

# Terms of Service

BY ACCESSING OR USING ANY PART OF OUR WEBSITES OR NETWORKX ONLINE PRODUCTS, YOU AGREE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO BE SO BOUND, DO NOT ACCESS OR USE THIS WEBSITE OR OUR PRODUCTS. YOU MAY ALSO BE ASKED TO RE-ACCEPT OUR THEN-CURRENT TERMS EVERY TIME YOU MAKE ANY USE OF ANY PRODUCT PROVIDED BY NETWORKX ONLINE. REGARDLESS, YOU ARE BOUND BY THESE TERMS IF YOU PROCEED TO USE OUR SITE OR SYSTEM IN ANY WAY.

Any questions concerning this agreement should be referred to [support@faxburner.com](mailto:support@faxburner.com). We are happy to negotiate alternative terms so long as that takes place before Your use of our products.

- 1. Agreement.** This Terms of Service agreement (“TOS” or “Agreement”) is a legally binding agreement made by and between Networx Online, Inc. (“Networx Online”, “We” or “Us”) and You personally and, if You use FaxBurner for business, Your business entity (collectively, “Client” or “You”). These TOS govern Your use of FaxBurner and all related Web pages, applications, portals and interfaces (collectively, the “Site”) and the products We offer on or through the Site, so please read it carefully.
- 2. Limited License Granted.** Upon payment of all required fees, and so long as You continue in compliance with these terms and with the law, You will be granted a limited, revocable, non-exclusive license to access the selected faxing products and services (“System” or “Products”) until this Agreement is terminated.
- 3. Data Sources and Ownership of Leads.** Networx Online is not a data broker or lead generator. Rather, it is merely a facsimile platform – a “common carrier.” As such, Networx Online has no ability, is not responsible, and assumes no obligations regarding the source or accuracy of Your telephone number lead data, which must be selected by Client. It is solely Client’s responsibility to select a compliant data source.
- 4. Privacy.** Your visit to our Site is also governed by our Privacy Policy. Please review our Privacy Policy at <https://www.faxburner.com/homepage/privacy>. We reserve the right, and You authorize Us, to use and assign all information regarding use of the Site by You and all information provided by You in any manner consistent with our Privacy Policy. We may use information collected by it, including technical or diagnostic information and Your suggestions or feedback, to maintain, improve, and enhance the System. We have no control over, and are not responsible for, the privacy of any content that You have shared with others, so always use caution when providing any personally identifiable information. You agree to be solely liable for any consequences arising from Your disclosure of private information.

- 5. Proprietary Rights and Ownership.** The System is owned, trademarked and copyrighted by Networx Online, Inc., and is protected by United States copyright, trademark and other state, federal, and international intellectual property laws. Through use of the System, You may have access to information, communications, software, photos, text, video, graphics, music, sound, images, and other materials owned, trademarked or copyrighted by Networx Online, Inc. (“Content”). You do not have any ownership interest in the Content, the System, or improvements and modifications to the System. Nothing in this Agreement shall be construed to transfer any of the Site’s proprietary or intellectual property rights to You. Except to the extent permitted by law, You may not modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile, or otherwise attempt to decipher any code in connection with the System and/or any other aspect of this Site’s technology.
- 6. Confidential Information.** You agree to keep confidential and safeguard, using commercially reasonable means, all Networx Online information You may view or obtain through Your use of the Site or System.
- 7. Registration for System.**
- a) To use the System, You must register by providing the Site with current, complete and accurate information as prompted by the registration process. You are responsible for updating such registration data as necessary. You shall provide the Site with accurate, complete and updated registration information. You shall not knowingly provide inaccurate information with the intent to create a false identity.
- (b) You also agree not to provide false or misleading information to the Site. This includes, but is not limited to, providing a false e-mail address in the FROM: field on outgoing emails.
- (c) As part of the registration process, You may create Your own account on the Site by completing the online registration and membership processes, and You must do so if You would like to make a purchase. In doing so, You must provide Us with accurate and complete registration information, and update it if this information changes. It is particularly important to keep the email address associated with Your account current because although You may be able to log into Your Site account using an old email address, You will not be able to receive messages from Us about Your account or other matters. We will create an account for You and assign You, or allow You to select, a password. You must keep Your password confidential. You will be responsible for all use of Your password, including, without limitation, any use by any unauthorized third party. You must notify Us immediately if You believe Your password may be used by any unauthorized person or entity. For security purposes, We recommend You change Your password often. Under no circumstance should You respond to a request for Your password. Our employees will never ask for Your password in any manner via any means of communication. You must notify Us immediately if You receive such a request.

