



Textmaxx Pro Terms of Use

Overview

Welcome to Textmaxx Pro! We are a texting service that provides our subscribers with the ability to engage, communicate and interact with their customers via SMS text. These Terms of Use govern your use of our service. As used in these Terms of Use, "Textmaxx Pro service" or "the service" means the service provided by Textmaxx Pro (TMP) for sending/ receiving communications and other functions to/from mobile devices, websites, user interfaces, mobile apps, as well all content and software associated with our service.

Please note that these Terms of Use include hyperlinks that may be accessed only through our website and are available at www.textmaxxpro.com/TermsOfUse to review these hyperlinked terms.

Subscription Service, Promotional Offers, Billing and Cancellation

a. Subscription

- i. **Ongoing Subscription.** Your Textmaxx Pro subscription, which may start with a promotional offer, will continue month-to-month unless and until you cancel your membership or we terminate it. You must have Internet access and provide us with a current, valid, accepted method of payment (as such may be updated from time to time, "Payment Method") to use the Textmaxx Pro service. We will bill the monthly membership fee(s) to your Payment Method. You must cancel your subscription before it renews each month in order to avoid billing of the next month's subscription fees to your Payment Method.
- ii. **Differing Tiers.** We may offer a number of subscription plans, including special promotional plans or subscriptions with differing conditions and limitations. Any materially different terms from those described in these Terms of Use will be disclosed at your sign-up or in other communications made available to you. You can find specific details regarding your subscription with Paymaxx Pro by visiting our website and clicking on the "Login" link. We reserve the right to modify, terminate or otherwise amend our offered subscription plans.

b. Promotional Offers

- iii. Your Textmaxx Pro subscription may start with a trial, free texts, or other incentives. Any free trial period of your subscription lasts for one week, or as otherwise specified during sign-up. For combinations with other offers, restrictions may apply. Free trials are for new and certain former members only. Textmaxx Pro reserves the right, in its absolute discretion, to determine your free trial eligibility.
- iv. We will begin billing your Payment Method for monthly subscription fees at the end of the trial period of your membership unless you cancel prior to the end of the trial period. To view the specific details of your membership, including monthly subscription price and end date of your free trial period, visit our website and click the "View billing details" link after "Login". We may authorize your Payment Method through various methods, including authorizing it up to approximately one month of service as soon as you register. In some instances, your available

balance or credit limit may be reduced to reflect the authorization during your free trial period.

- v. You will not receive a notice from us that your Promotional Offer has ended or that the standard terms / paying portion of your subscription has begun. CLICK THE "LOGIN" LINK AT THE TOP OF THE TEXTMAXX PRO HOME WEB PAGE (www.textmaxxpro.com) TO FIND CANCELLATION INSTRUCTIONS. We will continue to bill your Payment Method on a monthly basis for your subscription fee until you cancel.

c. **Billing**

- vi. **Recurring Billing.** By starting your Textmaxx Pro subscription and providing or designating a Payment Method, you authorize us to charge you a monthly subscription fee at the then current rate, and any other charges you may incur (such as setup, training or overage fees) in connection with your use of the Textmaxx Pro service to your Payment Method. You acknowledge that the amount billed each month may vary from month to month for reasons that may include differing amounts due to promotional offers, overage fees, and/or changing or adding a plan, and you authorize us to charge your Payment Method for such varying amounts.
- vii. **Price Changes.** We reserve the right to adjust pricing for our service or any components thereof in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in these Terms of Use, any price changes to your service will take effect following email notice to you. For subscribers outside the United States, the subscription fees may be adjusted automatically annually, or more frequently as permitted by law, in accordance with the inflation index as established by General Price Index Market published by Fundação Getúlio Vargas ("IGP-M"), or such other index that may be applicable to the Textmaxx Pro service.
- viii. **Billing Cycle.** The subscription fee for our service will be billed at the start date of your subscription and automatically each month on that date thereafter unless and until you cancel your subscription. Subscription fees are fully earned upon payment. We reserve the right to change the timing of our billing, in particular, as indicated below, if your Payment Method has not successfully settled. In the event your paying membership began on a day not contained in a given month, we may bill your Payment Method on a day in the applicable month or such other day as we deem appropriate. For example, if you started your Textmaxx Pro subscription or became a paying subscriber on January 31st, your next payment date is likely to be between February 1 – 10, and your Payment Method would be billed on those dates. Your renewal date may change due to changes in your subscription. Visit our website and click on the "View billing details" link on the "Your Account" page to see the commencement date for your next renewal period. We may authorize your Payment Method in anticipation of subscription or service-related charges. As used in these Terms of Use, "billing" shall indicate a charge, debit or other payment clearance, as applicable, against your Payment Method. Unless otherwise stated differently, month or monthly refers to your billing cycle.

