

Cactus Mailing Terms of Service

These Terms of Service (these “**Terms**”) form an agreement between you, the customer and Cactus Mailing Company (“**Cactus Mailing**”) regarding your use of our Postcard Marketing Services (“**Services**”). These Terms are in addition to the other terms and conditions described in the quotation document attached to these Terms (the “**Quotation**”). By ordering our Services, you agree to these Terms. If you do not agree to these Terms, you should not order our Services.

1. **Scope of Services**

The Services to be provided under these Terms are described in the Quotation. Please, ensure you check the necessary boxes, select the package that best fits your needs, and uncheck any boxes you do not need. We will not offer any refunds for any Service already rendered.

By placing an order with Cactus Mailing, including if you do so on behalf of an entity, you represent that you have the authority to place the order and that you permit us to deliver – where applicable – the mailing on your behalf.

2. **Refusal of order**

Cactus Mailing may refuse to mail your order, if in our judgment, we believe that it contains any copy, photographs, or illustrations of any kind that is privacy-invasive, degrading, libelous, unlawful, profane, obscene, pornographic, tends to ridicule or embarrass, is in bad taste, or which in our sole judgment is an infringement on a trademark, trade name, service mark, trade dress, or other intellectual property rights belonging to a third party entity or individual.

3. **Postal handling and delivery**

Cactus Mailing has no control over the United States Postal Service (“**USPS**”) and its delivery schedule, we cannot guarantee when the mail deposited with or released to the USPS will be delivered. You release Cactus Mailing of any delays or losses after we have delivered the order to the USPS.

When Cactus Mailing mails the order to the USPS, it is inspected for proper preparation, and if approved, it is accepted into the mail delivery stream. Cactus Mailing will, upon request, provide you with a copy (in pdf format) of the 3600-FCM (for First Class Mail) or 3602-R (for Standard Mail). This document originates from the USPS’ PostalOne website and is often referred to as a “Postage Receipt” or “Receipt of Mailing.”

You hereby expressly agree that the Postage Receipt – be it the 3600-FCM or 3602-R – shall constitute proof that we have completed the mailing of your order and that Cactus Mailing has completed its obligation and has no further obligation or liability for the mailing. You further agree that the Postage Receipt will satisfy any and all disputes, claims, or issues you may bring in relation to our Services.

All requests for Postage Receipts (3600-FCM or 3602-R) must be made no later than 14 days after the mailing has been delivered to the USPS.

You hereby understand that there is always a possibility that the USPS may delay, damage, or lose the mail. You further understand and agree that we shall not be held liable for any liabilities you may suffer from the USPS delaying, damaging, or losing the mail after we have successfully delivered it to them.

Mail Tracking is accomplished by embedding a code in the barcode of each mail piece, which is then scanned at various stages throughout the mail delivery process. As the USPS does not always scan every piece at every location, you acknowledge that Cactus Mailing is not responsible for any missed scans, incomplete data, inaccurate reports, late deliveries, or lost mail and that all contact with the USPS regarding delivery issues is your responsibility.

4. Alternative delivery methods

Cactus Mailing, at its sole discretion, may opt to use shipping, transportation, or delivery methods other than USPS. This is typically referred to as "Drop Shipping," and any postage savings resulting from any Drop Shipping will be retained by Cactus Mailing as these savings are considered when providing prices and quotes for our Services.

5. No warranty on response rate

You agree that Cactus Mailing guarantees no response rates to mailings. Certain factors may affect the rate of response, including the mailing list, level of interest, and the mail content.

Any response rates discussed by Cactus Mailing by any of its employees or those contained in any marketing material, including on our website, are only projections of potential response rates. Cactus Mailing does not offer any refunds for low or no response rates.

6. Digital marketing; impressions

Digital display advertising impressions are obtained/purchased through an auction process. You understand that Cactus Mailing has no control over the auction process and the resulting cost of ad impressions. If Cactus Mailing, at its sole discretion, determines that the cost of ad impressions is higher than anticipated, Cactus Mailing may opt to reduce the number of impressions and issue a prorated refund to you or extend the end date of the campaign until the ordered number of impressions are fulfilled.

7. Increase in postage rate

You are aware that the postage rate or fee may be increased by the USPS. In such a case, you agree that you are responsible for any additional increase. Any increase in postage rate that becomes effective before or during the execution of our Service will, at our sole discretion, be passed to you. This includes orders that were placed with both estimated and flat rate postage.

8. Fees and payment

8.1 Fees and charges: You agree to the fees described in the Quotation. You agree that the fees for our Services are due upon placing an order. We accept payments via credit card as provided on the Quotation page we send to you. Cactus Mailing, at its sole discretion, may offer terms in which a deposit fee payment is accepted with the remainder of the Service to be paid on a "pay-as-you-go" basis in which the remaining amounts owed are divided by the number of mail-outs the campaign/order is for.

You hereby agree that the next portion of the fees that is due for the next mail-out will be charged to the credit card you provide within 7 to 10 days before the mail-out is scheduled to be delivered to the USPS.

