



**GMS Cloud**

## **Terms of Service**

This Gordano Limited (England and Wales Company number 04754464) ("**Gordano**", "**us**", "**our**" or "**we**") Terms of Service ("ToS") is a legal agreement between you (either an individual business end user or a business entity (that has procured use for individual end users)), (who will be referred to in this ToS as "**you**" or "**your**") and Gordano for the use of Gordano Messaging Services, and which may include cloud email messaging (GMS Cloud), groupware functionality, instant messaging, associated media, printed materials, other components and on-premise-based software modules ("**Service**") in accordance with the terms of this ToS. The Service also includes any software updates and upgrades that Gordano may provide to you or make available to you, or that you obtain after the date you obtain or first access the Service, to the extent that such items are not accompanied by a separate terms of use.

This product is only available to business users. By purchasing the product, you warrant and represent that you are doing so for business purposes and not as a consumer. The provisions of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, including the right of cancellation, shall not apply to the contract.

BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SERVICE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS ToS. IF YOU DO NOT AGREE TO THE ToS YOU HAVE NO RIGHTS TO THE SERVICE AND ARE NOT PERMITTED TO INSTALL, COPY, DOWNLOAD, ACCESS OR USE THE SERVICE.

### 1. Use of Service & Restrictions

Further to your acceptance of the ToS, Gordano hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes (and if appropriate, ancillary personal use), subject to the ToS and for as long as you or a connected third-party pays any associated fees in observance of a purchased subscription period to Gordano or Gordano's nominated partner. All rights not expressly granted to you are reserved by Gordano.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service ("**Content**") in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create internet links to the Service, frame or mirror any Content on any other server or wireless or internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

User access to the Service cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users. ("**User(s)**") means your employees, representatives, consultants, contractors or agents for whom you have purchased a User account ("**User Account**"), who are authorised to use the Service and who are using Gordano validated user identifications and passwords in accordance with any authorised third-party registration systems used in connection with the Service, where relevant.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful, hateful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorised access to the Service or its related systems or networks.

Gordano warrants that the Services will be provided in accordance with your selected Service Level Agreement current at the time you purchase the Services ("**SLA**").

Gordano provides basic support in relation to the Services as standard (information about such support is available at <http://www.gordano.com>). Extended support packages are available on request by contacting

sales@gordano.com. All support is subject to the terms of the applicable support agreement current at the time you purchase the Services and/or such support.

Gordano may add or remove functionalities or features of the Service and may suspend or stop a Service altogether. Gordano will provide reasonable notice for planned Service interruptions. Email notifications will be made via the GMS Cloud service.

You agree to maintain accurate and adequate records relating to your use of the Service and compliance with these ToS. You permit Gordano to audit you in relation to your use of the Service and compliance with these ToS. You shall provide Gordano with reasonable assistance and access to information in the course of any such audit, and you agree that Gordano may report the audit results to its licensors. Each party shall be responsible for its own costs in relation to any such audit.

## 2. Your Responsibilities

You must follow any policies or instructions made available to you within the Service. You warrant that you are or are part of a business and are using the Service as part of a business, and specifically that you will not use the Service as a consumer.

You are responsible for all activity occurring under your User account(s) and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You are solely responsible for Users' proper use of their identifications, passwords, accounts etc. used in connection with the Services. You shall: (i) notify Gordano (or your appropriate local support representative) immediately of any unauthorised use of any User identification password or account or any other known or suspected breach of security in relation to the Service; (ii) report to Gordano (or your appropriate local support representative) immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another user or provide false identity information to gain access to or use the Service.

You must not misuse the Services, for example, you must not interfere with the Service or try to access it using a method other than the interface and the instructions that Gordano (or Gordano's nominated partner) provides. You may use the Service only as permitted by law, including applicable export and control laws and regulations. Gordano (or Gordano's nominated partner) may suspend or stop providing the Services to you if you do not comply with Gordano's terms or policies or if Gordano is investigating suspected misconduct.

## 3. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments will be made annually or monthly in advance or as otherwise mutually agreed upon. You are responsible for paying for all User Accounts ordered for the entire term of each User Account, whether or not such User Accounts are actively used. Gordano reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail.

## 4. Billing and Renewal

Gordano charges and collects fees in advance for use of the Service. Gordano will automatically issue an invoice to you in accordance with the agreed payment schedule. Fees for other services will be charged on an as-quoted basis. Gordano's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties. You agree to provide Gordano with complete and accurate billing and contact information. This information includes your legal company name and/or trading name, full address, e-mail address, and name and telephone number of an authorised billing contact and administrator. You agree to update this information within 7 days of any change to it. If the contact information you have provided is false or fraudulent, Gordano reserves the right to terminate your access to the Service immediately and without notice in addition to any other legal remedies. Unless Gordano in its discretion determines otherwise you will be billed in pounds sterling and settlement of such fees shall also be provided in pounds sterling. If you believe your bill is incorrect, to be eligible to receive an adjustment or credit you must contact Gordano in writing within 60 days of the relevant invoice date and provide full details of the issue for Gordano's consideration.

## 5. Intellectual Property Ownership

Gordano or its third-party licensor alone shall own all right, title and interest, including all related unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world ("**Intellectual Property Rights**"), in and to the proprietary and licensed technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Gordano in providing the Service ("**Gordano Technology**"), the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This ToS is not a sale and does not convey to you any rights of ownership in or related to the Service, the Gordano Technology or the Intellectual Property Rights owned by Gordano. The Gordano name, the Gordano logo, GMS Cloud and any other product/service names associated with the Service ("**Branding**") are trademarks of Gordano or third parties, and no right or license is granted to use them. Where the Service contains any Branding, you shall not alter, amend, remove or obscure any Branding. The provision of the Service to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any device or software that you use to access the Service.