(d) You agree that the Site is a neutral host of the System and has no responsibility or liability in relation to any representations You may make as part of Your use of the System.

(e) You agree that the Site may rely on any data, notice, instruction or request furnished to the Site by You, which is reasonably believed by the Site to be genuine and to have been sent or presented by a person reasonably believed by the Site to be authorized to act on Your behalf.

(f) You shall notify the Site immediately at support@faxburner.com of any known or suspected unauthorized uses of Your account, or any known or suspected breach of security, including loss, theft or unauthorized disclosure of Your password. The Site shall not be liable for any loss that You may incur as a result of a third party using Your password or account, either with or without Your knowledge. You may be held liable for losses incurred by the Site and/or another party due to a third party using Your account or password.

(g) Any fraudulent, abusive or otherwise illegal activity shall be grounds for termination by Us and referral to the appropriate law enforcement agencies.

(h) You acknowledge and agree that You will promptly notify Us if You are aware of any person who, in Your good faith opinion, is or is intending to take unfair advantage of the System provided by the Site.

(i) We reserve the right to send email to You for the purposes of informing You of applicable offers, changes or additions to the System or Site.

(j) Our use of any information provided by You, including, without limitation, registration data and/or payment information, is set forth in the Site's current privacy policy.

## **8. User Conduct.**

(a) We retain the right, at our sole discretion, to determine whether Your conduct is consistent with the letter and spirit of this Agreement and may terminate your access if Your conduct is found to be inconsistent with the same.

(b) Any unauthorized use of the Site, or the resale of the System, is expressly prohibited. You agree to abide by all applicable local, state, national and international laws and regulations and are solely responsible for all acts or omissions that occur under Your account or password, including the content of Your transmissions through the Site or System. By way of example, and not as a limitation, You agree not to:

- I. Use the System in connection with chain letters, junk email, pyramid schemes, illegal or unethical testimonials, cross soliciting, money games,

- spamming, or any duplicative or unsolicited messages (commercial or otherwise);
- II. Harvest or otherwise collect information about others, including without limitation phone numbers and/or email addresses, without their consent;
  - III. Create a false identity or forged email, or otherwise attempt to mislead others as to the identity of the user or the origin of the message;
  - IV. Transmit through the System unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature;
  - V. Transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity;
  - VI. Libel, defame or slander any person, or infringe upon any person's privacy rights;
  - VII. Transmit any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs;
  - VIII. Violate any U.S. law regarding the transmission of technical data or software exported from the United States through the System;
  - IX. Interfere with or disrupt networks connected to the System or violate the regulations, policies or procedures of such networks;
  - X. Attempt to gain unauthorized access to the System, other accounts, computer systems or networks connected to the System, through password mining or any other means;
  - XI. Interfere with another's use and enjoyment of the System or another entity's use and enjoyment of similar services;
  - XII. Transmit unsolicited commercial email or "spam," as defined in the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM" Act) (15 U.S.C. §7701) or, if applicable, Canada's Anti-Spam Law ("CASL"), illegally create or collect e-mail addresses, deceptively use e-mail relays or transmissions, or otherwise violate the CAN-SPAM Act or CASL; or
  - XIII. Engage in any other activity that might subject either You or Us to criminal liability, money judgments or other civil penalties.

