

Terms of Service

1. Introduction

Please read these Terms of Service and our Privacy Policy together with our Data Processing Agreement carefully, as you must agree to these documents in order to have permission to use our Service. These Terms of Service incorporate MageMail's Privacy Policy and Data Processing Agreement, which is hereby made a part of these Terms of Service.

These Terms of Service set forth the legally binding terms and conditions for your use of the Services.

By creating a MageMail account, you or the company or entity that you represent ("you," "your," "yours" or "customer") are consenting to be bound by and are becoming a party to these Terms of Service. You are also representing and warranting that the individual creating the account is authorized to enter into this agreement and bind such entity. Your continued use of any portion of the services shall also constitute assent to the terms of these Terms of Service. If you are using the services on behalf of a company or other entity, then all references to "you" or "your" herein shall refer to both the individual and the entity.

If you do not agree to all of the terms of these Terms of Service, you will have no right to use the Services (and you should immediately cease all such use).

2. Definitions

Throughout this Agreement, we may use certain words or phrases, and it is important that you understand the meaning of them. The terms used with capitalized letter have the meaning set forth unless expressly otherwise specified herein.

- * "Agreement" means these Terms of Service, incorporating the Privacy Policy;
- * "MageMail" refers our Site, our Services, our company or a combination of all or some of the preceding definitions, depending on the context in which the word is used;

- * “Service” or “Services” refers to the applications, including related features and capabilities, that we provide through our Site, including our e-mail marketing services and our Site itself;
- * “Site” refers to our website, www.magemail.co or www.getmagemail.com, and underlying applications;
- * “User” or “Users” refers to anyone who uses our Service, including general visitors to our Site;
- * “You” refers to you, the person who is entering into this Agreement with MageMail on behalf of yourself and your company;
- * “Customer” or “Customers” refers to your customers purchasing products or services from you;
- * “Store” refers to a single instance of an online store;

3. What MageMail Offers

MageMail provides applications and related features to send triggered and marketing e-mail campaigns for e-commerce companies using the Magento platform.

4. Eligibility

In order to use our Services, you must meet a number of conditions, including but not limited to:

- * You must not be in violation of any embargoes, export controls, or other laws of Sweden or other countries having jurisdiction over this Agreement, MageMail, and yourself.
- * You must be the minimum age required to enter into a contract in the area in which you reside, and, in any event, must not be less than 18 years of age.
- * You must not be signing up for our Service on behalf of a natural person other than yourself.

- * You must, if signing up on behalf of a person other than a natural person, have the legal authority to bind that person to this Agreement, and you hereby agree that both that person and yourself shall be jointly and severally liable for any breaches hereof.
- * You must provide us with personal information, payment information, and other information that we deem necessary to provide you with our Service.

5. Service Availability

MageMail may become unavailable from time to time due to technical, legal, business, or other reasons. You agree that MageMail shall not be liable to you for any loss arising from such unavailability, beyond the pro rata portion of our Service which you have purchased but not received.

6. Rules of Use and Compliance

You must not:

- * Violate the laws of Sweden or any foreign political entity having jurisdiction over this Agreement, whether or not the foreign political entity is a country or a subdivision (such as a state or province) or municipality (such as a city, town, county, or region) of a foreign country.
- * Post or send anything violent, threatening, pornographic, racist, hateful, or otherwise objectionable according to the opinion of MageMail and the laws of your country, the laws of your recipients' country, and the laws of Sweden.
- * Infringe on anyone's intellectual property rights, defame anyone, impersonate anyone, or otherwise violate the rights of a third party.
- * Hack, crack, phish, SQL inject, or otherwise compromise the security or integrity of the MageMail Site, Service, or its Users' computers.
- * Attempt to reverse engineer or redistribute our Service.
- * Do anything else which could bring MageMail into disrepute or violate the rights of any person.

Furthermore, you represent and warrant that your use of MageMail will comply with all applicable laws and regulations. You're responsible for determining whether our Services are suitable for you to use in light of any regulations like HIPAA, GLB, GDPR, or other relevant laws. If you're subject to regulations and you use our Service, then we won't be liable if our Service doesn't meet those requirements. You may not use our Service for any unlawful or discriminatory activities, including laws that apply to commerce in your country and the country of your Customers.

If you're located in the European Economic Area (EEA) or send to anyone in the EEA, you represent and warrant that in creating email campaigns, creating email distribution list, sending emails via MageMail, and collecting information as a result of sending emails, you:

- * Will clearly describe in writing to Users and Customers how you plan to use any data collected, including for your use of MageMail. You'll get express consent for communication to Customers and get express consent to transfer data to MageMail and be processed, and you'll otherwise comply with whatever privacy policy you have posted.
- * Have complied, and will comply, with all regulations, as well as data protection, electronic communication, and privacy laws that apply to the countries where you're sending any form of email through MageMail.
- * Have collected, stored, used, and transferred all data relating to any individual in compliance with all data protection laws and regulations. You have the necessary permission to allow MageMail to receive and process data and send communications to that individual on your behalf.
- * Agree to indemnify and hold us harmless from any losses, including attorney fees, that result from your breach of any part of these warranties.
- * Have agreed to our Data Processing Agreement.

