

Terms of use

Last updated: 28 Sep 2023

1. Introduction and Acceptance of Terms

The Ortto Service

Ortto Inc. (“Ortto”, “we” or “us”) is providing a software as a service offering (“Service”) comprising:

- (a) a platform with a collection of applications and tools to allow you to automate your sales and marketing processes; and
- (b) other supporting products and services.

The following terms and conditions (“Terms”) are between you and Ortto and constitute a binding legal agreement (“Agreement”) that governs your use of the Service. By using the Service, you are agreeing to accept and comply with the Terms, which Ortto may update from time to time, except any changes will not be retroactive. You understand and agree that your continued use of the Service after the Terms have changed constitutes your acceptance of the Terms as revised.

Legal Capacity/Authority

To use and/or register for the Service, you agree that you must be of legal age to form a binding contract with Ortto.

If you use the Service on behalf of an entity, you represent and warrant to Ortto that you have the authority to bind that entity to these Terms, and your acceptance of these Terms will be treated as acceptance by that entity. In that event, “you” and “your” in these Terms will refer to that entity.



2. The Service

Access to the Service

Ortto will provide you access to the Service in accordance with the order form or in-app agreement entered into between you and Ortto.

Limitations on Use

Ortto may impose certain limitations on the use of the Service, including, without limitation, allocating certain levels of bandwidth and storage capacity (including number of contacts that may be stored) to your Ortto Service and restricting the number of emails you may send using the Service. Certain limits can be increased by upgrading your contacts tier.

Your Ortto Account

You agree to provide accurate and complete information when you register with, and as you use, the Service ("Service Registration Data"), and you agree to update your Service Registration Data to keep it accurate and complete.

You should not share your account and/or password details with another individual. You are solely responsible for maintaining the confidentiality and security of your account and for all activities that occur on or through your account, and you agree to immediately notify Ortto of any security breach of your account.

Feedback

Ortto may provide you with the opportunity to submit comments, information, feedback and ideas regarding our company, products or services, and any such comments that you communicate to us ("Feedback") will be deemed, at the time of communication to Ortto, the property of Ortto, and Ortto shall be entitled to full rights of ownership, including without limitation, unrestricted right to use or disclose such Feedback in any form, medium or technology now known or later developed, and for any purpose, commercial or otherwise, without compensation to you.

Software Updates



As part of the Service, you may from time to time receive updates to the software from Ortto which may be automatically downloaded and installed to your device or hosted by Ortto. These updates may include bug fixes, feature enhancements or improvements, or entirely new versions of the software. You agree that Ortto may automatically deliver such updates to you or include such updates as part of the Service and you shall receive and install or, as the case may be, utilize, them as required.

You acknowledge and agree that Ortto shall not be responsible or liable in any way for any damages you incur or allege to have incurred, either directly or indirectly, as a result of the software updates described above.

3. Term, Automatic Renewals and Termination

Subscription Term

The term of each subscription shall be as specified in the applicable order form or “in-app agreement”.

Automatic Renewals

Except as otherwise specified in an order form or in-app agreement, and unless terminated, subscriptions will automatically renew for additional renewal terms equal to the initial subscription term.

Except as expressly provided in the applicable order form or in-app agreement, renewal of promotional or one-time priced subscriptions will be at Ortto’s applicable list price in effect at the time of the applicable renewal.

Termination

Enterprise or Managed Accounts

Either party notifies the other party of termination, in writing, at least 30 days before the end of the corresponding Initial Term or any Renewal Period, in which case the Order Form will terminate upon the expiry of the applicable Initial Term or Renewal Period.

Non-Managed Accounts



Non-managed accounts can cancel anytime in-app via the Plan & Billing Page. Any cancellations will be required to complete the remainder of their term, as represented in-app

Material Breach Termination

Either party may terminate a subscription by written notice to the other party if the other party commits a material breach of this Agreement and such breach shall continue unremedied for a period of 30 days after the other party receives written notice of such breach.

