

Terms & Service Agreement

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Introduction

Flexmail nv/sa is a provider of internet e-marketing services. These conditions set out the terms under which Flexmail nv/sa will provide services to the Client (hereinafter referred to as "User").

Modification of terms of this Agreement

Flexmail nv/sa may, at any time and at its sole discretion, modify the terms and conditions of this Agreement. Any such modifications will be made available online and will be effective immediately upon posting to the Flexmail website. User agrees to assume responsibility for periodically reviewing this Agreement. By continuing to use the service, following the initial posting date of modifications made by Flexmail nv/sa, User agrees to be bound by the Agreement as amended.

Non-exclusive License

Subject to the terms and conditions of this Agreement, Flexmail nv/sa grants to the User a limited, non-exclusive and non-transferable right to access and use Flexmail in accordance with the specific limitations set forth in this Agreement and in any applicable exhibit provided that an order for Flexmail has been accepted by Flexmail nv/sa. Unless expressly provided in any applicable exhibit, Flexmail shall be hosted and served and executed solely on servers under the direct supervision and control of Flexmail nv/sa or its contractors. The client shall not receive a copy of Flexmail, nor have any other rights to Flexmail other than those granted under this Agreement.

Ownership and Copyright

Flexmail nv/sa retains sole rights and ownership of all code, text and graphics used in the service (including goodwill). Should agreement be terminated by either party the User will own full rights to their own list data held in the Flexmail database which can be transferred to the User at no penalty, provided that there are no outstanding sums of money owed to Flexmail nv/sa. You acknowledge and agree that the services and the Flexmail nv/sa company names and logos and all related product and service names, design marks and slogans, are the property of Flexmail nv/sa or its affiliates or suppliers (collectively, the "marks"). You are not authorized to use any of the marks in any advertising, publicity or any other commercial manner without the prior written consent of Flexmail nv/sa. Your use of the services confers no title or ownership in the service, the software or the marks and is not a sale of any rights in the service, the software or the Marks. All ownership rights remain in Flexmail nv/sa or its third party suppliers, as the case may be.

Restrictions and Responsibilities

The User represents, warrants, covenants that use of the services will only be in compliance with this Agreement and all applicable laws. With regard to email campaigns, the User specifically agrees not to use the services to:

Send Unsolicited Commercial E-Mail (UCE) or SPAM through Flexmail's services. Any client found to be using Flexmail for SPAM is subject to services termination and potential legal action.

Harvest or otherwise collect information about third parties, including e-mail addresses, without the express consent of such third parties;

Publish, post, distribute, disseminate, advertise or link to any:

- content, site, topic, name, material or information which is inappropriate, profane, defamatory, libelous, slanderous, infringing, obscene, indecent, or which contains nudity or adult content;
- software, content or other material protected by intellectual property laws, copyright licenses, rights of privacy or publicity, or other proprietary rights, unless you own, or control such rights or have received all necessary consents for your publication, distribution, or linking of such software and other materials;
- software, content or other material that contains viruses, worms, corrupted files, cracks or that may or are intended to damage the operation of or render inoperable another's computer, hardware, software, security measures or system or other programs written to defeat the security measures of any computer, system or programs;
- software, content, other material or website that constitutes "hate speech", whether directed at an individual or a group, and whether based upon the race, sex, creed, national origin, religious affiliation, sexual orientation or language of such individual or group;
- Violate any applicable government laws or regulations;
- Defame, libel, slander, impersonate, abuse, harass, threaten, invade the privacy of or otherwise violate or infringe the legal rights (including the rights of privacy and publicity) of any other person;
- Conduct, promote or forward illegal contests, pyramid schemes, chain letters, unsolicited or unauthorized advertising, promotional materials, unsolicited e-mail (including "spamming") or multi-level or illegal marketing campaigns;

You agree you will not access or otherwise use third party mailing lists in connection with preparing or distributing unsolicited email to any third party. You hereby agree to indemnify and hold harmless Flexmail nv/sa against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable legal fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the services. In addition, you acknowledge and agree that Flexmail nv/sa has the right to seek damages when you use the services for unlawful purposes, in an unlawful manner, and/or in a manner inconsistent with the terms of this agreement, and that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages. Although Flexmail nv/sa has no obligation to monitor the content provided by you or your use of the services, Flexmail nv/sa may do so and may remove any such content or prohibit any use of the services it believes may be (or is alleged to be) in violation of the foregoing.

