



BerkOnline® Banking Term and Conditions

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY USING BERKONLINE®, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO ABIDE BY THESE TERMS AND CONDITIONS, YOU MAY NOT USE BERKONLINE®.

Please read this Agreement carefully, as it contains the terms and conditions for BerkOnline®, and print a copy for your records. You may refer back to it at any time by accessing the "Agreement" tab within BerkOnline®. To obtain a paper copy of this Agreement, you must print it yourself, as it is not otherwise available from us in paper or a non-electronic format. These terms and conditions are subject to change, and we will incorporate all changes to this Agreement to this website from time to time. The Bank and you agree as follows:

Definitions

The "Bank," "us," "we," or "our" means The Berkshire Bank, and "you" or "your" means the person(s), or in the case of a business account, the business entity, registered with BerkOnline®.

Our "Business Days" are Monday through Friday, excluding federal holidays. You may access your accounts through BerkOnline® at any time. The Bank may perform regular maintenance on BerkOnline®, which may result in errors or interrupted service. The Bank cannot guarantee that we will be able to provide notice of such interruptions, although we will attempt to provide such notice.

"Cutoff Time" means the time by which we must receive instructions to have them considered entered on that particular Business Day. All transactions after a Cutoff Time or on a Saturday, Sunday, or federal holiday will be processed on the next Business Day. All Cutoff Times referenced in this Agreement reflect the times displayed on the Bank's internal system clocks and may not necessarily be synchronized with the internal clock displayed on your computer. For this reason, we suggest that you transmit any instructions to us sufficiently in advance of a Cutoff Time to eliminate the possibility of missing the cutoff.

"Eligible Accounts" means all accounts that you maintain with us that are approved by us for access through BerkOnline®, including your "Payment Account," which is the account designated by you as the account to be charged for all BerkOnline® fees (if any), and your "Transfer From Account," which is the account from which a transfer is being requested by you through BerkOnline®.

Your "User ID" is a unique identification number relating to BerkOnline® that we have assigned to you. Your "Password" is a unique identifier that we will initially assign to you for use with BerkOnline®, as well as the new, permanent Password that you select when you access BerkOnline® for the first time, and any change you make to your Password thereafter. We may at our option change the password parameters without prior notice to you, requiring you to change your Password the next time you enter BerkOnline®. All transactions initiated using your Password will have the same legal effect as if you had given us a written communication signed by you. You are responsible for all financial transactions performed using your Password through BerkOnline® to the fullest extent allowed by law.

Services

The following services are currently available through BerkOnline®:

1. Obtaining account balances and other information.
2. Downloading account information.
3. Transferring funds between accounts.
4. Placing stop payment orders on checks.
5. Placing new orders and reorders of checks.
6. Contacting us by e-mail.

We reserve the right to expand, terminate, suspend, or otherwise modify any and all services offered through BerkOnline®. We will notify you of the availability and terms of these new services if we are legally required to do so. By using any new or modified services when they become available, you agree to be bound by the rules concerning these services.

Internet Service

You may access BerkOnline® through the Internet service provider and an encrypted browser of your choice. You are responsible for obtaining, installing, maintaining, and operating all equipment necessary to access BerkOnline®. You acknowledge that we are not responsible for notifying you of any upgrades, fixes, or enhancements to, or for providing technical or other support for, any browser or for any compromise of data transmitted across computer networks or telecommunications facilities. You acknowledge that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet and you expressly assume such risks (to the extent the law allows you to do so). You acknowledge that you have requested BerkOnline® access for your convenience, have made your own independent assessment of the adequacy of the Internet as a delivery mechanism for accessing information and initiating instructions, and that you are satisfied with that assessment. The Bank reserves the right to upgrade BerkOnline® at any time without prior notice to you. If we upgrade or change BerkOnline® or its security features, you may have to modify or change the equipment or software that you use to access BerkOnline®.

