

Barilliance Terms Of Service (Sept 2013)

LICENSE

Provided you are not in breach with these terms, Barilliance grants you a limited, nonexclusive, non-transferable and revocable license to use its Services within the licensed site ("eligible sites"), and to access content from Barilliance's servers. The Customer acknowledges and agrees that, for the whole term of this Agreement, Barilliance's Services shall be hosted on Barilliance servers or those of any third party appointed by Barilliance.

CUSTOMER RESPONSIBILITY AND BARILLIANCE RESPONSIBILITY

Barilliance's service performs technical activities such as reading data from your site, adding content to your site, sending emails to your customers and more. By agreeing to the terms the customer acknowledges that the risks involved are understood and that the customer is responsible for testing each new feature, content, behavioural targeting rule or campaign.

Barilliance will do its best to fix and/or support customers in resolving any technical or business related issues in reasonable time. Barilliance will monitor the availability and integrity of the service and fix known issues as soon as possible.

INTELLECTUAL PROPERTY RIGHTS

Each party remains the sole owner of all intellectual property rights related to its own data, material, technologies, knowhow, trademarks and logos. Barilliance does not acquire any right whatsoever on the Customer web site, on which the Customer is the sole owner of all rights. The Customer does not acquire any right, whatsoever, on the widgets, recommendations, compute models and data used by Barilliance's personalization algorithms, on which Barilliance is the sole owner of all intellectual property rights. Each party is responsible to comply for its part with Data Protection Laws and any related requirements. Nothing in these Terms constitutes the transfer of an ownership right in the Intellectual Property of either Party.

DATA CONFIDENTIALITY

All Data linked to the Customer's web site is exclusive to the Customer. Barilliance agrees not to disclose any of the Customer's Data to any other web site/company/organization or individual with the exclusion of operations required for the usage of the system such as sending emails through email providers.

WARRANTY

THE SERVICE, THE SOFTWARE AND REPORTS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY BARILLIANCE AND/OR ITS SUBSIDIARIES AND AFFILIATES, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICE, THE SOFTWARE, THE DOCUMENTATION AND REPORTS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. BARILLIANCE DOES NOT WARRANT THAT THE SERVICE, THE SOFTWARE OR REPORTS WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICE.

INDEMNIFICATION

Neither Barilliance, nor any of Barilliance's employees or contractors will be held liable under this Agreement in contract, negligence, strict liability or other legal or equitable theory for any indirect, special, incidental or consequential damages (including damages for loss of business and loss of profits), even if it has been advised of the possibility of such damages. You agree to indemnify, hold harmless, and (at Barilliance's request) defend Barilliance and its representatives from and against any and all liability, damages, losses, costs, or expenses incurred in connection with any claim related to your breach of any term or condition in this Agreement.

AVAILABILITY

The Barilliance service and software may be subject to temporary shutdowns due to causes beyond our reasonable control, and Barilliance will have no liability to you, your customers, or any third party for such temporary shutdowns. Barilliance will attempt to notify you of any factor or event that is likely to cause a material interruption in the delivery of Services. Barilliance assumes no responsibility for the availability or lack of availability of your site.

PRIVACY

You accept and agree that data captured by the Barilliance Tag will be transmitted, stored and processed by Barilliance servers. If any personally identifiable information (personal data) is transmitted to Barilliance, You will have to comply with all applicable laws relating to the collection of personally identifiable information from visitors to Your Sites. This will include but is not limited to You posting a privacy policy, providing notice of your collection and use of all such data and obtaining consent from all affected visitors.

DATA PROTECTION AND SECURITY

Data is only used for purposes intended. These are providing real time customer suggestions and web content, sending emails, providing analysis, reports and data to website owners and statistical analysis for marketing purposes. Industry standards security measures are implemented in order to protect information from misuse and unauthorized access and disclosure.

PAYMENT

In consideration for the use of the Services, you shall make payments of amounts set forth in a separate quotation provided by us to you in writing or on the Barilliance website. We shall charge you automatically through a third party payment service or by sending an invoice in respect of each calendar month, and you agree to make full payment in respect of the Services through such mechanism. Amounts due hereunder are exclusive of VAT and applicable taxes. You shall make payments hereunder free and clear, and without deduction or withholding, except as required by law. If you are required by law to make any deduction or withholding, you shall make payment of such additional amounts as is necessary such that Barilliance shall receive the amounts due hereunder without any such deduction or withholding. Late payments shall bear interest at the rate of 18% per annum or, if lower, the maximum amounts permitted under applicable law.

TERMINATION

Either party shall have the right to terminate this Agreement if:

- The other party commits a material breach of its obligations or
- The other party enters into liquidation or any other form of insolvency or
- They serve the other party with 30 days written notice to terminate

No refunds will be available on account of any service cancellation by either party.

GOVERNING LAW, JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of Israel, without giving effect to the conflict of laws principles thereof. The parties consent to the exclusive jurisdiction of Israel for the purpose of any suit, action or other proceeding arising out of or otherwise related to this Agreement, and expressly waive any and all objections they may have as to venue in any such courts.