Effects of Termination

Upon termination of your subscription, you will lose all access to the Service and any portions thereof, including, but not limited to, your Ortto account and any content, contacts, data or documents generated, published or stored by the Service.

The termination of this Agreement or a subscription for any reason shall not affect a party's rights or obligations that expressly or by their nature continue and survive (including, without limitation, the payment terms and the provisions concerning ownership, confidentiality, limitation of liability, indemnity and the warranty disclaimers).

4. Fees

Payment

You agree to pay the fees applicable to your access to the Service. Ortto may suspend or terminate your account and/or access to the Service if your payment is late and/or your designated payment method cannot be processed. By providing your designated payment method, you represent and warrant that you are authorized to use the designated payment method and that you authorize Ortto (or our third-party payment processor) to charge your payment method for the total amount of your subscription (including any applicable taxes and other charges). If the payment method cannot be verified, is invalid, or is otherwise not acceptable, your access to the Service may be suspended or terminated.

Unless otherwise stated in your order form or in-app agreement, all amounts are due and payable on receipt of the invoice.

Except as otherwise expressly stated herein or in an order form or in-app agreement, payment obligations are non-cancellable and fees paid are non-refundable. Ortto will not issue refunds



or credits for partial months of Service, plan downgrades, or refunds for unused time if you cease use of the Service before the end of your subscription term.

Taxes

All quoted fees are exclusive of taxes, which Ortto will charge or invoice as applicable, and you agree to pay any such taxes applicable to your access to the Service as determined based on the laws and regulations of the taxing authority(ies) governing your location.

Upgrades and Downgrades

If you upgrade your contacts tier (either by choosing to subscribe to a higher tier or by exceeding the limits of your previous tier) or if you choose to add optional components to your subscription during your subscription term, any additional cost will be prorated over the remaining days in your then-current subscription term and charged to your applicable payment method. You will be charged the full adjusted rate upon any renewal of your subscription term.

If auto-upgrade is enabled on your account, and you exceed your plan contact limit for 7 consecutive days, your account will be automatically upgraded to the next tier and any additional cost will be billed to your account as applicable.

You agree that your account owner, billing contact, and administrative users are authorized to upgrade your contacts tier and add optional components to your subscription on your behalf.

You acknowledge that, if you wish to downgrade your contacts tier for your next renewal term, merely removing your contacts within the Service is not sufficient. Instead, you will need to give Ortto written notice of your downgrade request at least 30 days before the end of your then-current subscription term* and the downgrade will then be effective for your next renewal term.

Free Trial

Ortto may make the Service available to you on a trial basis, free of charge. Ortto may terminate any such free trial period in its sole discretion.

DURING THE FREE TRIAL, THE SERVICE IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND ORTTO SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICE FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH



CASE ORTTO'S LIABILITY WITH RESPECT TO THE SERVICE PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$100.

5. Ortto Privacy Policy

By using the Service, you consent and agree to the collection and use of certain information about you and your use of the Service in accordance with Ortto's Privacy Policy. Please note that when you conduct transactions with other companies via the Service, you may also be subject to their privacy policies and other terms and conditions.

You further understand, agree and consent to this information and any of your personal information being transferred to the United States, Australia and/or other countries for storage, processing and use by Ortto and/or its affiliates in accordance with Ortto's Privacy Policy.

For more information, please [review our Privacy Policy](#).

Where your use of the Service includes the processing of personal data (as described in the EU Data Protection Directive 95/46/EC—"GDPR") within the European Economic Area (EEA), the terms of the data protection addendum ("DPA") available at <https://www.ortto.com/gdpr> shall apply to such processing, and shall be incorporated into these Terms, provided and from the date that you send to "privacy AT ortto.com" a copy of the DPA signed by you in accordance with the instructions therein. In such event, if any provision of the DPA is in conflict with these Terms, the provision in the DPA shall be controlling with respect to that particular subject matter.

You agree that Ortto may identify your company name and/or logo as an Ortto customer on client lists, marketing materials and/or press releases. If you wish to be excluded from this program, do so by emailing: "help@ortto.com".