Security

Access to BerkOnline® requires that you enter your User ID and Password each time you log on. You agree that the use of your User ID and Password is a commercially reasonable security procedure to verify that all BerkOnline® transactions have been duly authorized by you. You authorize us to act upon any transaction in compliance with this security procedure without further verification or inquiry. You must safeguard your User ID and Password. Any person having access to your User ID and Password will be able to access BerkOnline® and perform transactions in your Eligible Accounts. If you permit other persons to use BerkOnline® or if you disclose your Password to another person, you will be responsible for all transactions they make.

Account Information

You may use BerkOnline® to view, download, store, or print information regarding your Eligible Accounts that is usually in your account statement, account balances, amounts and check numbers for checks drawn on the account, and debits and credits made to the account. All account information provided through BerkOnline® will be current as of the end of the preceding business day, and is subject to further adjustment and correction. Because the information is made available to you as "raw data" and is subject to change, we cannot assure you of the accuracy or completeness of the information and expressly disclaim the same. You will still receive your usual periodic statement of account, and adjustments may have been made to your account in connection with the preparation of your statement.

Account Transfers

You may transfer funds between Eligible Accounts using BerkOnline®. You authorize the Bank to debit your designated Transfer From Account for all transfers of funds that you initiate through BerkOnline®. We will not be obligated to make any transfer you may request unless there are sufficient available funds or available credit in your Transfer From Account to cover the transfer on the date of the request. If you exceed your established credit line for an account or if there is an overdraft to your Transfer From Account, we may charge any of your accounts for the amount of such excesses or overdraft. If there are insufficient available funds (or available credit in the case of credit transfers) to cover a transfer, no automatic representation of the transfer will be attempted by us and the transfer will be immediately rejected. You agree that we may, at our option, follow your instructions to make transfers that you request, even though a debit to your Transfer From Account may bring about or increase an overdraft.

Transfers to, from, or between Eligible Accounts that are made before the Cutoff Time of 3:00 p.m. (Eastern Time) on any Business Day will be effective immediately and the transferred funds will be available the same day to cover all payments. Transfers to, from, or between Eligible Accounts that are made after that Cutoff Time or on a non-Business Day will be available on the next Business Day to cover all payments. Transfers will be deducted from your Transfer From Account as soon as the transaction is completed.

You agree that we may treat any transfer from an Eligible Account the same as a written withdrawal, transfer, check, or deposit, in accordance with the terms of contained in our Account Agreement and Disclosures. Any transfer made from any of your savings or money market accounts by using BerkOnline® is a restricted transfer subject to certain limitations. Please refer to our Account Agreement and Disclosures for full details. If you open a new Eligible Account after enrolling in BerkOnline®, you must request that the new account be linked through BerkOnline® in order to have access to it. We reserve the right to limit transfer eligibility to certain types of accounts and to change such eligibility from time to time. Not all accounts are eligible to be linked for transfer through BerkOnline®. Eligible Accounts will not include accounts established under any Uniform Transfers to Minors Act or Uniform Gifts to Minors Act, estate accounts, formal trust (except for Totten trust) accounts, or accounts on which the signature of more than one joint owner is required to process transactions, unless all owners authorize access to BerkOnline®.

Statements

We will send you a monthly statement for each monthly cycle in which an electronic funds transfer has occurred and at least a quarterly statement if no electronic funds transfer has occurred for each account using BerkOnline® to transfer funds. We may provide you with more frequent statements.

Stop Payments

You may instruct the Bank through BerkOnline® to stop payment on a check that has not been paid. A stop payment order will not be effective unless the Bank has a reasonable opportunity to act on the stop payment order before the check is paid or certified. A stop payment order is effective for 6 months, unless you renew the order in writing or online as a new stop payment order. You cannot use BerkOnline® to request a stop payment on a certified check, an unissued, blank check that has been lost, stolen, or destroyed, electronic fund transfers, or Automated Clearing House debits.