When you upload or otherwise submit content (other than content within emails) to interactive elements of the Service ("**User Generated Content**" or "**UGC**"), you give Gordano a worldwide, royalty free, perpetual, irrevocable, transferable license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes), communicate, publish, publicly perform, publicly display and distribute such UGC. The rights that you grant in relation to UGC are for the limited purpose of operating, promoting and improving our Services, and to develop new ones. Some Services may offer you ways to access and remove UGC that has been provided to that Service. Also, in some of our Services, there are terms or settings that narrow the scope of our use of the UGC submitted in those Services. You warrant that you have all of the necessary rights to grant Gordano this license for any UGC and that all such content shall be accurate and legal. You shall indemnify Gordano against any breach of this warranty.

## 6. Third Party Interactions

Gordano does not endorse any sites on the Internet that are linked to through the Service. Gordano provides these links to you only as a matter of convenience, and in no event shall Gordano be responsible for any content, products, or other materials on or available from such sites.

## 7. Non-Payment and Suspension

In addition to any other of Gordano's rights, Gordano reserves the right to suspend or terminate this ToS and your access to the Service and User Accounts if your account falls into arrears. Accounts in arrears are subject to interest at the maximum rate permitted by law, plus all expenses of collection. You will continue to be charged for the Service during any period of suspension. If you or Gordano initiates termination of the ToS or any User Account, you must pay the balance due on your account. You agree that Gordano may invoice you for any such fees. Gordano reserves the right to impose a reconnection fee in the event you are suspended and thereafter request the reinstatement of your access to the Service.

## 8. Term and Termination for Cause

The ToS and your User Accounts will run for the period you agree to when you pay for the Services. If you opt for an annual User account, that will last for a minimum term of 12 months, after which User accounts can either be renewed for a further period of 12 months or can switch to monthly renewals. Please note that if you switch from an annual to monthly payment profile, the fees may change

Any breach of your obligations or unauthorised use of the Gordano Technology or Service will be deemed a material breach of this ToS. Gordano, in its sole discretion, may terminate your password, User Account or use of the Service if you breach or otherwise fail to comply with this ToS. Fees will not be refunded if Gordano terminates under this provision.

You may submit any request to terminate this ToS and your User Accounts (and thus your access to and use of the Service) via any marketplace from which you have subscribed and paid for the Service. You may incur a cancellation fee and may not be entitled to any refund if you request to terminate the Service.

If at the time of any termination of this ToS and/or your User Accounts, Gordano is in possession of any of your personal data, Gordano may erase such data after ninety (90) days from termination. If you terminate during an annual subscription, you will continue to be able to access your email data until the end of the subscription period and throughout the "**Grace Period**" described below.

Following termination Gordano will use reasonable endeavours to make your data held via the Services available for a further period of 30 days ("**Grace Period**") in order to allow you to back-up your data that is held in the Services. Following the Grace Period Gordano may deep archive such data for a further 60 days ("**Archive Period**"); if access is required to this data during the Archive Period then you may request Gordano support to facilitate data repatriation via an email support facility in consideration for an access charge of £15.00 per User Account. No data repatriation will be carried out until the access charge has been paid in full.

At any point up to the date of termination of Services you will be able to back-up your own data that is held in the Services.

It is your responsibility to carry out such back-up prior to termination of the Services and Gordano shall have no liability for your failure to do so.

Email data transfer: GMS Cloud provides the ability to download all mail to your computer via POP or IMAP access with a local desktop client, such as Microsoft Outlook.

Contacts data transfer: GMS Cloud allows users to export the contacts list in a CSV or vCard format (via the GMS Cloud webmail client).

Calendar data transfer: GMS Cloud offers the ability to download an iCal file to your desktop.

#### 9. Disclaimer of Warranties

OTHER THAN AS DETAILED IN THE SLA, GORDANO MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. OTHER THAN AS DETAILED IN THE SLA, GORDANO DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND OTHER THAN AS DETAILED IN THE SLA, THE SERVICE AND CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. GORDANO ONLY GIVES THE SPECIFIC WARRANTIES DETAILED IN THE ToS. ALL OTHER CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED BY GORDANO TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

#### 10. Internet Delays

GORDANO'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. GORDANO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

#### 11. Limitation of Liability

NOTHING IN THIS ToS SHALL EXCLUDE OR IN ANY WAY LIMIT GORDANO'S LIABILITY FOR FRAUD, OR FOR DEATH AND PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR ANY OTHER LIABILITY TO THE EXTENT THAT IT CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW. IN NO EVENT SHALL GORDANO'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN CONNECTION WITH THE SERVICE (OR BY

ANY THIRD PARTY ON YOUR BEHALF), IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL GORDANO BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 12. Modification to Terms

This ToS and any policies relating to the Service can be amended by Gordano at any time, such amendments will be notified to you and will take effect immediately upon notification.

#### 13. Assignment; Change in Control

This ToS may not be assigned by you without the prior written approval of Gordano but may be assigned without your consent by Gordano to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Gordano directly or indirectly owning or controlling 50% or more of you shall entitle Gordano to terminate this ToS for cause immediately upon written notice.

#### 14. General

No text or information set forth on any other purchase order, pre-printed form or document or any other verbal representation or warranty shall add to or vary this ToS. If any provision of this ToS is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Gordano as a result of this ToS or use of the Service. The failure of Gordano to enforce any right or provision in this ToS shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Gordano in writing. This ToS comprises the entire agreement between you and Gordano and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

#### 15. Governing law

These terms and conditions shall be governed by and construed in accordance with English and Welsh law. Any disputes shall be subject to the exclusive jurisdiction of the English courts, save that Gordano may at its option enforce the terms of this ToS against you in your local jurisdiction.