, audio and data signals of the Customer, or of any third party the Customer allows to use the Service, having the Service's technical characteristics and specifications;

“**Customer's Equipment**” means equipment that the Customer uses with the Service;

“**Customer's Premises**” means the Customer location(s) at which BT will provide Service under this contract;

“**Due Date**” means the Commencement Date; and for each succeeding quarter, the first day of that quarter being 1 January, 1 April, 1 July and 1 October;

“**Equipment**” means any equipment placed on Customer's Premises and used by BT to provide the Service;

“**Fault Repair Service**” means BT's Total Care service, which offers fault repair work 24 hours per day, 7 days per week including Bank and Public Holidays. BT undertakes to respond within 4 hours of a fault report;

“**Fault Report Point**” means a telephone number specified by BT for fault reporting;

“**Licence**” means any licence granted or having effect as if granted under the Telecommunications Act 1984, the Broadcasting Act 1990 or the Wireless Telegraphy Act 1949, including any replacement or re-enactment of those statutes and any amendment to any licence so granted;

“**Licensed Area**” means the United Kingdom excluding the Hull area;

“**Minimum Period**” means the minimum period of Service as defined in the Contract Letter.;

“**Order Form**” means the form that the Customer uses to order the Service from BT;

“**Service**” means telecommunications service by any terrestrial permanent Vision Circuits, permanent Sound Circuits or permanent Vision with associated Sound Circuits between two points that BT provides to the Customer;

“**Standard Customer Credit Scheme**” means the scheme set out in the BT Price List which can provide for the reduction of BT's Charges;

“**Total Failure**” means a fault which causes continuous and complete loss of Service;

“**Working Day**” means 8am to 5pm Monday to Friday inclusive excluding all United Kingdom bank and public holidays.

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2. PROVISION OF SERVICE

- 2.1 These Conditions, together with the BT Price List, the Contract Letter and the Order Form form BT's entire contract with the Customer for Service. It is made in England and is subject to English Law.
- 2.2 Where BT has offered a Contractual Delivery Date, if BT does not provide Service by such date, the Customer will be entitled to credits against Charges in accordance with the Standard Customer Credit Scheme.
- 2.3 Where BT agrees to change a Contractual Delivery Date at the Customer's request and installation involves BT working outside its normal hours, or at weekends, or on Bank or Public Holidays, the Customer must pay additional charges.
- 2.4 It is technically impracticable to provide Service free of faults and BT does not undertake to do so. BT does undertake certain obligations with regard to faults in Service (see Condition 8 below).
- 2.5 Requests to BT for Service must be made, or confirmed in writing, if requested.

3. MINIMUM PERIOD OF SERVICE

BT shall provide and the Customer shall pay the Charges for the Service from the Commencement Date for the Minimum Period and thereafter unless and until either party shall give 1 month written notice to terminate expiring at or after the end of the Minimum Period provided always that no circumstances have arisen which would reasonably prevent BT from being able to offer a continuation of the Service beyond the Minimum Period.

4. PROVISION OF SERVICE BY SPECIAL MEANS

Where BT decides it is necessary or appropriate in order to meet the Customer's requirements or if the Customer asks BT to provide Service, wholly or in part, by means BT does not normally use or at substantially greater expense than BT normally incurs, or if the Customer asks BT to construct or install a Circuit in an unusual way, BT may ask the Customer to pay an additional charge and/or ask the Customer to agree to special conditions. BT will tell the Customer in writing how much any additional charge would be and which special conditions would apply and BT may advise the Customer of a revised

Contractual Delivery Date. The Customer then has the option to cancel the order for Service within 7 days. In any conflict between any Conditions determined under this Condition and the other Conditions of this contract, the special conditions will prevail. If Service is provided by special means under this Condition 4 any Contractual Delivery Date BT gives the Customer will be an estimate only and the provisions of the Standard Customer Credit Scheme concerned with late delivery will not apply.