(c) Client is required to use the Site and Products in full compliance with all applicable laws and regulations, including without limitation, all state, federal and international: (a) professional licensing requirements; (b) Do-Not-Call ("DNC") list prohibitions; (c) telephone solicitor registration and bonding requirements; (d) consumer cancellation rights; (e) wireless calling restrictions; (f) restrictions on the use of automatic telephone dialing systems and pre-recorded messages; (g) opt-out rules; (h) mandatory disclosures (i) intellectual property rights and restrictions; and (j) all other product and industry regulations. By making any use of the Products or Site, Client expressly warrants to Networx Online that Client is and shall continue to act in full compliance with the law. All Networx Online offers are void where prohibited by law. Client agrees that Client has read and understands the FTC's Telemarketing Sales Rule ("TSR"), the FCC's Telephone Consumer Protection Act ("TCPA"), if applicable, the Canadian Radio-television and

Telecommunication's Unsolicited Telecommunications Rules ("UTR"), and all other applicable laws and regulations. Client should review these rules with Client's own legal counsel to ensure that Client understands and is fully compliant. Networx Online does not assume responsibility for ensuring that Client's marketing campaigns meet applicable legal requirements. Networx Online will not assume any liability if Client is ever held guilty or liable for any law violation. Notwithstanding the foregoing, Client acknowledges that Networx Online has and is taking active steps to ensure the compliance of its customers, including by having Client agree to these terms and otherwise. Additional compliance obligations include:

- I. Cell Phones: Client understands that the TCPA and similar laws may prohibit certain types of calls and messages to wireless phones without prior express written consent and agrees to assume all risks related to the same. Client should investigate such laws and only elect to call or message a wireless phone if Client is confident that it can legally do so.
- II. SAN Numbers & DNC: (For telemarketing messages specifically) Client acknowledges that certain sellers and telemarketers may be required to purchase their own Subscription Account Number ("SAN") to access the National DNC registry, including all area codes into which they call or transmit messages. Client agrees to obtain a SAN number and all applicable area codes, unless exempt. Client agrees to purchase and scrub against any applicable state or federal DNC list, unless exempt. Client shall refrain from marketing to any consumer who has opted-out by asking not to receive future marketing from Client. Client (not Networx Online) shall be responsible for maintaining and enforcing an internal DNC list of consumers who have opted out of Client's marketing.
- III. Do-Not-Call List Suppression: (For telemarketing messages specifically) Client agrees not to place telemarketing calls to numbers on any then active state or federal Do-Not-Call ("DNC") database or on their own internal, entity specific opt-out list. Client shall suppress all such DNC related numbers from its lists at least once every 31 days, or more frequently if required by law. Client shall retain proof of all such DNC suppression habits, along with a written DNC policy and records demonstrating Client enforced the same. The only exceptions to this provision shall be if either the calls will be exclusively non-telemarketing/advertising, as defined by law, or if Client demonstrated that it has Well-documented proof of the call recipient's prior express written consent to be called.

(d) We do not take any responsibility for monitoring any usage of the System. It is Your responsibility to ensure that all usage of the System complies with these Terms and Conditions.

## **9. Payments.**

(a) We reserve the right at any time to charge fees for access to the Site or the System as a whole or in part. In the event that We so elect, a notice shall be posted at an appropriate location on the Website. Client has no obligation to continue using the System in such case.

(b) If You order or purchase any type of fee-based account or additional fee-based service from the Site, You authorize the Site to utilize its merchant account provider to charge Your account provided during the purchase/enrollment process. You authorize the Site to charge Your account a monthly subscription fee. Fees are non-refundable, even in the event of a termination, except in the sole discretion of Networx Online.

