



## **B2 Payment Solutions Inc. Terms and Conditions For Deliverables**

These B2 Terms and Conditions ("Terms") apply to all offers, proposals, quotations, invoices etc. issued by B2 Payment Solutions, Inc., B2 Payments USA, Inc. and/or any of their subsidiaries and affiliates ("B2"), and to all contracts, purchase orders and agreements between the customer ("Customer") and B2 (together – "Agreement").

### **1. Interpretation**

- 1.1. Deliverables - means any products (tools, software, hardware, B2 test cards, MTS, TTS etc.), training, services and/or consultation provided by B2 to the Customer as detailed in any Agreement.
- 1.2. Fees - means the agreed consideration to be paid by the Customer to B2 as detailed in the Agreement.
- 1.3. Intellectual Property Rights - means any and all proprietary rights, patents, patent applications, know-how, trade-marks, trademark applications, trade names, designs, copyright, database rights or other similar intellectual property rights, whether registered or not.

### **2. Deliverables**

- 2.1. B2 shall provide the Deliverables to the Customer subject to these Terms and in consideration of the full payment of the Fees as detailed in the Agreement.
- 2.2. Any products shall be shipped to Customer CPT, as consistent with Incoterms 2016.
- 2.3. All sales of Deliverables are final. B2 will not issue any credits and/or refunds with respect to any Deliverables purchased.
- 2.4. Any B2 software products sold and/or licensed to the Customer as part of the Deliverables (including but not limited to the Payment Transaction Engine (PTxE), Chip Integration Tool (CIT) etc.) are subject to the B2 license agreement and terms applicable to such products, either as a clickwrap or a separate license agreement, in addition to these Terms, and such license agreements and Terms shall supersede any other agreement between B2 and the Customer with respect to such software products.



2.5. ALL DELIVERABLES ARE PROVIDED "AS IS". EXCEPT AS MAY OTHERWISE SPECIFICALLY SET FORTH HEREIN, B2 DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TECHNICAL PERFORMANCE, AND NON-INFRINGEMENT.

### **3. Fees**

- 3.1. Unless otherwise stated in writing, all prices quoted by B2 shall be exclusive of sales tax, brokerage, duties and any other applicable taxes.
- 3.2. B2 may amend its prices and tariffs from time to time.
- 3.3. Unless otherwise agreed in writing, payment of Fees shall be made within 30 days of the invoice date.
- 3.4. Except where a fixed price has been agreed in writing, work shall be charged on the basis of the hourly and/or daily rate employed by B2. All costs connected with the provisions of Deliverables shall be borne by the Customer, including but not limited to travel and accommodation costs, unless otherwise indicated in the Agreement.
- 3.5. Where the Customer fails to pay any fees due to B2 within the agreed period for payment, it shall be in default of payment without further notice of default. B2 shall be entitled to charge the maximum interest rate applicable by law on any outstanding amount from the due date of payment. Where due payment is not made, B2 shall be entitled to suspend performance of the Deliverables immediately.

### **4. Warranties**

- 4.1. B2 will provide the Deliverables using reasonable care and skill and, as far as reasonably possible, in accordance with the terms Agreement, if applicable.
- 4.2. Where, in connection with the provision of the Deliverables or otherwise, B2 supplies any goods, services, products (hardware and/or software) of a third party, B2 does not give any warranty, guarantee or other term as to their use, quality, fitness for purpose or otherwise and shall not be liable with respect thereto; any use of such third party products shall be solely subject to such third party manufacturer's license and standard terms and conditions available.



- 4.3. The Customer shall, at its own expense, provide B2 and B2's personnel, which include employees, sub-contractors, agents and substitutes of B2, with all facilities, documents or other materials and data or other information necessary for the provision of the Deliverables.
- 4.4. The Customer shall be responsible for the content of all documents or other materials and shall ensure the accuracy of all data or other information provided to B2.