7. Payment, Pricing, Billing, and Refunds

Payment can be made by means of a credit card. Payments will be processed by MageMail through the third party payments provider, Stripe. Unless otherwise stated, all prices are listed in United States dollars.

For triggered emails, MageMail charges 3% of sales generated by our Services. Sales are attributed if a Customer clicks through up to 30 days prior to an order, opens the email up to 7 days prior, or if they use a MageMail coupon code.

You'll be billed in arrears on the first of the month after an account has been onboarded and is live, which includes connecting your Magento based Store to MageMail, enabling the email delivery service, and adding a credit card. Fees are based on all sales attributed to MageMail with a minimum fee of \$49 per Store. For example, if MageMail generated \$2k, you would be charged \$60. If MageMail generated between \$0 and \$1,000, you would be charged \$49.

MageMail also offers bulk email service which is billed for a fixed fee based on the number of subscribers.

You agree to keep your payment method current. We will attempt to charge your credit seven (7) times after the first payment. After the 8th failed attempt, the system will automatically suspend service until the payment method has been updated or other arrangements for payment have been made.

8. Discounts

MageMail may offer discounts. MageMail may refuse to honor such discounts for any reason including, but not limited to, fraud, mistake on the part of our publication of information, actual or expected financial hardship, sale of all or part of our business, or any other reason.

9. Chargebacks and Credit Card Cancellations

Where You or a User conducts a chargeback against MageMail, You or the User shall be liable to MageMail for the full amount of the chargeback, as well as any reasonable attorneys' fees,

collection agency fees, court costs, disbursements, and other expenses that MageMail may incur as a result of the enforcement of its rights under this section.

Where a credit card cannot be charged for a continuing subscription for any reason (including insufficient credit, expiration, or suspected fraud), the account of the User using such a credit card may be terminated immediately by MageMail and any of its associated data deleted.

Without limitation on any of MageMail's rights under this section, MageMail may choose to attempt to contact a User prior to taking such action in order to attempt to give the User an opportunity to remediate the issue with the User's credit card.

10. Limited License

By providing MageMail with payment, you agree that you are paying for a subscription to be licensed to use our Services for the specified time period. You must not attempt to reverse engineer, copy, or otherwise tamper with or redistribute our Services. MageMail may revoke this license to you at any time without notice, at which point you agree that you must take all steps necessary for the purpose of removing our software and any of its derivative data from any device under your possession or control. In the event of such a license revocation, MageMail's liability to you shall be limited to the pro rata amount of the subscription period which you have purchased from us but not yet have delivered, unless you have breached this Agreement, in which case MageMail shall not be liable to you for any amount whatsoever.

11. Our Copyright

You agree not to copy, distribute, display, disseminate, or otherwise reproduce any of the information, data, and code on the Site without receiving our prior written permission.

12. Trademarks

"MageMail" is a mark used to uniquely identify our Site, Services, and business. You agree not to use this mark anywhere without our prior written consent. Additionally, you agree not to use our

trade dress, or copy the look and feel of our website or its design, without our prior written consent. You agree that this paragraph goes beyond the governing law on intellectual property law, and includes prohibitions on any competition that violates the provisions of this paragraph, including starting your own competing website or business.

13. Revocation of Consent

We may revoke our consent for your use of our intellectual property, or any other permission granted to you under this Agreement, at any time. You agree that if we so request, you must take immediate action to remove any usage of our intellectual property that you may have engaged in, even if it would cause a loss to you.

14. Representations & Warranties

WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE MERCHANTABILITY OF OUR SERVICE OR FITNESS FOR ANY PARTICULAR PURPOSE. YOU AGREE THAT YOU ARE RELEASING US FROM ANY LIABILITY THAT WE MAY OTHERWISE HAVE TO YOU IN RELATION TO OR ARISING FROM THIS AGREEMENT OR OUR SERVICES, FOR REASONS INCLUDING, BUT NOT LIMITED TO, FAILURE OF OUR SERVICE, NEGLIGENCE, OR ANY OTHER TORT. TO THE EXTENT THAT APPLICABLE LAW RESTRICTS THIS RELEASE OF LIABILITY, YOU AGREE THAT WE ARE ONLY LIABLE TO YOU FOR THE MINIMUM AMOUNT OF DAMAGES THAT THE LAW RESTRICTS OUR LIABILITY TO, IF SUCH A MINIMUM EXISTS.

YOU AGREE THAT WE ARE NOT RESPONSIBLE IN ANY WAY FOR DAMAGES CAUSED BY THIRD PARTIES WHO MAY USE OUR SERVICES, INCLUDING BUT NOT LIMITED TO PEOPLE WHO COMMIT INTELLECTUAL PROPERTY INFRINGEMENT, DEFAMATION, TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS, OR ANY OTHER ACTIONABLE CONDUCT TOWARDS YOU.

