

themailing.co – Terms and conditions for the supply of services

(Your attention is particularly drawn to the provisions of Clause 9 – Limitation of liability).

Background

- (A) We offer an easy-to-use online service which lets you send direct mail, pre-printed with your marketing messages and contact details, to newly-established businesses, targeting those businesses which meet your chosen criteria.
- (B) We print and despatch the direct mailings on your behalf, with your chosen content and using our platform to select the recipients based on your criteria. You wish us to provide these services and we are willing to do so, on the terms and subject to the conditions of this agreement.
- (C) You can agree to be bound by the terms of this agreement:
- when you register with us via our website, by clicking the ACCEPT button;
 - by signing and returning a printed or pdf version of this agreement which has the relevant signature blocks attached;
 - by agreeing to do so over the phone; or
 - by placing your first order for a mailing campaign.

1. Interpretation and about us

- 1.1 The definitions and rules of interpretation set out in Schedule 1 apply in this agreement.
- 1.2 themailing.co is a trading name of Gallant Bureau Limited (company number 09123425) (**we** and **us**), which is a company registered in England and Wales and our registered office (and main trading address) is at 120 Pall Mall, London, England, SW1Y 5EA. Our VAT number is GB217862591. We operate the Website.

2. Our contract with you

- 2.1 In order to use our Platform and Services, please follow the onscreen prompts and then click to confirm your acceptance of this agreement (even if you have already signed a copy of this agreement).
- 2.2 This agreement applies to your use of the Platform and to the supply of any Services by us to you. This agreement applies to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 This agreement constitutes the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in this agreement.
- 2.4 This agreement is made only in the English language.
- 2.5 You should print a copy of this agreement or save it to your computer for future reference.

2.6 We shall be entitled to vary this agreement from time to time, and shall promptly give you notice via e-mail or via the Platform of any such changes. Such changes may include:

- (a) changing or adding to our methods of delivery; and
- (b) available paper stock or other characteristics of potential Mailing Item available.

3. Buying and using Credits

3.1 You can only exchange Credits for our Services, so before you can start a Campaign, you must buy a package of Credits as available on the Website or agreed in writing with us.

3.2 In order to carry out a Campaign, please go through the self-service steps as prompted onscreen on the Website (which may include setting your Criteria, carrying out research, uploading Artwork) and then click to accept the Campaign (or notify us that you want us to proceed, as agreed between us).

4. Artwork and Services

4.1 You are responsible for ensuring the Artwork meets any criteria as to size, resolution, colours or as otherwise specified on the Website and for reviewing the online proof of the Mail Items prior to their printing and despatch. When you approve a proof, you have accepted that it does meet all such criteria.

4.2 We do not review the Artwork, so you are solely responsible for ensuring that:

- (a) none of the content of the Artwork:
 - (i) infringes the Intellectual Property Rights of any third party;
 - (ii) is obscene, defamatory or likely to cause offence; and
 - (iii) discriminates against any person or group of persons on grounds of race, colour, religion or belief, gender, disability or sexual orientation or on any other unlawful basis;
- (b) all Artwork complies with all UK and other relevant laws and all relevant codes of practice relating to advertising, direct mailing and sales.

4.3 If we detect or are informed that any Artwork does not comply with Clause 4.2, then without prejudice to our rights under Clause 11.1(a), we may immediately suspend the Services and block your access to the Platform. For these purposes, you agree that we may open and inspect any sealed mailings.

4.4 You will indemnify us and hold us harmless against all losses and liabilities incurred by us as a result of any failure by you to comply with Clause 4.2.

4.5 You are responsible for the security of any login and access codes (eg passwords) we issue in relation to your account. You are responsible for paying for any Campaign created using your access details and for its content.

4.6 We will provide the Services with reasonable skill and care, including ensuring that we take an online feed from Companies House as available, in relation to all new incorporations and the details available in relation to them. We are not responsible for verifying the accuracy of the data provided by Companies House or any other third party information provider nor are we responsible for ensuring that any particular data feed is available.