The Bank shall not be liable for failure to stop payment if: (1) you do not provide the Bank with all the required information and with a reasonable time to implement the stop payment order; (2) the Bank determines, as permitted by law, not to stop payment on a certified item or Bank official check; or (3) the item in question is a postdated item.

E-mail

To ensure the security of your account information, do not send us any confidential information about your accounts by e-mail, or communications which we require to be in writing, or which need our immediate attention; call or write to us instead. Do not use e-mail to place a stop payment on a check, order new checks, or perform transactions on your accounts. Be aware that a "receipt" acknowledgement of an e-mail only means that the message has been routed into the Internet, not that it has been received by the appropriate business unit at the Bank. We will not be obligated to take any action based on any e-mail sent to us through BerkOnline® until we receive it and have a reasonable time to act on it.

Charges

There are no fees or service charges for using BerkOnline®. If we ever change this policy, you will be notified in advance and allowed to cancel your service. Certain fees for services (such as stop payment orders, insufficient funds charges, uncollected fees, and ordering checks) will apply, as disclosed in our Schedule of Fees and Service Charges. You agree to pay, and authorize us to automatically debit your Payment Account for all fees and service charges. We reserve the right to add or modify charges. You are responsible for all fees imposed by your Internet service provider and any associated communications service provider charges in connection with your use of BerkOnline®.

Amendments

The terms and conditions of this Agreement may be amended or changed by us. In such event, we shall either post such changes to our website, or if we are required to do so by applicable law, notify you by e-mail or regular mail. Your use of BerkOnline® after we have provided such a notice of change will be considered your agreement to the change. If you do not agree to the amendment or change, you must notify us prior to the effective date of the amendment or change and cancel your access to BerkOnline®. We may amend or change the terms and conditions contained in this Agreement without prior notice to you, if the change is made to maintain or restore the security of BerkOnline®, is immaterial, or does not result in higher fees, more restrictive service use, or increased liability.

Other Agreements

In addition to this Agreement, you agree to be bound by and comply with such other written requirements that we may provide to you in connection with BerkOnline®, the Bank's Account Agreement and Disclosures and Schedule of Fees and Service Charges, and applicable state and federal laws and regulations. This Agreement supplements the Bank's Account Agreement and Disclosures and Schedule of Fees and Service Charges only with respect to the mutual sections contained in both agreements; all remaining provisions of the Bank's Account Agreement and Disclosures and Schedule of Fees and Service Charges not otherwise addressed in this Agreement shall continue in full force and effect.

Disputes

In the event of a dispute regarding BerkOnline®, you and the Bank agree to resolve this dispute by looking to this Agreement. If there is a conflict between what one of our employees says and the terms of this Agreement, the terms of this Agreement shall control. The Bank's records, kept in the regular course of business, shall be presumed to accurately reflect the contents of your instructions to us and, in the absence of manifest error, will be binding and conclusive.

Assignment

You may not assign all or any part of your rights or obligations under this Agreement without our prior express consent, which may be withheld in our sole discretion. The Bank may assign this Agreement or delegate certain of its rights and responsibilities or the performance of the services under this Agreement to independent contractors or other third parties.

Your Liability

The liability of personal account holders for unauthorized transfers from their accounts is limited by the Electronic Funds Transfer Act, as described below. A personal account is an account established in the name of a natural person primarily for personal, family, or household purposes. Any other account is a non-personal account.

For personal account holders, you are responsible for all transfers you authorize or initiate through BerkOnline®. If you permit other persons to use BerkOnline® or your Password, you are responsible for any transactions they authorize from your accounts. If you believe that your Password has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, notify us AT ONCE, at the phone number or address set forth below. If you do not do so, you could lose all the money in each of the accounts, as well as all of the available funds in any overdraft line of credit account or any other credit line included among your accounts.

If you believe your Password has been lost or stolen or that an unauthorized transfer has been made from any of your deposit accounts, and you tell us within 2 Business Days after you discover the loss or theft, you can lose no more than \$50 if someone makes a transfer without your authorization.