5. BT's GENERAL POWERS

BT may:

- 5.1 In an emergency proclaimed by Government, suspend Service temporarily, or without notice cease to provide Service;
- 5.2 Temporarily suspend Service for the repair, maintenance or improvement of any of its telecommunications systems and apparatus; and
- 5.3 Give the Customer instructions about the use of Service which BT thinks reasonably necessary in the interests of safety or of the quality of Service to BT's other Customers.

But before BT does either of the things set out in Conditions 5.1 and 5.2 above, BT will give the Customer as much notice as it reasonably can and BT will restore Service as soon as it reasonably can.

6. BT's RESPONSIBILITY FOR SERVICE

- 6.1 This contract only applies to Service within BT's Licensed Area.
- 6.2 The Customer is responsible for requesting and paying for service from the body which provides Circuits outside BT's Licensed Area.

7. CUSTOMER'S RESPONSIBILITY FOR BT's EQUIPMENT

The Customer is responsible for all BT's Equipment in the Customer's Premises and for its proper use: if any of this Equipment is lost, destroyed or damaged (except by fair wear and tear), the Customer must pay BT's charge for its replacement and / or repair. The Customer must not interfere with BT's Equipment, or let anyone else, except someone authorised by BT to do so.

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8. FAULT REPAIR

8.1 BT shall provide a Fault Repair Service. The Customer must report a fault by telephoning the Fault Report Point for the Service. When the Customer does so, the Customer must provide BT with a contact name and telephone number for BT to report on progress BT is making to clear the fault. BT will tell the Customer when the fault is cleared.

8.2 BT will do everything appropriate to clear a fault as quickly as possible. This will include, where appropriate:

8.2.1. Giving the Customer advice by telephone, including advice, where appropriate, on the tests and checks that the Customer should carry out

8.2.2. Where possible, making diagnostic checks from BT's premises; or

8.2.3. Visiting the Customer's Premises or a point in BT's telecommunications system.

8.3 If BT fails to clear a Total Failure within the times published for the Service in the BT Price List, the Customer will be entitled to claim credits against Charges in accordance with the Standard Customer Credit Scheme.

8.4 If BT responds to a fault report and finds that no fault exists, BT may charge the Customer for the work BT has done and / or any money BT has spent.

9. CONNECTION OF THE CUSTOMERS EQUIPMENT

The Customer must only connect the Customer's Equipment to the Service at a Connecting Point.

10. SHIFT OF CONNECTING POINTS

If the Customer requires BT to move a Connecting Point, the Customer shall put its request in writing to BT, and BT shall consider such requirement and aim to provide the Customer with 30 Working Days with details of the associated charges. Subject to payment of these charges, BT shall make the necessary alterations to the Service as appropriate.

11. USE OF SERVICE

11.1 The Customer must only use the Service in compliance with the relevant provisions for any appropriate licence. BT accepts no liability for any licences required for programmes that the Customer wishes to transmit over the Service.

11.2 In addition, the Customer must not use the Service for sending any message or communication which is offensive, abusive, indecent, obscene, or menacing.

12. ELECTRICITY

The Customer must provide at its own expense a suitable mains electricity supply, with connections where BT needs them, to enable BT to provide the Customer with Service.

13. CHARGES FOR SERVICE

13.1 The Customer must pay Charges for the Services BT provides as published in the BT Price List.

13.2 All Charges are exclusive of Value Added Tax, which will be added to the Customer's invoice.

13.3 The connection Charges shall normally be payable on the Commencement Date. BT reserves the right to undertake a credit check and may require the Customer to provide an advance payment before Service is provided. The annual rental Charges shall be due and payable in equal quarterly instalments in advance on the Due Date.

13.4 BT may charge daily interest on late payments at a rate equal to 4% per annum above the base lending rate of HSBC Bank plc.