- 4.7 We will endeavour to comply with any timetable or timescale you specify for the printing and despatch of Mail Items, but cannot guarantee this.
- 4.8 We shall not be liable for any failure by us to comply with this Agreement to the extent that such failure is caused by:
- (a) use of the Platform contrary to our instructions; or
 - (b) access by any person who has obtained your access codes.
- 4.9 We do not warrant that the Services or your use of the Platform or Services will be uninterrupted or error-free and shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Platform and the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5. Rights

- 5.1 All Intellectual Property Rights in and to the Artwork are vested in you and you grant us the right to use such Artwork solely for the purposes of providing the Services.
- 5.2 All Intellectual Property Rights in and to the Platform, the Services, the Documentation and the Website are vested in us and you are granted a right to use such IPRs solely for the purpose of receiving the Services.
- 5.3 You have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Platform or in whole or in part except to the extent that: (i) any element of the Platform is open source and publicly available; and/or (ii) any reduction of the Platform to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Platform with the operation of other software or systems used by you, unless we are prepared to carry out such action at a reasonable commercial fee or have provided the information necessary to achieve such integration within a reasonable period, and you shall request us to carry out such action or to provide such information and shall meet our reasonable costs in providing that information.
- 5.4 You may not use any such information provided by us or obtained you during any such reduction permitted under Clause 5.3 to create any software whose expression is substantially similar to that of the Platform nor use such information in any manner which would be restricted by any Intellectual Property Rights subsisting in it.
- 5.5 You shall not:
- (a) access all or any part of the Platform in order to build a product or service which competes with the Platform or the Services; or
 - (b) use the Platform or Services to provide services to third parties; or
 - (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make available the Platform or the Services; or
 - (d) attempt to obtain, or assist third parties in obtaining, access to the Platform or the Services, other than as provided under this agreement.

6. Charges and payment

- 6.1 In consideration for the provision of the Services, you will acquire and use Credits in accordance with this Agreement.
- 6.2 You will buy and pay for Credits in accordance with the process and at the price set out on the Website or as agreed in writing with us. All payments will be in pounds sterling, unless otherwise stated.
- 6.3 Our charges are exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay for the Credits.
- 6.4 You must pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.5 Credits are non-refundable nor may they be traded or redeemed for any monetary equivalent. Credit can only be used as a pre-payment for our Services, as set out on the Website.

7. Warranties and indemnities

- 7.1 Both you and we warrant and undertake to each other that each of us:
- (a) has all requisite corporate power and authority to enter into this agreement and to carry out the transactions contemplated herein; and
 - (b) has obtained all consents, permissions and licences necessary for the purposes of this agreement.
- 7.2 We warrant to you that your use of the Platform and Services in accordance with this agreement shall not infringe the Intellectual Property Rights of any third party.
- 7.3 We shall defend, indemnify and hold you harmless for all direct losses, reasonable expenses, claims, actions, proceedings, damages and costs (including without limitation court costs and reasonable legal fees) you may incur or suffer directly arising out of or directly in connection with any claims or allegations by a third party that its Intellectual Property Rights have been infringed by your use of the Platform or Services in accordance with this agreement, and excluding any claim arising in the circumstances set out in Clause 7.4.
- 7.4 You shall defend, indemnify and hold us harmless for all direct losses, reasonable expenses, claims, actions, proceedings, damages and costs (including without limitation court costs and reasonable legal fees) we may incur or suffer directly arising out of or directly in connection with any claims or allegations by a third party that its Intellectual Property Rights have been infringed by our use of the Artwork in accordance with this agreement.
- 7.5 The indemnities in Clauses 7.3 and 7.4 are given provided that if any third party makes a claim, or notifies an intention to make a claim, against the indemnified party which may reasonably be considered likely to give rise to a liability under the applicable indemnity, the indemnified party shall:
- (a) give the other prompt written notice of any such claim, specifying the nature of the claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the claim without the other party's prior written consent;

- (c) provide the other party with reasonable co-operation in the defence and settlement of such claim; and
- (d) give the other party sole authority to defend or settle the claim.