(c) It is Your responsibility to keep Your payment information accurate and current with the Site. If a monthly payment cannot be processed, You will not be able to access Your account until You have paid all outstanding amounts. Failure to rectify the situation within a reasonable amount of time will lead to a cancellation of the account as described below.

(d) If You contact the Site directly with a specific request for cancellation and refund, including substantial justification for the refund, the Site, in its discretion, may issue a refund of Your current month's payment. No refunds are allowed for annual fee charge or any signup fee, including the shipment of physical goods. If You have concerns about the use of the System, You must sign up with the monthly fee option. Should the Site, in its discretion, make a refund outside of these conditions, the refund will not include a refund for the cost of physical goods delivered. In addition, if the Site, in its discretion, makes a refund for an annual payment, then the refund will be prorated to deduct the highest monthly fee paid by any customer for the months in which the annual service was used.

## **10. Submitting/Importing Information.**

(a) You represent to Us that any and all email addresses and phone numbers that You upload into the system are for individuals who have opted in or are otherwise legally contactable by You. You also represent that any content You upload to the System is owned by You or provided to You with the express authority of the owners, does not infringe upon any other individual's or organization's rights (including, without limitation, copyright, trademark or intellectual property rights).

(b) By submitting content, data or leads to any "Public Area" (e.g. public chat rooms, bulletin boards, auto responder, etc.), You automatically grant to the Site a royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, sell, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such content, data, or leads (in whole or part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or later developed for the full term of any rights that may exist in such content.

(c) Although the Site provides industry standard encryption to protect certain personal information which is transmitted, You understand that Your uploads and transmissions may be intercepted and used, and that all the risk associated therewith is solely Yours. You shall not upload to, or distribute or otherwise publish through the System any Content, which is libelous, defamatory, obscene, pornographic, abusive, or otherwise violates any law. As We do not and cannot review every facsimile created by You, You shall remain solely responsible for the content of Your facsimiles.

(d) We reserve the right to disclose information about sales and usage generated by the System in forms that do not reveal Your personal identity.

**11. Idea Submissions.** We welcome specific comments regarding the System. If You send Us creative suggestions, ideas, notes, drawings, concepts or other information (collectively “Information”), the Information shall be deemed, and shall remain, the property of the Site. None of the Information shall be subject to any obligation of confidentiality on the part of the Site and the Site shall not be liable or owe any compensation for any use or disclosure of the Information.

**12. Trademarks.** Networx Online, FaxBurner, and others are either trademarks or registered trademarks of Networx Online, Inc. Other product and company names mentioned on this Site may be trademarks of their respective owners.

**13. No Legal, Financial or Tax Advice Provided.** No financial, legal, or tax advice or counsel is given, or shall be deemed to have been given by Networx Online or its affiliates and contractors, or by the Products.

**14. Indemnification.** Client shall assume, pay, indemnify, hold harmless and reimburse Networx Online and its owners, employees, agents, affiliates, contractors, successors and assigns for any and all liabilities, damages, claims, suits, settlements, judgments, investigations, costs, and expenses (including reasonable attorney’s fees and court costs) directly or indirectly incurred by Networx Online to the extent the same are related in any way to this Agreement or to Client’s use of the Products. Upon receipt of any demand or claim by Networx Online related to Client, Networx Online may elect to turn the defense and resolution of such claim over to Client, who shall then bear all costs and expenses and shall promptly investigate and settle or otherwise resolve any such claim to Networx Online’s full satisfaction. Alternatively, Networx Online may elect to defend any such claim on its own and then to obtain reimbursement from Client on an ongoing basis or at the conclusion of the matter. In either case, Networx Online and Client shall cooperate and share necessary information in any such defense. Client realizes that Networx Online may be required by law to provide certain information about Client if Networx Online receives a subpoena from a court or regulator with competent jurisdiction.