- ix. **No Refunds.** PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED TEXTING ALLOWANCES. Following any cancellation, however, you will continue to have access to the service through the end of your current billing period. At any time, and for any reason, we may provide a refund, discount, or other consideration to some or all of our subscribers ("credits"). The amount and form of such credits, and the decision to provide them, are at our sole discretion. The provision of credits in one instance does not entitle you to credits in the future for similar instances, nor does it obligate us to provide credits in the future, under any circumstance.
- x. **Payment Methods.** You may edit your Payment Method information by visiting our website and clicking on the "Login" link, available at the top of the home page of the Textmaxx Pro website. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not edit your Payment Method information or cancel your account (see, "Cancellation" below), you remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated. This may result in a change to your payment billing dates. For certain Payment Methods, the issuer of your Payment Method may charge you a foreign transaction fee or other charges. Check with your Payment Method service provider for details.
- xi. **Cancellation.** You may cancel your Textmaxx Pro subscription at any time, and you will continue to have access to the Textmaxx Pro service through the end of your monthly billing period. WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH SUBSCRIPTION PERIODS OR UNUSED TEXTS. To cancel, go to the "Login" page on our website and follow the instructions for cancellation. If you cancel your subscription, your account will automatically close at the end of your current billing period. To see when your account will close, click "View billing details" on the "Your Account" page. If you signed up for Textmaxx Pro using your account with a third party as a Payment Method, and wish to cancel your Textmaxx Pro subscription at any time, including during any promotional period or trial offer, you may need to do so through such third party, including by visiting your account with the applicable third party and turning off auto-renew, or unsubscribing from, the Textmaxx Pro service through that third party. You may also find billing information about your Textmaxx Pro subscription by visiting your account with the applicable third party.

Acceptance

- i. Textmaxx Pro service is provided by Leedom Management Group, LLC, or one of its affiliated companies.
- ii. **Services.** TMP shall provide the SMS messaging services to enable the subscriber to generate SMS messaging for the purpose of communicating with its customers (the "Services"), in addition to the services described herein. "SMS" means a short message service in the form of a text message using standardized protocols sent to a mobile phone device.
- iii. **Fees.** Subscriber will be responsible for paying all Fees when such Fees are incurred. The Fees for the Services are defined in this Agreement, on the attached Schedule A or in a pricing schedule provided online at the Textmaxx Pro website or other third party websites, and each may be amended from time-to-time in accordance with this agreement. In addition, subscriber shall owe to Textmaxx Pro an Administration Fee equal to the number of hours expended by TMP to investigate, assist and respond to Company or governmental agencies' inquiries about the provisions of Services to subscriber, at the rate of \$200 per hour, plus actual attorneys' fees incurred by Textmaxx Pro related thereto.

