Kiwi Keywords  
Terms of service

Last updated: 26/02/2022

Terms and Conditions

These terms and conditions are the contract between you and Kiwi Keywords (“us”, “we”, etc). By visiting or using Our Website, or signing up for our Services, you agree to be bound by them.

We are Kiwi Keywords (in association with Chenille Pottle trading as Pottle Web Solutions).

You are: Anyone who uses Our Website or buys Services from us.

Please read this agreement carefully and save it. If you do not agree with it, you should leave Our Website and stop using the site or the Services immediately.

**These are the agreed terms**

# Definitions

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| “Content” | means the textual, visual or aural content that is encountered as part of your experience on Our Website. It may include, among other things: text, images, sounds, videos and animations. It includes content Posted by you. |
| "Intellectual Property" | means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights. |
| “Our Website” | means any website or service designed for electronic access by mobile or fixed devices which is owned or operated by us. It includes all web pages controlled by us. |
| "Post" | means place on or into Our Website any Content or material of any sort by any means. |
| “Services” | means all of the services available from Our Website, whether free or charged. |
| “Visitor” | means anyone who visits Our Website |
| “License Period” | means a period of time for which we agree to provide our Services. License Periods are clearly labelled on Our Website and come into effect after a subscription purchase has been made. |

# Interpretation

In this agreement unless the context otherwise requires:

* 1. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
  2. a reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or passed as a result of a merger, division, reconstruction or other re-organisation involving that person.
  3. in the context of permission, “may not” in connection with an action of yours, means “must not”.
  4. the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation.
  5. any agreement by either party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing;
  6. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person;
  7. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
  8. these terms and conditions apply to all supplies of Services by us. They prevail over any terms proposed by you.
  9. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

# Basis of Contract

* 1. In entering into this contract you have not relied on any representation or information from any source except the definition and explanation of the Services given on Our Website.
  2. Subject to these terms and conditions, we agree to provide to you some or all of the Services described on Our Website. We reserve the right to update the price from time to time.
  3. You acknowledge that you understand exactly what is included in the Services and you are satisfied that the Services are suitable and satisfactory for your requirements;
  4. So far as we allow use of our Intellectual Property, we grant a licence to you, limited to the terms set out in this agreement.
  5. Our contract with you and licence to you last for the duration of a License Period as specified in the product description for the service you have purchased. Any continuation by us or by you after the expiry of that License Period is a new contract under the terms then posted on Our Website. Your continued use of our Services after that shall be deemed acceptance by you of the changed Service, system and/or terms.
  6. The contract between us comes into existence when we receive payment from you for a Service.
  7. We may change this agreement and / or the way we provide the Services, at any time. If we do:
     1. the change will take effect when we Post it on Our Website.
     2. if you make any payment for Services or goods in the future, you will do so under the terms Posted on Our Website at that time.

# Your account and personal information

* 1. When you visit Our Website, you accept responsibility for any action done by any person using your name, account or password. You should take all necessary steps to ensure that the password is kept confidential and secure and should inform us immediately if you have any reason to believe that your password has become known to anyone else, or if the password is being, or is likely to be, used in an unauthorised manner.
  2. You agree that you have provided accurate, up to date, and complete information about yourself. We are not responsible for any error made as a result of such information being inaccurate.
  3. You agree to notify us of any changes in your information immediately it occurs. If you do not do so, we may terminate your account.

# The price

* 1. The prices payable for Services are clearly set out on Our Website.
  2. The price charged for any Services may differ from one country to another. You may not be entitled to the lowest price unless you reside in the qualifying country.

# Renewal payments

* 1. Before the end of a License Period, we shall send you a message to your last known email address to tell you that you licence to use the Services is shortly to expire and to invite you to renew. An invoice for the new period will be included.
  2. At any time before expiry of your subscription, you may use the “My Account” tab on Our Website to access your personal information and cancel renewal.
  3. At expiry of your Kiwi Keywords subscription License Period we shall automatically take payment from your credit card of the sum specified on the invoice sent earlier and shall confirm the renewal of your Kiwi Keywords subscription for a further License Period by sending you an email message.

# How we handle your Content

* 1. Our privacy policy is strong and precise. It complies fully with the Data Protection Act 2018 which is at https://kiwikeywords.com/privacy.
  2. Please notify us of any security breach or unauthorised use of your account.

# Security of Our Website

If you violate Our Website we shall take legal action against you. You now agree that you will not, and will not allow any other person to:

* 1. modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it.
  2. link to Our Website in any way that would cause the appearance or presentation of Our Website to be different from what would be seen by a user who accessed Our Website by typing the URL into a standard browser;
  3. download any part of Our Website, without our express written consent;
  4. Despite the above terms, we now grant a licence to you to:
     1. create a hyperlink to Our Website for the purpose of promoting an interest common to both of us. You can do this without specific permission. This licence is conditional upon your not portraying us or any product or service in a false, misleading, derogatory, or otherwise offensive manner. You may not use any logo or other proprietary graphic or trademark of ours as part of the link without our express written consent.
     2. you may copy the text of any page for your personal use in connection with the purpose of Our Website or a Service we provide.

# Uploading to our servers

* 1. You must not upload to, or store on our servers any material or Content which you are not permitted by this agreement to Post to Our Website.
  2. You may not share, let or sub-license space on the servers.