6. Content and Your Conduct

Content

"Content" means any information that may be posted, generated or encountered through use of the Service, such as data files, written text, scripts, software, music, graphics, photographs, images, sounds, videos, messages and any other like materials.



By submitting or posting Content to the Service (such as with respect to emails, SMS and other Content you intend to publish), you grant Ortto a worldwide, perpetual, fully paid-up, royalty-free, non-exclusive, sublicensable (including via multiple tiers of sublicensing) license to use, store, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content on or via the Service (i) for the purpose for which such Content was submitted or made available and (ii) to comply with law or legal process, in each case, without any compensation or obligation to you.

You are responsible for all of your Content. You represent that you have the right to upload, download, post, transmit, store or otherwise make available all the Content in your account. You further represent that you are the owner of such Content and/or have all necessary rights, licenses, and authorization to distribute it and to grant the licenses granted by you in this Agreement. You agree that any Content that you upload, post, transmit, store or otherwise make available shall not infringe or violate the rights of any other party (including intellectual property rights) or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene, objectionable or harassing.

Your Conduct

You agree that at all times, in relation to the use of the Service by you, you will comply with the Ortto Acceptable Use Policy. The Ortto Acceptable Use Policy is available at: <https://help.ortto.com/user/latest/ortto-acceptable-usage-policy/>.

You are responsible for all complaints in respect of your Content. You will cooperate fully with us in respect of any complaint including providing all information in respect of such complaint and responding to the allegations promptly and respectfully. You will do all things to mitigate the adverse impact of any complaint.

You agree to comply with all applicable laws and regulations when using the Service.

You agree that you will NOT use the Service to do any of the following:

- sell or promote any goods or services which are dangerous, harmful, illegally obtained or unlawful in any way, which create risk of loss or damage to person or property;
- upload, download, post, email, transmit, store or otherwise make available any Content that is unlawful, harassing, threatening, harmful, tortious, defamatory, libelous, abusive, violent, obscene, vulgar, invasive of another's privacy, hateful, racially or ethnically offensive, or otherwise objectionable;
- stalk, harass, threaten or harm another;



- pretend to be anyone, or any entity, you are not or otherwise misrepresent your affiliation with a person or entity;
- engage in any copyright infringement or other intellectual property infringement, or disclose any trade secret or confidential information in violation of any confidentiality obligation;
- post, send, transmit or otherwise make available any unsolicited or unauthorized email or SMS messages, advertising, promotional materials, junk mail or SMS, spam, or chain letters, including, without limitation, bulk commercial advertising and informational announcements. To be specific, you may not send any unsolicited email or SMS messages using the Service, and will only contact email addresses and phone numbers with the prior consent of recipients. You are solely responsible for your communications and their legality under all laws and regulations;
- take any action designed to mislead recipients as to the origin of any Content transmitted through the Service (“spoofing”);
- upload, post, email, transmit, store or otherwise make available any material that contains viruses or any other malicious or harmful computer code, files or programs designed to harm, interfere with or limit the normal operation of the Service (or any part thereof), or any other computer software or hardware;
- interfere with or disrupt the Service (including accessing the Service through any automated means, like scripts or web crawlers), or any servers or networks connected to the Service, or any policies, requirements or regulations of networks connected to the Service (including any unauthorized access to, use or monitoring of data or traffic thereon);
- upload any personal information of others who have not consented to share such personal information with you;
- exploit the Service in any unauthorized way whatsoever, including, but not limited to, by trespass;
- copy, sell, resell, rent, trade, modify, loan, distribute, sublicense, create a derivative work of, reverse engineer, decompile, or otherwise attempt to discover the source code (unless expressly permitted or required by law), grant a security interest in, assign, transfer or otherwise convey any right in the Service;
- use the Service for timesharing or service bureau purposes or otherwise for the benefit of a third party;
- subvert any storage limits or burdening network capacity;
- plan or engage in any fraudulent or illegal activity; and/or
- gather and store personal information on any other users of the Service to be used in connection with any of the foregoing prohibited activities.