13.5 Where the Commencement Date does not fall on a quarterly instalment date BT will apportion the first annual rental Charge on a daily basis for the incomplete period and invoice the Customer accordingly.

13.6 If the Customer cancels an order before the Commencement Date, the Customer shall pay BT in full all costs and expenses incurred by BT in the provision of Service. If the Customer cancels an order which BT has advised is subject to special assessment under Condition 4, the Customer will not be asked to pay a cancellation charge if the order is cancelled within 7 days of BT advising the Customer of its charge.

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14. DEFAULT

14.1 BT may (without prejudice to any other right or remedy) suspend the Service:

14.1.1. on giving the Customer, 5 working days written notice if BT does not receive the payment of the Charges in full on the Due Date;

14.1.2. immediately by written notice if the Customer commits a material breach of this Contract; or

14.1.3. immediately by written notice if the Customer is the subject of a bankruptcy order or becomes insolvent or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into liquidation either voluntary (otherwise than for reconstruction or amalgamation) or compulsory, or if a receiver or administrator is appointed over its assets.

Suspension will continue until the grounds for suspension are removed to BT's reasonable satisfaction or BT terminates the contract for the Service.

14.2 The Customer remains liable to pay Charges during any period of suspension and, for the avoidance of doubt, the Customer shall not be entitled to any credits in accordance with the Standard Customer Credit Scheme for any such period of suspension.

14.3 BT may (without prejudice to any other right or remedy) terminate the contract for the Service by giving 30 days written notice to the Customer if BT does not receive payment of Charges in full on the Due Date and any interest thereon.

14.4 BT may terminate the contract for the Service immediately by written notice to the Customer:

14.4.1. if the Customer commits a material breach of the contract which is incapable of remedy; or

14.4.2. if the material breach of contract is capable of remedy, and the Customer fails to remedy the breach within 30 days after receipt of written notice to do so.

14.5 BT may terminate the contract for the Service immediately by written notice to the Customer if the Customer is the subject of a bankruptcy order or becomes insolvent or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory, or if a receiver or administrator is appointed over its assets.

14.6 If BT terminates the contract for the Service due to the Customer's default, the Customer must pay BT any sums payable up to the end of the contract.

14.7 The Customer continues to be liable to pay Charges for Service during any period in which the Customer does not comply with this contract.

14.8 If BT waives a breach of contract by the Customer, that waiver is limited to the particular breach. BT's delay in acting upon a breach is not to be regarded in itself as a waiver.

15. TERMINATION OF SERVICE BY NOTICE

15.1 At any time after Service has been provided, this contract or the provision of any facility under it can be ended by one month's prior written notice by the Customer, or by BT, unless the special conditions which apply to the Services the Customer has chosen, provide otherwise.

15.2 If the Customer terminates Service during the Minimum Period of Service, then the Customer shall pay BT immediately on demand 50% of the rental Charges for the remainder of the Minimum Period of Service. In the event that the Customer will have paid BT less than 12 months rental charges for the Service then the Customer will pay to BT the additional rental charges necessary to ensure that the Customer has paid 12 months rental charges.

16. ACCESS TO CUSTOMER'S PREMISES

16.1 The Customer shall, subject to the production upon request of evidence of identity and authority, and on at least 2 working days' prior written notice to the Customer, permit or procure the right for persons engaged on BT's business, to enter the Customer's Premises as reasonably necessary at all times for the purpose of installing, provisioning or inspecting the Equipment. BT will comply with any of the Customer's reasonable site rules which are

notified to BT in advance regarding the safety of people on the Customer's Premises.