8.2 Changes to Fees: Cactus Mailing reserves the right to change its fees at any time without notice to you. Likewise, we reserve the right to suspend, end, or limit any offers or incentives at any time. In the event that the fees of any of our Services in a Quotation are listed in error, we reserve the right to cancel your order or correct the fees. If we correct the fees, we shall notify you and let you decide if you want to proceed or cancel the order.

8.3 Sales tax: Client is solely responsible for any sales, use or transaction tax that may be applicable. The Client understands that quotations do not include these taxes and if Cactus Mailing is required to collect any of these taxes on the client's order that the tax amount will be added to the order during the invoicing process.

9. Order cancellation

Cactus Mailing understands that certain circumstances may prompt you to cancel your order for our Services. If you wish to cancel your order, you may notify us via our email address at info@cactusmailing.com. You are responsible for confirming that Cactus Mailing receives your order cancellation request.

If you request a cancellation-for orders cancelled prior to the proof approval for the first mail out the client will be charged for any work already performed plus a cancellation fee of \$180. For cancellations after the proof approval for the initial mail out the client will be charged for work performed plus 50% of any unperformed work excluding postage.

10. Inactive projects

If we do not receive any communication from you regarding your order for 14 days, we shall move your order to the "Inactive Projects" category, and we will resume your project only when you communicate or perform your obligation. If your project remains inactive for more than 30 days, we reserve the right to abandon or terminate the project and these Terms.

11. Placing your order on hold

You may request that we put your order on hold by submitting your request via our e-mail address at info@cactusmailing.com. After receiving the request to place the order on hold Cactus Mailing will determine based on production status whether the project can be placed on hold. If the project can be placed on hold Cactus Mailing will determine how long the project can be placed on hold and whether the hold will result in additional fees.

If you request that we pause your order and the hold period extends over 90 days, we reserve the right to cancel your order subject to Section 9 of these Terms. You will be responsible for any postage and/or price increases that occur while the project is on hold.

12. Mailing lists

The industry average for returns on non-deliverable mail – even after list processing (CASS, PAVE, & NCOA) – is between 10% and 15%. If Cactus Mailing provides the mailing list, we will give a per-piece refund based on the per-piece price you paid for any amount returned over the 15% threshold. To obtain such credit you must return all of the returned mail pieces to Cactus Mailing prior to the issuance of any refunds.

If you provide the mailing list for your project, we will use your mailing list solely to perform our Services. We guarantee confidentiality with respect to your mailing list.

13. Proofing

Once we complete the design of your order, we will email you a link for your review and approval. You are 100% responsible for proofreading the design prior to approving the proof and thereby authorizing Cactus Mailing to proceed with the printing. This includes designs and/or artwork you submit and designs and/or artwork created or modified by Cactus Mailing and presented to you for review and approval.

Please, provide any feedback and changes in a timely manner. If we do not receive feedback from you in a reasonable time, we will proceed with the printing without liability.

14. Color accuracy

Cactus Mailing will make every effort to produce a reasonable representation based on the materials you supplied and the proof we provide. Cactus Mailing will strive to print the materials in accordance with industry printing standards. However, because of the differences in equipment, paper, inks, and other conditions, a variance between electronic proofs and the completed job may occur. We do not guarantee any color matching due to these circumstances.

15. Material layout

You are responsible for proofreading your layout to comply with the standards required by the USPS. Cactus Mailing reserves the right to refuse the printing of any material that we believe, in our best judgment, is illegal, immoral, unethical, or inappropriate for distribution to the USPS or the internet.

We will duly notify you if we believe any material you provide does not comply with the USPS regulations or any ethical standard, and you will be allowed to make the necessary changes to meet the requirements.

16. Production schedule and turnaround time

Delivery schedules, turnaround times, and other similar terms used by Cactus Mailing merely reflect the average completion time of similar orders and may be affected by run lengths, special customer requirements, workloads, holidays, or equipment breakdowns and are not contractual. It is your responsibility to plan time-sensitive mailings far enough in advance to accommodate any delays that may occur. Cactus Mailing will not give refunds and/or credit as a result of unforeseen delays that affect the project schedule.

For Expedited Projects, if Cactus Mailing does not print or ship the order on schedule, you will be entitled to a refund of the expedited fee paid but the project may not be canceled.

17. Call tracking number

You agree that the tracking number provided will only be used for calls generated from marketing material and services by Cactus Mailing. Service to numbers used for purposes other than authorized by Cactus Mailing will be terminated immediately.

Ninety days after your last mail date, the call tracking service will end, and the number will be released. If you choose to record telephone calls, you expressly agree and acknowledge that you will follow and abide by all applicable laws and regulations of call recording and that Cactus Mailing Company shall have no liability whatsoever in respect of any use made by you, your employee, contractor, officer, agent, authorized representative or other third parties, of the recordings and its contents, and/or of any personal information.