## **5. Test Cards**

- 5.1. Any test cards of any type supplied by B2 to a Customer ("Test Cards") are provided "as-is" without any warranties, express and/or implied with respect thereto, including but not limited to any implied warranties of non-infringement, merchantability, fitness for a particular purpose or absence of any defects.
- 5.2. Customer shall not (i) modify, enhance, customize, alter, revise (whether by addition, deletion, change or otherwise), any part or aspect of the test cards, including any proprietary markings; (ii) decompile, disassemble or reverse engineer the test cards; (iii) make unauthorized copies of the test cards (iv) rent, sell, time-share, transfer, distribute or grant any rights in the test cards, in any form, whether electronically or not, to any third party.
- 5.3. Any metal test cards of third parties provided by B2 ("MTC"), shall be stored and maintained by the Customer in a secured location and shall only be used at POS terminals physically located at Customer's premises. The MTC shall be used for testing communication and format only. Customer shall be liable for any fraudulent use of the MTC and for use at any POS terminal outside its physical location. The MTC and the test card numbers shall remain the property of the third-party manufacturer of such cards. In the event such third party requests that Customer returns any MTC, the Customer shall return the MTC immediately and B2 shall refund the costs of such MTC returned, excluding the costs of shipping and handling.

## **6. The B2 Mobile Test Suites and B2 Touchless Test Suites**

- 6.1. The B2 Mobile Test Suite consists of third-party manufacturers proprietary hardware (such as mobile devices), software, and test account numbers ("Mobile Test Suite" or "MTS").



- 6.2. Customers may purchase the MTS as a stand-alone product or as part of the B2 Touchless Test Suite (TTS). These Terms, including without limitation, the terms of this Section 5, shall apply to the MTS whether sold separately or as part of the TTS. Any reference to the MTS hereunder shall also apply to the TTS.
- 6.3. Any Mobile Test Suite supplied by B2 to a Customer is provided "AS IS" without any warranties, express and/or implied with respect thereto, including but not limited to any implied warranties of non-infringement, merchantability, fitness for a particular purpose or absence of any defects.
- 6.4. B2 DOES NOT GUARANTEE ANY RESULTS OR IDENTIFICATION OR CORRECTION OF PROBLEMS AS PART OF THE SERVICE AND B2 DISCLAIMS ANY LIABILITY RELATED THERETO. B2 DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. B2 DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO CUSTOMER'S USE OF THE MOBILE TEST SUITE. CUSTOMER ASSUME TOTAL RESPONSIBILITY AND ALL RISKS FOR ITS USE OF THE MOBILE TEST SUITE, INCLUDING, BUT NOT LIMITED TO, ANY INFORMATION OBTAINED THEREON. CUSTOMER'S SOLE REMEDY AGAINST B2 AND/OR ANY APPLICABLE THIRD-PARTY MANUFACTURER FOR DISSATISFACTION WITH THE MOBILE TEST SUITE IS TO STOP USING THE MOBILE SUITES. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES.
- 6.5. Customer shall not (i) modify, enhance, customize, alter, revise (whether by addition, deletion, change or otherwise), any part or aspect of the Mobile Test Suite, including any proprietary markings; (ii) decompile, disassemble or reverse engineer the Mobile Test Suite; (iii) make unauthorized copies of the Mobile Test Suite; (iv) rent, sell, resell, time-share, transfer, distribute or grant any rights in the Mobile Test Suite, in any form, whether electronically or not, to any third-party.
- 6.6. The B2 Mobile Test Suite which is for use with and runs on different android mobile devices of third party manufacturers, using, among others, various third party application developers, is provided to the Customer for internal, non-commercial, testing purposes only and may only be used by Customer for its intended purpose in internal testing



environments, and not in any production environments and are subject to any third party manufacturers and/or developers terms of use. B2 is not an authorized reseller or distributor of any such android products and/or third-party applications. B2 provides Customer with the MTS on a license to use basis only and will remain at all times the owner of the Mobile Test Suite. The MTS devices are registered under the B2 device enrollment programs of the applicable third-party manufacturer and will be managed by B2 through a mobile device management solution. Any mobile device management software is a third-party product. B2 is not obligated to renew its Mobile Test Suite test account once it is expired according to the terms of the third-party manufacturer.

6.7. The B2 Mobile Suite which is for use with and runs on Apple® mobile devices using Apple Pay®, is provided to the Customer for internal, non-commercial, testing purposes only and may only be used by Customer for its intended purpose in internal testing environments and not in any production environments, and are subject to the terms of the Apple® Developer Agreement, as published on <https://developer.apple.com>. B2 is not an authorized reseller or distributor of any Apple® products and provides Customer with the MTS on a license to use basis only and will remain at all times owner of the Mobile Test Suites. The MTS devices are registered under the B2 device enrollment programs of the applicable third-party manufacturer and will be managed by B2 through a mobile device management solution. The mobile device management software is a third-party product. B2 is not obligated to renew its Mobile Suite solution once test accounts are expired according to the third-party manufacturer.