- 16.2 If the Customer fails to provide or arrange for unrestricted access to the Customer's Premises for maintenance at the times BT reasonably requires it, or fails to keep arrangements made, and such access is necessary for maintenance of the Equipment or to clear a Total Failure (and such maintenance or clearing of Total Failure cannot be conducted by BT outside the Customer's Premises), any period during which the Service does not meet the Service specification shall not constitute Total Failure but only to the extent that such period is caused or prolonged by such failure by the Customer

17. ARBITRATION

If a dispute between BT and the Customer about the contract for the Service does not involve a complicated issue of law, an issue of quantification or mitigation of loss or a sum exceeding £100,000, either party may refer such dispute to arbitration by the Chartered Institute of Arbiters under procedures agreed between BT and the Institute, details of which appear in BT's Code of Practice for Consumers. The decision of the arbiter in any such dispute shall be final and binding on both BT and the Customer.

18. BT'S LIABILITY

- 18.1 BT does not exclude or restrict liability for death or personal injury resulting from BT's negligence.
- 18.2 In performing any obligation under this contract BT's duty is only to exercise the reasonable care and skill of a competent telecommunications service provider.
- 18.3 Under the Standard Customer Credit Scheme, should BT fail to either:
- 18.3.1. Provide Service by the Contractual Delivery Date; or
- 18.3.2. Restore Service within the published times after the Customer has reported a Total Failure;
- The Customer will be entitled to claim credits against Charges.
- 18.4 Subject to the Standard Customer Credit Scheme, BT is not liable whether in contract,

law, tort, (or delict), or otherwise (including liability for negligence), for loss whether direct or indirect of business, revenue, or profits, anticipated savings or wasted expenditure, corruption or destruction of data, or for any indirect or consequential loss whatsoever.

- 18.5 BT's liability in contract, law, tort or otherwise (including liability for negligence) under or in connection with this contract is limited to £1,000,000 for any event or series of related events and £2,000,000 for all events in any period of 12 months.
- 18.6 Each provision of this Condition limiting or excluding liability operates separately in itself and survives independently of the others.

19. INDEMNITY

The Customer must indemnify BT against any claims or legal proceedings arising from the Customer's use or any third party's use of the Service which are brought or threatened against BT by another person.

20. VARIATION OF CONDITIONS

BT can from time to time change the Condition of this contract other than the Charges payable under it by a document referring expressly to this Condition and signed by a duly authorised BT representative. Charges can be changed in accordance with Condition 13.1. BT will publish details of any changes in line with its licence obligations.

21. LIMITATION ON ASSIGNMENT

- 21.1 The Customer shall not, without the prior written consent of BT, assign, transfer or otherwise dispose of the benefit or burden of the contract for the Service in whole or in part, provided that nothing in the contract for the Service shall prevent the Customer from using the Service to convey the Customer's Content Signals on behalf of third parties. No assignment, transfer or disposal shall relieve the Customer of ultimate liability to BT under the contract for the Service.
- 21.2 BT may assign the contract for the Service to a Company within the BT Group of Companies. "Company within the BT Group of Companies" means BT or one of the subsidiaries of BT as defined by Section 736 of the Companies Act 1985.

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22. GIVING NOTICE

Notices given under the contract for the Service will be in writing and will be sent to the address of BT or the Customer as follows:

- 22.1 To BT: British Telecommunications plc, at the address which BT notifies to the Customer from time to time.
- 22.2 To the Customer: the address to which from time to time the Customer asks BT to send invoices, or the address of the Customer's Premises, or if the Customer is a limited company, the registered office.

All notices will be delivered by hand or sent by telex, facsimile or in the United Kingdom, by registered post or by recorded delivery and outside of the United Kingdom by registered airmail letter. All notices will be deemed to have been received when delivered by hand or on the date on which they would be received in the normal course of posting (if posted) or when the proper answerback code or confirmation is received by the sender if sent by telex or facsimile.

23. MATTERS BEYOND BT'S REASONABLE CONTROL

BT shall not be liable in respect of any breach of the contract for the Service caused by matters beyond that party's reasonable control including, but not by way of limitation, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving that party's employees), weather of exceptional severity or acts of local or central Government or other authorities or the act or omission of any person for whom that party is not responsible.

24. ENTIRE AGREEMENT

A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

25. SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.