8. Use of personal information

- 8.1 We will use any personal information you provide to us to:
- (a) provide the Services;
 - (b) process your payments of the Charges; and
 - (c) inform you about similar services that we provide, but you may stop receiving these at any time by contacting us.
- 8.2 Further details of how we will process personal information are set out in our privacy policy, which we will make publicly available.
- 8.3 Each party undertakes to the other to comply with the Data Protection Laws. In particular you agree that, by determining the Criteria and requiring us to apply the Artwork and despatch the Mail Items, you are the controller in respect of the personal data processed as part of providing the Services and accordingly you are responsible for determining whether such processing is permitted under the Data Protection Laws and whether and in what manner any consent of the relevant data subject is required.

9. Limitation of liability

- 9.1 Nothing in the agreement limits or excludes our liability for:
- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to Clause 9.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of use or corruption of software, data or information;
 - (e) loss of or damage to goodwill; and
 - (f) any indirect or consequential loss.
- 9.3 Subject to Clause 9.1, our total aggregate liability to you arising under or in connection with the agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to £100,000.
- 9.4 Except as expressly stated in this agreement, we do not give any representations, warranties or undertakings in relation to the Services. Any representation, condition or warranty which might be implied or incorporated into this agreement by statute,

including without limitation the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982, by common law or otherwise are, to the fullest extent permitted by law, excluded from the agreement.

9.5 This Clause 9 will survive termination of the agreement.

10. Confidentiality

10.1 We each undertake that we will not at any time during the agreement, and for a period of five years after termination of the agreement, disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers (**Confidential Information**), except as permitted by Clause 10.2.

10.2 We each may disclose the other's Confidential Information:

(a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out our respective obligations under the agreement. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this Clause 10; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Each of us may only use the other's Confidential Information for the purpose of fulfilling our respective obligations under the agreement.

11. Termination

11.1 Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the agreement with immediate effect by giving written notice to you if:

(a) you commit a material breach of any term of the agreement and (if such a breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so; for these purposes a failure to comply with Clause 4.2 will be a material breach which is not remediable;

(b) you fail to pay any amount due under the agreement on the due date for payment;

(c) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(d) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or

(e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the agreement has been placed in jeopardy.

11.2 Termination of the agreement will not affect your or our rights and remedies that have accrued as at termination.

- 11.3 Any provision of the agreement that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.
- 11.4 On termination of this agreement for any reason:
- (a) all licences and permissions granted under this agreement shall immediately terminate;
 - (b) each of us shall return and make no further use of the other's Confidential Information, any equipment, documentation, property, and other material including disks and tapes containing Confidential Information of the other (and all copies of them) belonging to the other;
 - (c) any rights, remedies, obligations or liabilities of you or us that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced; and
 - (d) both you and we shall provide a certificate signed by an officer of that party, certifying that the provisions of Clauses 11.4(a) and 11.4(b) have been complied with.

12. Events outside our control

- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the agreement that is caused by any act or event beyond our reasonable control.
- 12.2 If such act or event takes place that affects the performance of our obligations under the agreement:
- (a) we will contact you as soon as reasonably possible to notify you; and
 - (b) our obligations under the agreement will be suspended and the time for performance of our obligations will be extended for the duration of the act or event. We will arrange a new date for performance of the Services with you after the act or event is over.
- 12.3 You may cancel the agreement if we affected by such an act or event for 30 days or more.

13. Communications between us

- 13.1 Any notice or other communication given by one of us to the other under or in connection with the agreement must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
- 13.2 A notice or other communication is deemed to have been received:
- (a) if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - (c) if sent by email, at 9.00 am the next working day after transmission.
- 13.3 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

13.4 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

14. General

14.1 We may assign or transfer our rights and obligations under the agreement to another entity but will always notify you in writing if this happens.