YOU AGREE THAT WE ARE NOT RESPONSIBLE FOR ANY FAILURE ON THE PART OF A PAYMENT PROCESSOR, INCLUDING STRIPE, TO DIRECT PAYMENTS TO THE CORRECT DESTINATION, OR ANY ACTIONS ON THEIR PART IN PLACING A HOLD ON YOUR FUNDS.

WE ARE NOT LIABLE FOR ANY FAILURE OF THE GOODS OR SERVICES OF OUR COMPANY OR A THIRD PARTY, INCLUDING ANY FAILURES OR DISRUPTIONS, UNTIMELY DELIVERY, SCHEDULED OR UNSCHEDULED, INTENTIONAL OR UNINTENTIONAL, ON OUR WEBSITE WHICH PREVENT ACCESS TO OUR WEBSITE TEMPORARILY OR PERMANENTLY.

THE PROVISION OF OUR SERVICE TO YOU IS CONTINGENT ON YOUR AGREEMENT WITH THIS AND ALL OTHER SECTIONS OF THIS AGREEMENT. NOTHING IN THE PROVISIONS OF THIS "REPRESENTATIONS & WARRANTIES" SECTION SHALL BE CONSTRUED TO LIMIT THE GENERALITY OF THE FIRST PARAGRAPH OF THIS SECTION.

For Jurisdictions that do not allow us to limit our liability: Notwithstanding any provision of these Terms, if your jurisdiction has provisions specific to waiver or liability that conflict with the above then our liability is limited to the smallest extent possible by law. Specifically, in those jurisdictions not allowed, we do not disclaim liability for: (a) death or personal injury caused by its negligence or that of any of its officers, employees or agents; or (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future.

IF YOU ARE A RESIDENT OF A JURISDICTION THAT REQUIRES A SPECIFIC STATEMENT REGARDING RELEASE THEN YOU HEREBY WAIVE ANY SUCH PROVISION IN LAW, REGULATION, OR CODE THAT HAS THE SAME INTENT OR EFFECT AS THE AFOREMENTIONED RELEASE.

15. Indemnity

You agree to indemnify and hold us harmless for any claims by you or any third party which may arise from or relate to this Agreement or the provision of our service to you, including any damages caused by your use of our Site or acceptance of the offers contained on it. You also

agree that you have a duty to defend us against such claims and we may require you to pay for an attorney(s) of our choice in such cases. You agree that this indemnity extends to requiring you to pay for our reasonable attorneys' fees, court costs, and disbursements. In the event of a claim such as one described in this paragraph, we may elect to settle with the party/parties making the claim, and you shall be liable for the damages as though we had proceeded with a trial.

16. Governing Law & Forum of Dispute

Any dispute, controversy or claim arising out of or in connection with this Agreement shall be governed by Swedish law and finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be Swedish. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Your use of the Services may also be subject to other local, state, national, or international laws.

If you bring a dispute in a manner other than in accordance with this section, you agree that we may move to have it dismissed, and that you will be responsible for our reasonable attorneys' fees, court costs, and disbursements in doing so.

You agree that the unsuccessful party in any dispute arising from or relating to this Agreement will be responsible for the reimbursement of the successful party's reasonable attorneys' fees, court costs, and disbursements.

17. Force Majeure

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labor shortages (including lawful and unlawful strikes),

embargoes, postal disruption, communication disruption, unavailability of payment processors, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

18. Severability

In the event that a provision of this Agreement is found to be unlawful, conflicting with another provision of the Agreement, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it.

If two or more provisions of this Agreement are deemed to conflict with each other's operation, MageMail shall have the sole right to elect which provision remains in force.

19. Non-Waiver

MageMail reserves all rights afforded to us under this Agreement as well as under the provisions of any applicable law. Our non-enforcement of any particular provision or provisions of this Agreement or any applicable law should not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

20. Termination & Cancellation

We may terminate your access to our Site and Service at our discretion without explanation, though we will strive to provide a timely explanation in most cases. Our liability for refunding you, if you have paid anything to us, will be limited to the amount you paid for goods or services which have not yet been and will not be delivered, except in cases where the termination or cancellation was due to your breach of this Agreement, in which case you agree that we are not required to provide any refund or other compensation whatsoever. Under no circumstances, including termination or cancellation of our Service to you, will we be liable for any losses related to actions of other Users.

21. Assignment of Rights

You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

22. Revisions and Amendments

We may revise or amend this Agreement from time to time. When we amend this Agreement, we will e-mail you to inform you of the amendments. Your continued use of our Service shall constitute your acceptance of any such amendments. It is Your responsibility to check the websites listed herein regularly for changes to these Terms and Conditions. If You disagree with any modifications to these Terms and Conditions, Your sole and exclusive remedy shall be to terminate the use of our Services.

23. Contact

Contact: You may contact us at hello@magemail.co. Our mailing address is BOX 7609, 103 94 Stockholm, Sweden.