Every email message sent in connection with the services must contain an "unsubscribe" link that allows visitors to remove themselves from your mailing list.

If you have used the Flexmail's "Double Opt-In" feature that allows you to request a recipient to confirm that you have his or her permission to send emails to him or her, and such recipient has not responded or does not respond affirmatively to such request for confirmation, you agree that you shall not send emails through Flexmail to such recipient. You cannot mail to distribution lists, newsgroups, or spam email addresses. You cannot copy a Flexmail template and use the design for purposes other than sending emails from Flexmail. Flexmail nv/sa, at its own discretion, may immediately disable your access without refund to the services if Flexmail nv/sa believes in its sole discretion that you have violated any of the restrictions listed above.

You will adopt and maintain our [Privacy Policy](#) and our [Anti-Spam Policy](#) which may be modified by Flexmail nv/sa from time to time.

Anyone found in breach of these restrictions will find their account terminated immediately without warning and without refund of any monies paid.

Nondisclosure

Each party shall retain in confidence all proprietary and confidential information transmitted to the other that the disclosing party has identified in writing, or orally and then subsequently identified in writing, as being proprietary and/or confidential, and will make no use of such information except under the terms and during the term of this Agreement. During the term of this agreement, and after the termination of this agreement, we will use all reasonable precautions and take all necessary steps to prevent your distribution lists from being acquired by unauthorized persons. We will not share (unless required by law), sell or otherwise distribute the confidential information in your account. You agree to use all reasonable precautions and take all necessary steps to prevent our confidential information, data, scripts, object code, source code, programs, business plans, business models, business concepts, communications and any and all further confidential information from being acquired by unauthorized persons, and to take appropriate action, by instruction, agreement, or otherwise, with regard to all persons permitted access to our owned confidential information and data, in order to ensure our confidential information and data are protected. Client shall not disclose any of our confidential information to any person for any purpose other than as provided in this Agreement. However, neither party shall have an obligation to maintain the confidentiality of information that (a) it has rightfully received from another party prior to its receipt from the disclosing party; (b) the disclosing party has disclosed to a third party without any obligation to maintain such information in confidence, (c) enters the public domain or becomes generally known to the public by some action other than breach of this Agreement by the receiving party; or (d) is independently developed by the receiving party. Each party shall safeguard proprietary and confidential information disclosed by the other using the same degree of care it uses to safeguard its own proprietary and confidential information but, in no event, shall use less than a reasonable degree of care. Each party's obligation under this paragraph shall extend for a period of three (3) years following termination or expiration of this Agreement.

Security

The user is responsible for maintaining confidentiality of its username and password. Furthermore, the user is entirely responsible for any and all activities that occur under its username and password. The user is to immediately notify Flexmail nv/sa of any unauthorized use of the account or any breach of security. The user may change their password at any time by following instructions in Flexmail. The user hereby authorize Flexmail nv/sa to rely on any data, notice, instruction or request furnished by the user to Flexmail nv/sa, or that Flexmail nv/sa reasonably believes to have been furnished by the user. Flexmail nv/sa is not responsible for fraud of participants or of other users of the user's account.

Termination

You may terminate this Agreement at any time by sending an email message to sales@flexmail.be or by sending written notice to Flexmail nv/sa, Felix Delhassestraat 20, 1060 Brussels, Belgium. There are no refunds for any fees paid. Flexmail nv/sa shall have no liability to you or any third party because of such termination.

Flexmail nv/sa will delete any of your archived data within 30 days after the date of termination. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability. In the event that Flexmail nv/sa terminates the Agreement, no termination fees are due.

