

Terms of Use

Thank you for selecting GiftTool.com Inc (hereinafter referred to as "GiftTool") as your online application service provider. The terms and conditions in this agreement (the "Agreement") will govern your use of GiftTool services and our general principles for all of our affiliates. Use of the services available to you from the GiftTool web site is subject to the following terms and conditions.

THE FOLLOWING DESCRIBES THE TERMS ON WHICH GIFTTOOL OFFERS YOU ACCESS TO OUR SERVICES

In this Agreement, the word "Service" shall be understood to refer to the use of any GiftTool online application and transaction processing services; the use of the data obtained by use of the services; and associated use of the GiftTool web site. The word "you" shall be understood to refer to the client organization and/or any of its duly appointed representatives authorized to conduct business on behalf of the organization with GiftTool. Your use of the services confers no title or ownership in the services. All ownership rights remain in GiftTool.com Inc.

1. Client Eligibility

Our services are available to all businesses and non-profit organizations, except for our Canadian tax receipting service, which is limited to duly registered Canadian charities and organizations working with duly registered charities. You will provide true, accurate, and current information about yourself as requested by the sign up, registration or billing process.

2. The Application and Transaction Process

- 2.1 Once you have registered for one or more GiftTool services, we will provide you with links to place on your site. You'll be able to interact immediately; your customer will be able to simply click the link and interact with the application and / or make a credit card transaction on the pages that will open. After each financial transaction, GiftTool will send you an email showing the amount of the transaction, non-private customer information, and other information pertinent the transaction. Your GiftTool services will be connected to your internet merchant account / payment gateway solution, which will handle the final behind-the-scenes processing of the credit card transactions, disbursing any funds collected directly to your organization.
- 2.2 **Tax Receipts:** If you choose to use the GiftTool donation tax receipting service, GiftTool will provide electronic tax receipts to your online donors that meet the standards of the Canada Revenue Agency. If you do not choose to use the GiftTool tax receipting service, you are responsible for issuing tax receipts as requested by customers using GiftTool to donate to your charity. The e-receipt that you receive after each transaction will show either the tax receipt # that has been issued on your behalf, or that you must issue a receipt.

3. GiftTool is only a Service

- 3.1 **Overview:** GiftTool provides services that collect, process, and disburse online transactions; that collect participant responses; and that support email marketing. These services are offered on an "as is" basis. GiftTool does not actively solicit business on any organizations behalf. As such, we have no control over the quantity or amount of transaction including the creditworthiness of transaction and of your customer.
- 3.2 **Secure Transaction:** Due to the difficulty of user authentication on the Internet, GiftTool cannot and does not confirm each customer's proper identity. We make every effort to obtain customer information during the transaction process. However, customers are only required to provide enough information to complete the transaction (i.e. name and credit card #). We do this in order to make the process as easy and efficient for customers as possible, leaving customers free to supply additional information if they so choose.
- 3.3 **Release:** Due to our role as a temporary transaction recipient, we make no warranty or guarantee as to the creditworthiness of your customer. In the event that you have a dispute with one or more of the customers, you release GiftTool (and our officers, directors, agents, subsidiaries and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. This will include those jurisdictions in which a general release does not extend to claims, which the creditor does not

know or suspect to exist in its favour at the time or executing the release, which if known by him, must have affected his settlement with the debtor.

- 3.4 **Information Control:** We do not control the information provided by you or your customers, which is made available through our system. GiftTool is not responsible for verifying customer information beyond the extent necessary to process a transaction. Please use caution, common sense, and practice safe information exchange with all of your online customers and constituents. GiftTool reserves the right, but is not obligated to, review and approve any content posted by you. GiftTool disclaims all copyright and other rights in such content and all responsibility for them.
- 3.5 **Permission-Based Email Marketing:** With this service, you can create and send email campaigns using the tools to distribute content you create to email addresses you supply. You acknowledge that GiftTool is not the author or publisher of any email campaign, and does not create any content. You further acknowledge that GiftTool does not supply, rent or sell lists of email addresses. GiftTool retains the right to cancel and delete any campaign violating its Terms of Use as defined by GiftTool set forth in the section 12. By permitting email campaigns, GiftTool makes no warranties or representations of any kind as to the accuracy of the content, legality or suitability of the subject matter. GiftTool specifically disclaims liability for direct, consequential or incidental damages arising from such email campaigns. By posting an email campaign on the GiftTool servers, you warrant that the content is true, and that you will indemnify GiftTool against any and all direct, indirect or consequential claims and alleged claims that may arise from your use of the services. You will also indemnify GiftTool in the event that GiftTool shares your organization's name with third parties for violations of the Terms of Use. By using GiftTool services, you are giving GiftTool permission to store your content, contact lists and other information. GiftTool will use all reasonable effort to ensure posting of your email campaign at the scheduled time. However, GiftTool reserves the right to alter the delivery date and time of the campaign and the delivery of the campaign results without prior notification to you of such a change. GiftTool reserves the right at any time to limit the number of emails that can be sent per campaign.