# Termination

This agreement may be terminated:

* 1. upon either of us giving the other notice by e-mail to the last known e-mail address of the other of us. For this and all purposed in connection with this agreement, our addresses are clearly outlined on Our Website. If your cancellation is to be effective, you must give us full information to enable us to identify:
     1. who you are and;
     2. that you have proper authority to cancel and;
     3. the Services you wish to cancel.
  2. when we terminate it, without notice, on account of your failure to comply with these terms.
  3. Any termination of this agreement by this paragraph shall be without prejudice to any other rights or remedies to which a party may be entitled.
  4. Termination by either party shall have the following effects:
     1. your right to use the Services ceases after the end of any outstanding License Period;
     2. we are under no obligation to forward any unread or unsent messages to you or any third party;
  5. In the event of such termination by us, we will within 14days refund to you the balance of your cost outstanding for any Service, pro rata with time not elapsed;
  6. There shall be no reimbursement or credit if we decide in our absolute discretion that you have failed to comply with any of the terms of this agreement.

# Interruption to Services

* 1. If it is necessary for us to interrupt the Services, we will give you reasonable notice where this is possible and when we judge the down time is such as to justify telling you.
  2. You acknowledge that the Services may also be interrupted for many reasons beyond our control.
  3. You agree that we are not liable to you for any loss, foreseeable or not, arising from any interruption to the Services.

# Intellectual Property

You agree that at all times you will:

* 1. not cause or permit anything which may damage or endanger our title to the Intellectual Property.
  2. notify us of any suspected infringement of the Intellectual Property;
  3. indemnify us for any loss or expense arising from your misuse of the Intellectual Property;
  4. on the expiry or termination of this agreement immediately stop using the Intellectual Property except as expressly authorised by us in writing;
  5. not use any name or mark similar to or capable of being confused with any name or mark of ours;
  6. so far as concerns software provided or made accessible by us to you, you will not:
     1. copy, or make any change to any part of its code;
     2. use it in any way not anticipated by this agreement;
     3. give access to it to any other person than you, the licensee in this agreement;
     4. in any way provide any information about it to any other person or generally.
  7. not use the Intellectual Property except directly in our interest.

# **D**ata storage

* 1. We maintain reasonable procedures for general backup of data for our own purposes but we give no warranty that your data will be saved or backed up in any particular circumstances unless we have made specific contractual arrangements with you in writing.

# Disclaimers and limitation of liability

* 1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
  2. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warrant or term cannot be excluded, then this sub paragraph shall be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
  3. The Kiwi Keywords Website and Kiwi Keywords Services are provided “as is”. We make no representation or warranty that Our Services will be:
     1. useful to you;
     2. of satisfactory quality;
     3. fit for a particular purpose;
     4. available or accessible, without interruption, or without error;
  4. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.
  5. We shall not be liable to you for any loss or expense arising out of or in connection with your use of Our Website, which is indirect or consequential loss, or economic loss or other loss of turnover, profits, business or goodwill. This applies whether in an action of contract, negligence or otherwise, even if such loss was reasonably foreseeable or we knew you might incur it.
  6. We make no representation or warranty and accept no responsibility in law for:
     1. accuracy of any Content or the impression or effect it gives;
     2. delivery of Content, material or any message;
     3. privacy of any transmission;
     4. any act or omission of any person or the identity of any person who introduces himself to you through Our Website;
     5. any aspect or characteristic of any goods or services advertised on Our Website;
  7. Our Website includes Content Posted by third parties. We are not responsible for any such Content. If you come across any Content which offends you, please contact us via the “Contact us” page on Our Website.
  8. We will do all we can to maintain access to Our Website, but it may be necessary for us to suspend all or part of our service for repairs, maintenance or other good reasons. We may do so without telling you first.
  9. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Services concerned.
  10. This paragraph (and any other paragraph which excludes or restricts our liability or provides an indemnity to us) applies to our directors, officers, employees, subcontractors, agents and affiliated companies, as well as to us. Any of them may enforce this provision under the Contracts (Rights of Third Parties) Act 1999 / Contracts (Rights of Third Parties) (Scotland) Act 2017.
  11. If you become aware of any breach of any term of this agreement by any person, please tell us by email. We welcome your input but do not guarantee to agree with your judgement.
  12. Nothing in this agreement excludes liability for a party's fraud.

# You indemnify us

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

* 1. your failure to comply with the law of any country;
  2. your breach of this agreement;
  3. any act, neglect or default by any agent, employee, licensee or customer of yours;
  4. a contractual claim arising from your use of the Services
  5. a breach of the intellectual property rights of any person;

# Dispute resolution

The following terms apply in the event of a dispute between the parties:

* 1. If you are not happy with our services or have any complaint then you must tell us by email message to support@kiwikeywords.com
  2. If a dispute is not settled as set out above, we hope you will agree to attempt to resolve it by engaging in good faith with us in a process of mediation or arbitration.

# Miscellaneous matters

* 1. You undertake to provide to us your e-mail address and telephone number as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.
  2. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
  3. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.
  4. If you are in breach of any term of this agreement, we may:
     1. terminate your account and refuse access to Our Website;
     2. remove or edit Content, or cancel any order at our discretion;
     3. issue a claim in any court.
  5. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
  6. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
  7. Any communication to be served on either of the parties by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

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| It shall be deemed to have been delivered: |
| if delivered by hand: on the day of delivery; |
| if sent by post to the correct address: within 72 hours of posting; |

* 1. This agreement does not give any right to any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except that any provision in this agreement which excludes or restricts the liability of our directors, officers, employees, subcontractors, agents and affiliated companies, may be enforced under that Act.
  2. Neither party shall be liable for any failure or delay in performance of this agreement which is caused by circumstances beyond its reasonable control.
  3. In the event of any conflict between any term of this agreement and the provisions of the articles of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.
  4. The validity, construction and performance of this agreement shall be governed by the laws of England and Wales and you agree that any dispute arising from it shall be litigated only in that country.