

Fresh Relevance: Reseller Terms and Conditions

Please read these terms and conditions carefully, together with the "Fresh Relevance: Common Terms and Conditions", as they set out our and your legal rights and obligations in relation to the Fresh Relevance system. You will be asked to agree to these terms and conditions before becoming a reseller.

You should print a copy of these terms and conditions, and the Fresh Relevance: Common Terms and Conditions, for future reference.

These terms and conditions are available in the English language only.

If you have any questions or complaints about Fresh Relevance services, please contact Fresh Relevance Ltd, as described on <http://www.freshrelevance.com/contact>

1. Definitions and interpretation

1.1 Fresh Relevance: Common Terms and Conditions

The "Fresh Relevance: Common Terms and Conditions" as amended from time to time, is incorporated by reference and receives full effect here. It is found at <http://www.freshrelevance.com/contact/legal>

The "Fresh Relevance: Common Terms and Conditions" is being incorporated into these Reseller terms and conditions, so "Customer" means "Reseller" throughout it.

1.2 Definitions

"Reseller Agreement" means the agreement between the Provider and the Reseller for the resale of the Fresh Relevance services, incorporating these terms and conditions and the order confirmation, and any amendments to the Reseller Agreement from time to time;

"Reseller" and **"Customer"** mean the customer specified in the order confirmation.

"Reseller's Customers" means anyone who gets access to The System via The Reseller, whether or not money is paid.

"Provider" means the provider specified in the order confirmation.

"Shoppers" mean people who are using a shopping cart from, or sent email by, Reseller's Customers.

"User Terms and Conditions" means:

- "Fresh Relevance: User Terms and Conditions", as amended from time to time, which can be found at: <http://www.freshrelevance.com/contact/legal>
- Or alternative terms and conditions that have previously been agreed in writing between the Provider and the Reseller.

"User Terms and Conditions for Reseller's Clients" means the "User Terms and Conditions", with the Reseller acting as Provider, or other terms and conditions written by the Reseller at its expense and agreed by the Provider.

3 Responsibilities of the Provider

3.1 The Provider grants to the Reseller a licence to resell the Fresh Relevance system for the Permitted Purpose in accordance with the Documentation and order

confirmation during the Term. The licence is non-exclusive, unless agreed otherwise in writing between the parties.

- 3.2 The Provider will make available promotional material for use by the Reseller.
- 3.3 The Provider will provide a contact for the Reseller's marketing questions. The Provider may be willing to assist with some marketing, such as joint conference calls, if this is agreed on a case-by-case basis between the parties.
- 3.4 The Provider will make available support material and documentation to allow the Reseller to support its clients.
- 3.5 The Reseller will provide a support contact for the Reseller's support questions.
- 3.6 Clients of the Reseller may contact the Reseller for Support and accordingly, the Reseller may contact the Provider for Support. For the avoidance of doubt, the Provider will provide Support to the Reseller, but will not provide direct Support to Clients of the Reseller, unless agreed otherwise in writing between the parties.
- 3.7 The Provider may establish general practices and limits regarding use of the System, including without limitation the length of time that data will be held, the maximum number of email messages that may be sent by or received by an account on the Service and the maximum size of messages.
- 3.8 The Provider will not deliberately seek to market or sell its Services directly to the Reseller's Clients. However, the Reseller acknowledges that its Clients may approach The Provider directly, or a third party organization may approach the Provider on Clients' behalf, in which case the Provider shall be entitled to supply such Services to that Client.

4 Responsibilities of the Reseller

- 4.1 The Reseller agrees to the User Terms and Conditions and the Reseller Terms and Conditions.
- 4.2 The Reseller will ensure that the Reseller's Clients agree to the User Terms and Conditions for Reseller's Clients, before they can use the System. The Reseller will enforce these conditions on Reseller's Clients, including taking any action requested by the Provider in writing.
- 4.3 The Reseller shall be responsible for advertising and promoting the Services but the Reseller shall not use any Materials nor make any public statement about the Services or about Provider without Provider's prior written consent.
- 4.4 The Reseller shall provide support to its customers, unless agreed otherwise in writing between the parties.
- 4.5 The Reseller agrees that the Reseller's dealings with, or participation in promotions of advertisers and merchants found on or through the System including payment and delivery of related services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between the Reseller and such advertisers or merchant, and the Reseller agrees not to hold the Provider liable for any disputes the Reseller may have with such advertisers or merchant.
- 4.6 The Reseller will ensure that the User Terms and Conditions for Reseller's Clients, including documents referenced by it, are readily available on the Reseller's Website at all times.
- 4.7 The Reseller agrees that it will keep the Provider informed about its customer

list, and its list of major prospects, so that the Provider can manage The System and its business.