14.2 You may only assign or transfer your rights or your obligations under the agreement to another person if we agree in writing.

14.3 Any variation of the agreement only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

14.4 If we do not insist that you perform any of your obligations under the agreement, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

14.5 Each Clause of this agreement operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

14.6 This agreement is between you and us. No other person has any rights to enforce any of its terms.

14.7 This agreement is governed by the law of England and Wales and you and we each irrevocably agree to submit all disputes arising out of or in connection with the agreement to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1: definitions and rules of interpretation

Definitions

Marketing Item	Marketing message and contact details to be printed on the Mail Items in a Campaign, which must be uploaded via the Website and be in one of the formats set out on the Website and comply with any other guidelines (eg as to size and resolution) and with Clause 4.2;
Acceptance	Event of mailing triggered when you click the ACCEPT button when you have entered the Criteria
Platform Information	The meaning given in Clause 10.1 and, in respect of you, shall include the Artwork, and, in respect of us, shall include the software comprising the Platform and the Documentation;
Virtual Credits	The meaning given in s3(6) of the DPA 2018; Credits of value which you buy via the Website and which can be exchanged for Services as part of a Campaign, in accordance with the Website or otherwise agreed with us. The number of Credits to be exchanged per Mail Item in any Campaign (or other Services) will depend on the characteristics of the Mail Item (including the location of the Recipient) or the relevant Services, as set out on the Website or otherwise agreed with us;
Criteria	Criteria you select in order to target the appropriate recipients of the Mail Items, which you select as part of your Campaign via the Website, including: <ul style="list-style-type: none">• search criteria, which may include selecting entries on a drop-down list (eg SIC codes) or entering text, as the Website allows;• specific timings for despatch of Mail Items; and• the maximum number of Recipients to which Mail Items should be despatched;
Applicable Data Protection Laws	General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 (the DPA 2018);
Personal Data	The meaning in s3(5) of the DPA 2018;
Platform Documentation	Such user guides and documentation (in whatever form, such as a wiki or FAQs) provided by us or made available on the Platform from time to time, relating to the use and functionality of the Platform
Intellectual Property Rights or IPRs	Patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case

whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

em	mail item we print as part of the Services, which sets out: <ul style="list-style-type: none">• the Artwork;• the address of each recipient; and• the correct postage or other delivery charge and, weight and other characteristics of which can be selected via the Website or otherwise agreed with us;
ial data	means meaning given in s3(2) of the DPA 2018;
m	Platform we make available from time to time via the Website (or any other website notified to you by us from time to time), through which we provide the Services, including any software and Intellectual Property Rights embodied in such platform;
sing	means meaning given in s3(4) of the DPA 2018;
ent	organisation identified by the Platform as conforming to the Criteria in relation to a particular Campaign, the number of which will be either the maximum number set out in the Criteria, or, if fewer, the actual number of recipients generated;
es	Services comprise: <ul style="list-style-type: none">• processing the Criteria via our Platform to generate the list of Recipients;• printing a Mail Item for each Recipient; and• despatching each Mail Item by post; and any software, code, file or programme which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices;
te	/themailing.com/ or such other websites as we may specify from time to time;

Rules of interpretation

In this agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a statute or statutory provision includes:
 - (i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;
 - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and
 - (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- (c) a reference to:
 - (i) any party includes its successors in title and permitted assigns;
 - (ii) a **person** includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
 - (iii) a Clause is to a clause of this agreement, to a Schedule is to a schedule to this agreement and to a Paragraph is to a paragraph within a Schedule;
 - (iv) writing or written includes fax but not e-mail, save in accordance with Clause 13;
- (d) the headings of Clauses and Schedules are for convenience only and shall not affect the interpretation of this agreement;
- (e) any undertaking under this agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing; and
- (f) the rule known as the *ejusdem generis* rule shall not apply nor any similar rule or approach to the construction of this agreement and accordingly general words introduced or followed by the word **other** or **including** or **in particular** shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.