4. Fees and Services

- 4.1 The services are charged according to the pricing plan and selection of services agreed upon by you. For the use of each service, GiftTool charges a one-time Setup Fee, a Monthly Maintenance and Support Fee, and a variable fee per Transaction, Email Sent, Survey/Test/Ballot Completed, and/or Bulk Tax Receipt Issued. As used in the Agreement, "Transactions" means the collection of all online event registrations, member registrations, one-time and monthly donations, shopping cart orders, as well as, all revenues collected from e-commerce. An "Email Sent" shall mean any email sent by you, or your Pledge-a-thon participants, using the GiftTool Email Marketing and/or Pledge-a-thon services (does not include Confirmation & Thank You emails sent automatically by GiftTool when an online transaction is completed or an electronic tax receipt is sent). A "Survey/Test/Ballot Completed" shall mean any online survey, test or ballot completed by a participant, as well as, any attached survey completed during the registration process for an Event or Membership. A respondent will have completed a survey, test, or ballot once they click the final button submitting the survey, test, ballot, event registration or member registration, regardless of whether the respondent has completed any, or all, questions. An "Imported Tax Receipt Sent" shall mean any electronic tax receipt sent by you when you manually entered or uploaded an Excel spreadsheet with your list of donors, donation amounts, and email addresses in the Bulk Tax Receipt section of the GiftTool BackOffice (does not include any electronic tax receipts automatically sent when an online donation is made). Unless otherwise stated, the fees are quoted in Canadian Dollars for Canadian currency transactions and US Dollars for US currency transactions.
- 4.2 We may change our Fees and Credits policy and the fees for our services from time to time. Our changes to the policy are effective after we provide you with at least fourteen (14) days notice of the changes by emailing you at the email address (the "Notice Address") supplied by you in the Account section of your password-protected [GiftTool account](#). You are responsible for keeping your contact information up-to-date.
- 4.3 We may, in our sole discretion, change some or all of our services at any time with proper notice given to the Notice Address. In the event that we introduce a new service, the fees for that service – if any – will be effective at the launch of the service.

- 4.4 For accounts with an active balance, invoices will be mailed to you within the first 7 days of each month. At any time you may view electronic copies of your current and previous invoices, available in the Account section of your password-protected [GiftTool account](#).
- 4.5 You are responsible for paying all fees and expenses associated with our services and all applicable taxes, which are due and payable on receipt of the invoice, and are non-refundable, regardless of any termination of this Agreement by you or GiftTool.
- 4.6 You authorize GiftTool and its agents to deduct any fees and expenses due and owing to GiftTool by you from amounts due to you; if the amounts due to you are insufficient to cover the compensation due GiftTool hereunder, GiftTool will invoice you for the remainder. You shall continue to pay the then-current Transaction Fees in effect at the expiration of the term of this Agreement on all revenues received from online Transactions, notwithstanding the termination of this Agreement. You shall also continue to be responsible for all chargebacks (credit card adjustments due to transaction cancellation) and associated chargeback fees of any kind whatsoever, notwithstanding the termination of this Agreement.

5. Installation and Access

- 5.1 **Installation:** To use our services, one or more links to our site must be posted on your web site. Installing this single line of HTML is extremely safe and easy and GiftTool is available to help you with any or all parts of the process. However, GiftTool assumes no responsibility for any harm incurred by your organization upon the installation or attempted installation of this HTML.
- 5.2 **Access:** In order to use our services, you need the equipment and connections necessary to access the World Wide Web. You are responsible for any fees associated with such connection or access (such as those charged by an Internet Service Provider).
- 5.3 **Account password and security:** You have the ability to modify your user name and password at any time from your account. You are responsible for maintaining confidentiality of your user name and password. Furthermore, you are entirely responsible for any and all activities that occur under your user name and password. You should immediately notify GiftTool of any unauthorized use of the account or any breach of security.
- 5.4 **Links on and to our web site:** As a service to our clients, we provide links to other web sites on the GiftTool web site. These sites are operated independently of GiftTool and therefore GiftTool is not responsible for the availability, content, accuracy, practices or privacy policy of other web sites and cannot be held liable for such. You may not link to www.GiftTool.com any site containing inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topics, names, material or information, or material of information that violates any applicable intellectual property, proprietary, privacy or publicity rights.

6. Maintenance

At GiftTool, we endeavour to offer the best service possible to all our clients. Performing regular maintenance on our equipment and website is part of providing constantly improving service. We will make every reasonable effort to ensure that these activities cause as little disruption as possible. However, GiftTool takes no responsibility for any loss incurred when our service is disrupted for any reason.

7. Customer Information

GiftTool collects and stores your online customer information on your behalf. GiftTool does not "own" this information and is not liable for any use of the information by your organization. Upon receiving a written request, GiftTool will destroy any of your customer records in our database except records that must be maintained to comply with applicable laws.

8. Liability

- 8.1 At GiftTool, we want your online efforts to succeed and, with our fee-per-transaction system, we have directly tied our success to yours. However, under no circumstances, including but not limited to negligence, shall GiftTool, its employees, suppliers and/or its third party agents be liable for direct, indirect, incidental, consequential, special, punitive or exemplary damages, arising from the use of or inability to use the service or any provision of the Terms, such as, but not limited to, loss of revenue or lost business.