- iv. Subscriber must provide and is solely responsible for its own resources, facilities, provisions and the cost of appropriate telecommunication equipment necessary for subscriber to utilize the Services.
- v. **Directions.** Subscriber shall provide TMP with such mobile numbers, guidelines, provisions, content or other information (collectively, "Directions") as may reasonably be required by TMP to perform the Services. TMP may rely on any such Directions provided to it by Company and shall incur no liability as a result thereof. TMP shall not be required to follow any Directions not made or confirmed in writing. TMP may refuse to follow any Directions within its sole discretion and must inform subscriber of its reason within five (5) days. TMP shall incur no liability as a result of the information and content contained in text messages sent at subscriber's request. TMP is not responsible for Directions provided by subscriber relating to any text messaging services it performs. Subscriber is responsible for ensuring that any text messaging service it provides complies with applicable state or federal laws, including ensuring that the messages do not violate state or federal concepts of unfair, deceptive or abusive practices. TMP has no obligation to provide support, maintenance, upgrades, modifications or new releases of the Services.
- vi. **Compliance.** Subscriber represents and warrants that its Directions comply with all applicable state and federal laws and regulations. Subscriber represents and warrants that it has all appropriate licenses and registrations to operate its business and that the business will be conducted in accordance with all applicable laws. Subscriber represents and warrants that its Directions comply with the Mobile Marketing Association "Best Practices" - <http://www.mmaglobal.com/policies/code-of-conduct>. TMP will not be responsible for reviewing Directions, including the content of the text messages for compliance with any applicable law or best practices.
- vii. **Consents.** Subscriber represents and warrants that it has obtained all consents required under state and federal law for its customers to receive the SMS messages (including marketing and joint marketing/account related texts) it directs TMP to send, including but not limited to any and all consents required under the Telephone Consumer Protection Act. Subscriber also represents and warrants that no other applicable state or federal law prohibits TMP from sending any text message in accordance with the Directions.
- viii. **Non-compliance Fee.** Failure to abide by the terms this Agreement or any applicable law regarding the sending of text messages shall cause Subscriber to pay TMP a fee of \$150.00 for each instance of non-compliance.
- ix. **Licensing and Proprietary Rights.** Subscriber has a limited, non-sublicensable, non-exclusive, non-transferable, enterprise-wide right and license to use the TMP technology required to provide the Services. This license only benefits Subscriber and its employees. Subscriber acknowledges that all technologies related to the providing of the Services, its structure, organization, source code, and documentation are the property and constitute valuable trade secrets of TMP. Subscriber agrees not to: (a) decompile or disassemble any technology related to the Services, separate any technology related to the Services into its component parts, or in any way attempt to reconstruct or discover any source code or algorithms of the software related to the Services by any means whatsoever; (b) remove any product identification, trademark, copyright, confidentiality, proprietary or other notice contained on or within the technology related to the Services; (c) modify or create any derivative works from the technology related to the Services or any part thereof, except to the extent that the technology related to the Services provides for User-modifiable components (d) except as otherwise permitted herein, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer

any technology related to the Services or any component thereof; (e) otherwise copy or use any technology related to the Services for any purpose or in any manner not expressly permitted in this Agreement; or (f) knowingly permit or encourage any third party to do any of the foregoing. All rights in and to the technology related to the Services and documentation not granted to Company in this Agreement are reserved by TMP.

- x. **Privacy Policy.** All Subscriber customer data, constituting non-public personal information (“Subscriber Data”), to which TMP obtains access through providing its Services will be maintained by TMP in accordance with applicable state and federal laws. TMP represents and warrants that it will maintain appropriate safeguards to protect Subscriber Data. In the event that we and/or our units or subsidiaries are ever sold, acquired, merged, liquidated, reorganized, or otherwise transferred, we reserve the right to transfer our user databases together with any Subscriber Data contained therein, to a third-party acquiring our assets for the expressed purpose of continuing our Services.

- xi. **Data Breach.** TMP will maintain reasonable safeguards to prevent a breach of Subscriber Data. TMP shall only be responsible for a breach of Subscriber Data if the breach occurs when the Subscriber Data is in TMP’s direct control (i.e. resides on TMP server). TMP shall not be responsible for a breach that occurs in the process of Subscriber Data being sent to or sent from TMP (i.e. not on TMP server). In the event a breach occurs while Subscriber Data is in TMP’s direct control, TMP shall notify Subscriber in writing within 10 days of TMP’s knowledge of the breach or as otherwise required by law.