If you breach this Agreement, your access to the Service may be suspended or terminated.



Access to Your Account and Content

You acknowledge and agree that Ortto may monitor, access, use, preserve and/or disclose your account information and Content if legally required to do so or if we have a good faith belief that such access, use, disclosure, or preservation is reasonably necessary to: (a) comply with legal process or request; (b) enforce these Terms, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Ortto, its users or third parties as required or permitted by law. We have the right but not the obligation to monitor and track your use of the Services, all Content, including campaigns which you run, including to track your compliance with the Ortto Acceptable Use Policy.

Removal of Content

Although not obligated to do so, Ortto will have the right to review your Content to determine whether you comply with the Terms, and may pre-screen, move, refuse, modify and/or remove your Content at any time, without prior notice and in its sole discretion, if such Content is found to be in violation of these Terms or is otherwise objectionable. You agree to remove any Content when reasonably requested to do so by Ortto.

Backup Your Content

You are responsible for all of your Content, including backing up, to your own computer or other device, any Content that you store or access via the Service and for ensuring that you retain a duplicate copy of your Content. Ortto does not guarantee or warrant that any Content you may store or access through the Service will not be subject to inadvertent damage, corruption or loss.

7. Proprietary Right

Subject to the limited rights expressly granted hereunder, Ortto and its licensors reserve all of their right, title and interest in and to the Service, including all of their related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

8. Indemnity



You shall indemnify and hold harmless Ortto and its affiliates, officers, agents, employees, and licensors from claims, suits, actions, demands and proceedings (including action by a government authority) and all losses, damages, costs, expenses (including reasonable attorneys' fees) and liabilities related thereto arising out of or related to: (a) any Content you submit, post, transmit, or otherwise make available through the Service; (b) your use of the Service, including without limitation Content which may be offensive, indecent, or objectionable; (c) use of your Account, whether or not such use is expressly authorized by you; (d) any violation by you of these Terms, including, without limitation a breach by you of the Ortto Acceptable Use Policy; or (e) your violation of any rights of another.

9. Disclaimer of Warranties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE", EXCLUSIVE OF ANY WARRANTY WHATSOEVER. ORTTO DOES NOT MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND ORTTO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. Limitation of Liability

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORTTO ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER FOR THE SERVICE GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

NO EVENT WILL ORTTO HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ORTTO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF YOUR REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW



11. General

These Terms and those in your order form or in-app agreement constitutes the entire agreement between you and Ortto and govern your use of the Service, and completely replaces any prior agreements between you and Ortto in relation to the Service. If any part of these Terms is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The failure of Ortto to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. You agree that, except as otherwise expressly provided in these Terms, there shall be no third party beneficiaries to this Agreement. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all order forms and in-app agreements), without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempted assignment in derogation of this section will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Use of the Service, including transferring, posting, or uploading data, software or other Content via the Service, may be subject to the export and import laws of the United States and other countries. You agree to comply with all applicable export and import laws and regulations. In particular, but without limitation, the Service may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Service, you represent and warrant that you are not located in any such country or on any such list. You further agree not to upload to your account any data or software that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software. Ortto shall not be responsible to you for our failure to comply with any part of this Agreement, if this is the result of events beyond our reasonable control, including, but not limited to, acts of God, pandemics, epidemics, war, insurrection, riots, terrorism, crime, employment shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond its control. Ortto may provide you with notices regarding the Service, including changes to these Terms, by email, SMS, regular mail, or by postings on its website and/or the Service. Any litigation or other dispute resolution between you and Ortto arising out of or relating to these Terms or your use of the Service will take place in the Northern District of California, and you and Ortto hereby consent to the personal jurisdiction of and exclusive venue in the state and federal courts within that District with respect to any such litigation or



dispute resolution. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California without regard to its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

*applies to annual subscriptions and managed accounts