- 8.2 You agree to indemnify, defend and hold harmless GiftTool and its subsidiaries, affiliates, officers, directors, employees, consultants, agents and licensors from any and all third-party claims, liability, damages and/or costs resulting from your failure to comply with the Terms, your infringement of the Terms, or from your violation of any applicable laws.

9. Modification of Terms and Conditions

GiftTool may, at any time and at its sole discretion, modify the terms and conditions of this Agreement. Any such modifications will be made available online and will be effective immediately upon posting to the GiftTool website. Although we may attempt to notify you when major changes are made via the Notice Address, you agree to assume responsibility for periodically reviewing this Agreement. By continuing to use the service, following the initial posting date of modifications made by GiftTool, you agree to be bound by the Agreement as amended. You may terminate this agreement in accordance with Section 10.

10. Termination of Service

- 10.1 You must provide thirty (30) days written notice of termination of your account.
- 10.2 You may not use the Service for any illegal purpose or in any manner inconsistent with the Terms. The Service may not be used to directly benefit any individual. Any fraudulent, abusive or otherwise illegal activity shall be grounds for termination of your account at the sole and unfettered discretion of GiftTool. GiftTool reserves the right to terminate your account at any time for any reason, without liability. You will receive immediate notification of any decision to terminate on the part of GiftTool via the Notice Address.

11. Privacy Policy

GiftTool takes your privacy concerns very seriously and has a strict privacy policy governing the use of all information we collect in the process of providing this service. Our privacy policy is available for your review at <http://www.gifttool.com/Privacy.html>.

12. Permission Marketing Policy

GiftTool provides email marketing services to its clients, supporting only permission-based marketing practices. Our clients use the GiftTool service to deliver permission-based personalized communications to their constituents, prospects, and customers. GiftTool has implemented various policies and procedures that encourage permission-based marketing, and help prevent GiftTool services from being used for the purpose of unsolicited email campaigns.

13. Trademarks and Intellectual Property

- 13.1 GiftTool.com, the GiftTool.com logo and other GiftTool logos and service names are trademarks or service marks of GiftTool (hereinafter referred to as the "Marks"). The Marks may not be used in connection with any product or service that does not belong to GiftTool, in any manner that is likely to cause confusion, or in any manner that disparages or discredits GiftTool or its Marks. Furthermore, you acknowledge and agree that content and design of the web site, including but not limited to any text, graphics, photographs, audio or video thereon, has been specially designed by GiftTool for presentation in a unique format and appearance, with the GiftTool look and feel (collectively "Look and Feel") and that such Look and Feel is protected by copyrights, trademarks, service marks, international treaties and/or other proprietary rights and laws of Canada and other countries.
- 13.2 You agree to grant GiftTool permission to include your organization's name and logo in the GiftTool client list, including the GiftTool website, media kit and other promotional material such as client references in sales presentations, demonstrations at conferences, trade shows, and speaking engagements, etc.
- 13.3 Third-party trademarks, service marks, logos, and trade names appearing on the GiftTool web site are the property of their respective owners.
- 13.4 You shall immediately notify GiftTool of any claim that the Service infringes upon copyright, trademark or other contractual, statutory or other common law rights.

13.5 You acknowledge that the service is the intellectual property of GiftTool. You may not copy, reproduce, recompile, decompile, disassemble, reverse engineer, distribute, publish, display, perform, modify, create derivative works from, transmit or in any way exploit any part of the service, except that you may download material from the service for application and information purposes.

14. General

14.1 **Entire Agreement:** This Agreement shall constitute the entire contract between the parties and supersedes all existing Agreements between them, whether oral or written, with respect to subject matter hereof. Neither Party shall be bound by any condition, definition, warranty or representation other than as expressly set forth in the Agreement.

14.2 **Notices:** Any notices prescribed in this Agreement to be made "in writing" may be delivered by Email, Facsimile or Post.

14.3 **Governing Law:** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario.

14.4 **Interpretation:** In construing this Agreement or determining the rights of the Parties hereto, no Party shall be deemed to have drafted or created this Agreement.

14.5 **Severability:** The provisions of this Agreement are severable, and if any one or more provisions is determined to be illegal, indefinite, invalid or otherwise unenforceable, in whole or in part, the remaining provisions of this Agreement, and any partially unenforceable provisions to the extent enforceable, shall continue in full force and effect and shall be binding and enforceable.

14.6 **Assignment:** Neither this Agreement nor any right or duty here under shall be assignable or delegable by either Party without the express consent of the other Party except for the subcontracting provisions herein provided, and nothing in the Agreement, express or implied, is intended to confer upon any person other than the Parties hereto any rights or remedies under or by reason of this Agreement. The Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, administrators, executors, legal representatives, successors in interest and permitted assigns.

14.7 **Waiver:** No waiver of any provision of this Agreement shall be deemed to be or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The failure of any Party to object to any act, omission or breach by the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of any rights or remedies hereunder or otherwise provided at law or in equity.

This Agreement was last revised on March 18, 2007.