- xii. **Announcements.** Subscriber agrees that TMP may publicly announce and list Company as a Subscriber of TMP.

- xiii. **Audits.** Subscriber shall maintain correct and accurate books and records in connection with its activities under this Agreement. TMP shall have the right to conduct a Subscriber audit to ensure compliance with the terms of this Agreement. Any such audit shall be conducted upon reasonable notice to Subscriber (but not more than twice per calendar year) and shall not unreasonably interfere with Subscriber’s business activities. Subscriber shall also have the right to conduct an audit of TMP to ensure compliance with the terms of this Agreement. Any such audit shall be conducted upon reasonable notice to TMP (but not more than twice per calendar year) and shall not unreasonably interfere with TMP’s business activities.

- xiv. **Entire Agreement; Assignment; Binding Effect; Severability; Waiver.** This Agreement sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement will be binding on the parties and their respective successors and permitted assigns. Subscriber may not assign its rights or obligations under this Agreement without TMP’s consent. Nothing in this Agreement confers any right, privilege or claim to any third party. This Agreement may not be amended except in a writing signed by both parties. No waiver or consent is binding except in a writing signed by the party making the waiver or giving the consent. Failure of a party to exercise any rights or privileges granted by this Agreement, or insist upon the full performance of all obligations hereunder, shall not be construed as waiving any such rights, privileges, obligations, or duties, or as creating any consent contrary thereto. This Agreement shall be construed as though both parties participated in its construction. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

- xv. **Choice of law and venue.** This Agreement shall be governed by laws of the State of Florida and all parties consent to the personal jurisdiction of a court of competent jurisdiction for Sarasota County, Florida. All actions must be brought in a court of competent jurisdiction for Sarasota, Florida.

xvi. **Attorney's fees and costs.** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, costs and expenses incurred.

Plan Selection

Choose the plan that's right for you. Downgrade or upgrade at any time.

	Text	Maxx	PRO
Monthly Subscription Plan	\$49	\$99	\$199
User Licenses	1	5	10
Included Plan Text Messages	500/mo	1,000/mo	2,000/mo
Rollover Texts*	✓	✓	✓
Web to Mobile Messaging	✓	✓	✓
VIP Text Mobile App		✓	✓
T2P™ Pay by Text			✓
SFDC Leads Flow		✓	✓
Marketing Text Words		1	2
Term Contract	None	None	None
Setup	\$49	\$99**	\$199***
Annual Licensing Fee	\$49	\$195	\$495
Message Archive	5 years	5 years	10 years
One-on-One Training		✓	✓
Dedicated Account Manager		✓	✓
		** Waived with 90 Day Agreement	*** Waived with 180 Day Agreement

Initial Plan Choice

* Unused texts from the monthly plan allowance carry over for one bill cycle. **Unused rollover texts automatically expire after one billing period or with any plan change (including termination).** Unused overage texts do not roll over. Rollover texts are used after your monthly plan allowance. Unused rollover texts are not redeemable for cash or credit and are not transferable.



Credit Card Authorization Form for Recurring Charges

Please fill in the information and sign below.

Print Name of Cardholder: _____

Cardholder's Billing Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

Company Name: _____

Credit Card Type: MC VISA DISCOVER

Credit Card #: _____

Security Code: _____

Expiration Date: ____/____

I authorize _____ to initiate a recurring charge to the credit card indicated above for the total amount due each _____. I also authorize charges for any additional related services that I may incur. Charges to my account may vary.

Card Holder's Signature: _____ Date: _____

Print Name: _____

Please return form by fax or email: 941-845-0228 or info@textmaxxpro.com

TEXTMAXX PRO - 2601 CATTLEMEN ROAD SUITE 200 SARASOTA, FL 34232 - 866-367-6889