The termination of the Agreement by either party will not affect the user's obligation to pay the charges incurred for services consumed and any fees due and payable, under the termination clause

of this contract.

Flexmail nv/sa shall not be liable to you or any third party for any claim for loss or damage arising out of the termination of the account or any other actions taken by us in connection with the termination.

Spamming Complaints

Any complaints received by Flexmail nv/sa of your alleged involvement in spamming will be forwarded to you via email. You must respond to this email to Flexmail nv/sa within 24 hours. If you fail to respond within 48 hours or you fail to show that the alleged spamming email was not sent by you, Flexmail nv/sa may terminate your account at any time without notice and without any refund. When you receive a complaint of spamming, you must immediately remove the complaining recipient from your email list, failing which Flexmail nv/sa may terminate your account at any time without notice and without a refund.

When Flexmail nv/sa receives a spam complaint from one of your contacts or from an ISP, Flexmail will move the email address of this contact to the Central Blacklist in your Flexmail account. This contact will also immediately be deleted from all of your mailing lists. You further understand that sending bulk email may cause an ISP to terminate your internet service. You are responsible for complying with the terms of service of your ISP and Flexmail nv/sa assumes no liability for your non-compliance with such terms.

Hard bounces

Flexmail nv/sa will check every campaign for hard bounces from non existing e-mail addresses based on the RFC 3463, code 5.1.1. Non existing e-mail addresses will automatically be moved to the Central Blacklist in your Flexmail account. These contacts will also be deleted from all of your mailing lists.

Disclaimer of Warranty

Flexmail nv/sa does not warrant that the functions contained in the services will be uninterrupted or error-free. Whilst Flexmail nv/sa will endeavor to ensure the service has undergone full testing, in no event will Flexmail nv/sa be liable to the User or any third party for any damages, including, but not limited to service interruptions caused by Acts of God or any other circumstances beyond our control, any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate the service, failure of any service provider, of any telecommunications carrier, of the internet backbone, of any internet servers, your or site visitor's computer or internet software, even if Flexmail nv/sa has been advised of the possibility of such damages.

At Flexmail nv/sa's request, the user agrees to defend, indemnify and to hold harmless Flexmail nv/sa, its officers, directors and employees from any claims arising from the user's use of the services or the user's breach of the terms of service, including, without limitation, claims of copyright infringement, patent infringement, misappropriation of trade secrets, libel, slander, trade libel, defamation, harassment, invasion of privacy or fraud.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND THE INFORMATION ARE PROVIDED BY FLEXMAIL NV/SA ON AN "AS IS" BASIS, AND FLEXMAIL NV/SA EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ACCURACY, OMISSIONS, COMPLETENESS, TIMELINESS OR DELAYS WITH RESPECT TO THE SERVICE, INFORMATION OR PRODUCTS.

FLEXMAIL NV/SA AND ITS AFFILIATES ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE SERVICE, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR TORT, WILL BE LIMITED TO THE AGGREGATE AMOUNT OF CHARGES FOR SERVICES PAID BY THE USER TO FLEXMAIL NV/SA WITH RESPECT TO ANY SERVICES DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIM(S).

General

This license and the rights granted under this Agreement may not be transferred or assigned by you or your company. Flexmail nv/sa is entitled to transfer and assign the rights of this Agreement to any third party.

Should any term of this Agreement be finally determined by a court of competent jurisdiction to be invalid, unenforceable or otherwise contrary to law and equity, the parties agree that such provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary to eliminate its invalidity or unenforceability, and that the other provisions of this Agreement shall remain unaffected.

No waiver, amendment, or modification of any provision of this Agreement shall be effective unless agreed to by both parties in writing. No failure or delay by either party in exercising any rights, power, or remedy under this Agreement shall operate as a waiver of any such right, power, or remedy.

These terms and conditions represent the complete, final and exclusive agreement between Flexmail nv/sa and the User, and supersede and merge all prior oral, written or electronically transmitted agreements, representations and understandings between Flexmail nv/sa and the User.

Belgian Law will govern this Agreement.