If you do not tell us within 2 Business Days after you discover the loss or theft of your Password or that an unauthorized BerkOnline® transfer has been made from any of your deposit accounts, and we can prove we could have stopped someone from making a transfer without your authorization if you had told us, you could lose as much as \$500. Furthermore, if any deposit account statement shows BerkOnline® transfers that you did not make, tell us AT ONCE. If you do not tell us within 60 days after a statement showing such a transfer was transmitted to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason, such as a long trip or hospital stay, kept you from telling us, we will extend the time periods.

For non-personal account holders, you are responsible for all transfers which are authorized using your Password. If you permit other persons to use BerkOnline® or your Password, you are responsible for any transactions they authorize. You assume the entire risk for the fraudulent, unauthorized, or otherwise improper use of your Password. The Bank shall be entitled to rely on the genuineness and authority of all instructions received by us when accompanied by your Password, and to act on such instructions.

Our Liability

For personal accounts, if we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

1. If, through no fault of ours, you do not have enough money in your account to make the transfer.
2. If the transfer would go over the credit limit on your overdraft line.
3. If the hardware, software, service provider, or any part of BerkOnline®, including the loan payment service was not working properly and you knew about the breakdown when you started the transfer.
4. If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
5. If the funds are subject to legal process or other encumbrance restricting the transfer.

There may be other exceptions in our Account Agreement and Disclosures.

For non-personal accounts, we will only be liable for unauthorized transfers from your account to an account in which you have no interest which is caused by the misconduct of one of our employees or a breach of the BerkOnline® security features, without your negligence or misconduct. We will not be liable for any errors or losses you sustain in using BerkOnline®, except where we fail to exercise ordinary care in processing any transaction. Our liability in any case shall be limited to the amount of any funds improperly transferred from your Transfer From Account less any amount which, even with the exercise of ordinary care, would have been lost. We will not be liable for transfers initiated by someone using your Password unless your Password was wrongfully used by one of our employees or by a person who obtains access to our records and wrongfully obtains your Password from us. We will not be liable if you or any person you give your Password to contributes to the event which causes the loss. Without regard to care or lack of care of either you or the Bank, a failure to report to us any unauthorized transfer or error from any of your accounts within 60 days of our providing you with a bank statement showing such unauthorized transfer or error shall relieve us of any liability for any losses sustained after the expiration of such 60 day period and you shall thereafter be precluded from asserting any such claim or error.

Disclaimer of Liability

Except as specifically provided in this Agreement or where the law requires a different standard, we are not responsible for any direct, indirect, special, incidental, consequential, punitive, or exemplary damages, lost profits, lost opportunity, losses, expenses, or injury arising in any way out of or in connection with the use of or inability to use BerkOnline®, regardless of whether the Bank has been apprised of the likelihood of such damages occurring, failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, bugs, computer viruses, malicious code or other defect in this website, errors, configuration problems or incompatibility of computer hardware or software, failure or unavailability of Internet access, problems with Internet service providers, problems or delays with intermediate computer or communications networks or facilities, problems with data transmission facilities, your telephone service, or any other problems that you experience due to causes beyond our control. We are not responsible for any losses or delays in transmission of instructions arising out of the use of any Internet service provider or caused by any Internet browser or software. We are not responsible if you give incorrect instructions or if you do not give your instructions sufficiently in advance to allow us to timely execute them. If any law limits this exclusion from liability, our liability will be limited to the extent permitted by law. We believe that the information you can get by using BerkOnline® is reliable. BerkOnline® is provided to you on an "as is" and "as available" basis. We are not responsible for any deficiencies in the accuracy, completeness, availability, or timeliness of such information or for any investment or other decision you may make using this information. We are not responsible for any damage to your computer, software, modem, telephone, or other property resulting from your use of BerkOnline®. You expressly agree that your use of BerkOnline® is at your sole risk. No license to you is implied in these disclaimers.