18. Errors in mailing

Cactus Mailing makes every effort to ensure that its Services are accurate and error-free. However, we cannot guarantee that all mailings will be delivered successfully due to factors outside of our control, including errors in mailing addresses, changes in postal regulations, and unforeseen delays in postal delivery.

If we are notified of an error in the mailing that was caused by our mistake, we will take all reasonable steps to rectify the error as quickly as possible. This may include re-mailing the material or refunding the fees.

However, we are not responsible for errors in mailing that are caused by incorrect or incomplete information provided by you, including incorrect mailing addresses, incorrect postal codes, or incomplete recipient information. It is your responsibility to ensure that all mailing information is accurate and up to date.

19. Storage of materials

For orders with no scheduled future mailings, Cactus Mailing will contact you and provide options for the disposition of any stored materials. If you fail to respond to (or choose) one of the provided disposition options within 10 days, Cactus Mailing shall have the right to dispose of the stored materials without liabilities for any liabilities you may incur.

20. Ownership of materials/designs

All materials you supply in connection with your order shall remain your intellectual property. We shall use your materials solely to perform our Services.

Any materials Cactus Mailing creates with respect to your order shall become the intellectual property of Cactus Mailing and can only be used for printing, mailing, and digital projects produced and managed by Cactus Mailing. You hereby agree not to redistribute or recreate the design or any portion without written approval from us. Unless you write to us, we reserve the right to distribute samples of your mail piece and include them on our website or any media controlled by us, including for our marketing purposes. Additionally, Cactus Mailing reserves the right to reuse concepts and artwork it creates in designs for other clients.

21. Warranty

Cactus Mailing warrants that the project will be free from defects in material and workmanship. If you notice any imperfections in your order, please reach out to us, and we will make all reasonable efforts to remedy the defect at no additional cost to you. Claims for defects, damage, or shortages must be made in writing and must be received by Cactus Mailing within 5 days of receipt or 15 days of the mail date, whichever is sooner.

This warranty does not cover defects or damages caused by misuse, abuse, neglect, accidents, or modifications to the project made by anyone other than us. Additionally, this warranty does not cover defects or damages resulting from acts of nature, such as floods, earthquakes, or hurricanes.

This warranty is in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. In no event shall we be liable for any damages arising from the use or inability to use our Services, including but not limited to direct, indirect, incidental, punitive, or consequential damages.

22. Liability limitation

YOU AGREE THAT YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. UNDER NO CIRCUMSTANCES SHALL CACTUS MAILING BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGE, INCLUDING DAMAGES OF LOSS OF PRIVACY, REVENUE, INTEGRITY, BUSINESS DEALS, OR ANY INTANGIBLE DAMAGES AS A RESULT OF YOUR USE OR INABILITY TO USE OUR SERVICES – EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF CACTUS MAILING IS FOUND LIABLE FOR ANY DAMAGES RELATED TO THE PRODUCTION, SHIPPING, OR DELIVERY OF ANY MAILING, CACTUS MAILING'S TOTAL LIABILITY SHALL NOT EXCEED THE FEES YOU PAID FOR OUR SERVICES.

23. Indemnity

You hereby agree to defend, indemnify, and hold Cactus Mailing harmless from and against any liabilities, damages, expenses, disputes, court actions, or claims brought against Cactus Mailing and its affiliates by a third party resulting from circumstances where Cactus Mailing, acting as your agent, uses copy, photographs, or illustrations that are believed by the third party to be degrading, libelous, or harmful to their reputations, images, or standing in the community, or which in Cactus Mailing's sole judgment, is an infringement on a trademark, or trade name, or service mark, or other intellectual property rights belonging to a third party entity or individual.

24. General terms

- 24.1 Entire agreement:** These Terms represent the entire agreement between you and Cactus Mailing with respect to the Services described in the Quotation. These Terms supersede any promises, conversations, covenants, or discussions before them – whether they are written or made orally via email or phone conversations.
- 24.2 Severability:** If any paragraph, provision, or clause under these Terms is found by any applicable court to be invalid or unenforceable, such a paragraph, provision, or clause shall be deemed severable, and it shall not affect the validity and enforceability of the remaining paragraphs, provisions, and clauses.
- 24.3 Governing law and jurisdiction:** These Terms and any related disputes between us shall be settled in accordance with the laws of the State of Arizona without regard to conflict of law and its principles. You agree to submit any claims to any State or Federal courts located in the State of Arizona.
- 24.4 Electronic communications:** By using our Services, you agree to receive electronic communications from us, including emails, phone calls and texts, and these Terms. By agreeing to these Terms, you acknowledge that electronic communication methods are a necessary part of our Services and that such communications satisfy legal requirements.
- 24.5 Force majeure:** Cactus Mailing shall not be liable for any delay or failure to perform its Services under these Terms if such delay or failure is caused by events or circumstances beyond our reasonable control, including but not limited to acts of God, war, terrorism, strikes, lockouts, or other labor disputes, natural disasters, government regulations or restrictions, or interruptions or failures of utility or transportation services.