**15. Limitation of Liability; No Warranty; Limitation of Damages.** Neither party shall be liable for any consequential, incidental, special or indirect damages (including, but not limited to, loss of profits, goodwill, use, data, or other intangible items) even if the other party has been advised of the possibility of such damages or losses. Networx Online is

not responsible for any failure of a third-party DNC or wireless list provider to deliver its data accurately, completely or in a timely way, Networx Online is not responsible for damages resulting from improper or incomplete use by Client of Networx Online's products and services. With respect to any other damages, Networx Online's liability hereunder shall in no event exceed an amount equal to the amount actually paid by Client to Networx Online in the month prior to a claim being made, regardless of the basis for the claim. Client understands that this is a significant limitation on Client right to sue Networx Online and Client should not proceed if Client does not agree. Networx Online shall not be bound by any typographical or other error or misprint in its marketing materials or online purchase Websites, so long as Networx Online provides prompt notice of any such error and corrects the same, upon discovery. Except as otherwise provided herein, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL NETWORKX ONLINE OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS, EVEN IF NETWORKX ONLINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**16. Copyrights and Copyright Agent.** If You believe Your work has been copied in a way that constitutes copyright infringement, please provide a notice containing all of the following information to our Copyright Agent:

- (a) An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- (b) A description of the copyrighted work that You claim has been infringed;
- (c) A description of where the material that You claim is infringing is located on the Site;
- (d) Your address, telephone number, and email address;
- (e) A statement by You that You have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (f) A statement by You, made under penalty of perjury, that the above information in Your notice is accurate and that You are the copyright owner or authorized to act on the copyright owner's behalf. Our Copyright Agent is designated to receive notice of claims of copyright infringement on the Site is Networx Online, and can be reached as follows:

Networx Online, Inc.  
1968 S. Coast Hwy., Laguna Beach, CA 92651  
support@faxburner.com  
888-928-7637



- 17. Applicable Law & Venue for Disputes.** You agree that the laws of the State of California, without regard to conflicts of law provisions, will govern this Agreement, Your use of the System and any dispute that may arise between You and Us. Any future legal proceeding between the parties shall be brought and heard only in the State and Federal courts of California and You hereby irrevocably consent to the jurisdiction of the same.
- 18. Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.
- 19. Non-Solicitation.** While this Agreement is in effect and for a period of at least 1 year after termination, neither party shall solicit for employment any employee or contractor of the other.
- 20. Term and Termination.** This Agreement shall become effective on the date it is agreed upon by both parties. The initial term of this agreement shall be for one (1) calendar month or such other term as is agreed upon by the parties in writing. The Agreement will then automatically renew, if has not been cancelled by either party, for additional 1-month renewal terms or such other terms as agreed upon by the parties in writing. This Agreement may be terminated by either party at any time, for any reason or no reason, on notice to the other or by Client's ceasing payment of fees. If Networx Online determines, in its sole discretion, that Client has or may have breached this Agreement in any way or violated the law with regard to its marketing campaigns or its use of the Products, Networx Online may immediately suspend or terminate this Agreement.
- 21. Survival.** Any provision of this Agreement, which by its nature, would naturally survive the termination of this Agreement, shall expressly survive any termination, including without limitation, those provisions related to indemnity, compliance with law, intellectual property, non-circumvention and notices.
- 22. MODIFICATIONS. WE RESERVE THE RIGHT TO MAKE CHANGES TO THESE TERMS AT ANY TIME. YOUR CONTINUED USE OF THE SITE OR PRODUCTS CONSTITUTES ASSENT TO ANY NEW OR MODIFIED PROVISION OF THIS AGREEMENT THAT MAY BE POSTED ON THE WEB SITE.**

**23. Contact Information:**

HOW TO CONTACT US:  
Networx Online, Inc.  
1968 S. Coast Hwy., Suite 1800  
Laguna Beach, CA 92651  
888-928-7637

[support@faxburner.com](mailto:support@faxburner.com)

LAST REVISED AND EFFECTIVE: 11/06/2018