6.8. Limited Warranty of the B2 Mobile Test Suite. B2 offers a two-year limited warranty for the Mobile Test Suite as of the date of purchase, subject to and in accordance with the terms of the limited warranty of the device manufacturers, which are provided by B2 back-to-back, if any. Following the initial two-year limited warranty period, the Customer may purchase an additional extended warranty at such fees as published by B2 from time to time. The limited warranty does not include coverage for theft and breakage instances. Any repairs not covered by the manufacturers limited warranty, is subject to additional service fees, which shall be borne by Customer. In the event of any problems with the Mobile Test Suite, Customer should contact B2 at [Mobile@b2ps.com](mailto:Mobile@b2ps.com) and will receive further instructions. Any shipping costs associated with shipping the MTS for repairs shall be borne by the Customer.



6.9. Any trademarks, logo and/or service marks (Marks) of any third party manufacturers and/or developers, including without limitation, Apple® and other manufacturers, are the exclusive property of such third parties and Customer agrees not to claim any right, title, or interest in or to the Marks or at any time challenge or attack the third party manufacturers' rights in the Marks. Any goodwill resulting from Customer's use of the Marks shall inure solely to the benefit of the applicable third-party manufacturer and shall not create any right, title, or interest for Customer in the Marks. B2 is not an authorized reseller or distributor of Apple® or any Android third party manufacturer.

## **7. Limitation of Liability**

7.1. The Deliverables have been negotiated and agreed by B2 with the Customer in the context of information provided by the Customer as to the Customer's particular needs and requirements, and therefore:

7.1.1. B2 shall have no liability to the Customer for any delay, loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

7.1.2. IN NO EVENT SHALL B2 BE LIABLE TO CUSTOMER AND/OR ANY OF ITS AFFILIATES OR ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF USE OF AND/OR IN CONNECTION WITH THE DELIVERABLES EVEN IF B2 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO EVENT SHALL THE LIABILITY OF B2 FOR ANY DIRECT DAMAGE EXCEED THE LOWER OF (I) ACTUAL FEES PAID BY CUTOMER FOR THE DELIVERABLES WHICH ARE THE BASIS OF THE ALLEGED CLAIM; OR (II) USD 10,000.



## **8. Intellectual Property**

B2 shall retain full and exclusive ownership of all Intellectual Property Rights of whatever nature, whether registered or not, in all of B2's content, documents, proprietary or confidential information or data, materials, generic developments and know-how, products, including but not limited to, any of B2's software and/or hardware products, including without limitation, the B2 Test Cards, and all enhancements, updates, versions, derivative works etc. associated to such products.

Customer shall retain without any modifications, any copyright notices included in any of B2 documentation and materials provided to it.

## **9. General**

9.1. B2 shall not be liable to the Customer or be deemed to be in breach by reason of any delay in performing, or any failure to perform any of B2's obligations in relation to the Deliverables, if the delay or failure was due to any cause beyond B2's reasonable control and/or due to any force majeure event.

9.2. B2 reserves the right, in its sole discretion, to exclusively modify, update, add to, remove or otherwise change any portion of these Terms and Conditions at any time, by updating the most updated version on B2's website.

9.3. These Terms supersede all prior proposals, negotiations, representations, agreements and understandings between B2 and the Customer, and all terms and conditions included in any purchase orders or similar documents provided by the Customer, regardless of when such purchase orders are issued, and these Terms constitute the complete and exclusive agreement between B2 and Customer and regarding the Deliverables, unless otherwise specifically agreed to in writing by B2.

9.4. These Terms shall be governed by the laws of the Province of Ontario, Canada except for its conflict of laws rules, with exclusive jurisdiction of the competent courts of the Province of Ontario, Canada, where B2 Payments Solutions, Inc. or B2 Processing Solutions, Inc. is the engaging party; and by the laws of Florida, USA, with exclusive jurisdiction of the competent courts of Palm Beach County, Florida, where B2 Payments USA, Inc. is the engaging party. If any dispute arises between B2 and Customer with respect to the matters covered by the Agreement which leads to a proceeding to resolve



such dispute, the prevailing party in such proceeding shall be entitled to receive its reasonable attorneys' fees and out-of-pocket costs (including, without limitation, expert witness fees) incurred in connection with such proceeding, in addition to any other relief it may be awarded.

To the extent permitted by law, the Uniform Commercial Code (UCC) and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any of the transactions contemplated by these Terms.