Errors and Questions

In case of errors or questions about your electronic transfers from your deposit accounts, call us at (212) 785-8499 or (845) 294-6151, or write to us at The Berkshire Bank, BerkOnline Customer Service, 5 Broadway, New York, New York 10004, as soon as you can, if you think that your statement is wrong or you need more

information about a transfer listed on the statement. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 Business Days. We will determine whether an error occurred within 10 Business Days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit the account in question within 10 Business Days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 Business Days, we may not credit your account.

For errors involving new accounts, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within 3 business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

Please note, if we credit your account with an amount in dispute before we complete our investigation, the credit is provisional. This means that if our investigation reveals that there was no error or that your dispute is invalid, then we can withdraw the amount that we credited to your account. If your claim is partially valid, then we can withdraw any amount in excess of the amount of the valid claim.

Information Disclosure

You authorize us to disclose information to third parties about you or your accounts or the transactions you make: (1) where it is necessary for completing transactions; (2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; (3) in order to comply with government agency or court orders; (4) if you give us your written permission; or (5) as permitted under our Privacy Policy, which can be viewed by clicking on the "Privacy Policy" tab on our website.

Copyright Notice

BerkOnline® is a registered trademark of The Berkshire Bank. The works of authorship contained on the www.berkbank.com website, including, but not limited to, all design, text, and images are owned, except as expressly stated otherwise, by the Bank. Except as otherwise provided in this Agreement, they may not be copied, transmitted, displayed, distributed (for compensation or otherwise), licensed, altered, framed, stored for subsequent use, or otherwise used in whole or in part in any manner without the Bank's prior written consent, except to the extent permitted by the Copyright Act of 1976 (17 U.S.C. § 107), as amended, and then only with notice of the Bank's proprietary rights, provided that you may download information and print out hard copies for your personal use, so long as you do not remove any copyright or other notice as may be contained in the information, as downloaded.

Termination

The Bank reserves the right to terminate or suspend this Agreement and the services covered under it, in whole or part, at any time for any reason or for no reason, without prior notice to you, including, but not limited to, your failure to access BerkOnline® for an extended period of time. For security purposes, if you do not log on to BerkOnline® at least once within the first 30 days after receiving your User ID and Password, your right to access BerkOnline® will be terminated. You may terminate your right to use BerkOnline® at any time by notifying us in writing. If you terminate your right to use BerkOnline®, you authorize us to continue to process orders previously authorized by you until we receive your termination notice and have a reasonable time to act on it. Such notice will serve to cancel your BerkOnline® services only, not your account relationships with the Bank. The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this Agreement for all purposes.

Notices

You agree that by using BerkOnline®, all notices or other communications which we may be required to give you arising from our obligations under this Agreement or BerkOnline® services may be provided to you online or sent to any e-mail address that you provide to us, or in any other manner permitted by law. If your mailing address or e-mail address changes, you must promptly notify us in writing of the new address. Any notice that you give us under this Agreement must be given in writing, unless applicable law provides that it can be given in any other way.

Waiver

No failure of the Bank to enforce any right or remedy shall act as a waiver of such rights. No waiver shall be valid unless it is in writing and signed by us. We may waive any term or provision of this Agreement at any time or from time to time, but a waiver in any one situation will not be deemed a waiver of the term or provision in the future.

Severability

If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain valid and enforceable.

Governing Law

This Agreement is governed by and interpreted in accordance with the laws of the State of New York, without regard to the conflict of law provisions of New York law.

Customer Service

For any questions regarding BerkOnline®:

Write to us at: The Berkshire Bank
 BerkOnline Customer Service
 5 Broadway
 New York, New York 10004

Call us at: (212) 785-8499

Email us at: berkonline@berkbank.com

BY SIGNING YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Account Holder Signature

Date

Account Holder Signature

Date