- 4.8 For the avoidance of doubt, the Reseller has no right to access the object code or source code of the Fresh Relevance system, either during or after the Term, save as expressly permitted by the order confirmation.
- 4.9 All Intellectual Property Rights in the Fresh Relevance system shall, as between the parties, be the exclusive property of the Provider.
- 4.10 The Reseller shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Fresh Relevance system using the Customer's account.
- 4.11 Unless agreed otherwise in writing between the parties, the Reseller shall not in any way:
- i. represent itself as an agent of the Provider for any purpose;
 - ii. pledge Provider's credit;
 - iii. give any condition or warranty on Provider's behalf;
 - iv. make any representation on Provider's behalf;
 - v. commit Provider to any contracts;
 - vi. make any promises or guarantees about the Services beyond those contained in the promotional material supplied by Provider, or otherwise incur any liability on behalf of the Provider.
- 4.12 The Reseller is responsible for obtaining and maintaining any equipment or ancillary services that they need to connect to, access or otherwise use the System including, modems, hardware, software and long distance or local telephone service.
- 4.13 Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under this agreement shall be paid by the Reseller, unless Provider has expressly agreed in advance in writing to pay such expenses, costs and charges.

5 Privacy and Permission

- 5.1 The Reseller's Clients will use the Fresh Relevance System to connect an email marketing platform from an ESP, with a shopping cart from an eCommerce vendor. The Reseller agrees that Shoppers, subscribers, site visitors and other individuals affected do not use the Fresh Relevance System directly, so privacy and permission issues need addressing via the email marketing platform and the shopping cart.
- 5.2 The Reseller will check and ensure that Reseller's Clients have permission from Shoppers, subscribers, site visitors and other individuals affected, to allow the Reseller and the Provider to act on its behalf. Reseller's Clients' website needs permission to: store cookies, store shopping information, and send status and reminder emails. For example the website could have a statement beside the submit button on its order form, saying, "By using this form, I agree to your terms and conditions [link]", with appropriate text in the linked terms and conditions.
- 5.3 The Reseller will check and ensure that Reseller's Clients' use of the email marketing platform in connection with the Triggered Marketing System complies with all applicable laws, such as the United States CAN-SPAM laws, the Canadian Personal Information Protection and Electronic Documents Act (PIPEDA) and the C-28 Canadian Anti-Spam Law (CASL).

- 5.4 The Reseller will check and ensure that Reseller's Clients' use of the shopping cart in connection with the Triggered Marketing System complies with all applicable laws, such as EU cookie laws.
- 5.5 The Provider shall under no circumstances be liable for the act of sending, or the content of, any emails sent using The Fresh Relevance System.

6 Prices and Payment

- 6.1 The Reseller shall pay the Licence Fee (if applicable) to the Provider upon entering into the Contract.
- 6.2 Subject to any separate agreement in writing between the parties, the Provider Charges and any additional sums payable shall be paid by the Reseller (together with any applicable sales taxes, and without any set off or other deduction) to Provider by credit card (until agreed otherwise in writing) and are payable 30 days net from date of each monthly invoice. Time for payment is of the essence in this agreement.
- 6.3 No payment shall be deemed to have been made until Provider has received such payment in cleared funds.
- 6.4 If the Reseller fails to pay Provider any Provider Charges due pursuant to this Agreement, then without limiting any other rights it may have or its rights under the Late Payments of Commercial Debts (Interest) Act 1998, Provider shall be entitled to charge interest (both before and after any judgement) on the outstanding amount at the rate of 2% above the base rate of the Bank of England from time to time, accruing on a daily basis and compounded quarterly, from the due date until the outstanding amount is paid in full.
- 6.5 If the Reseller fails to pay any sums due within 30 days (subject to any separate agreement in writing between the parties) of the date of each invoice, Provider retains the right to disable the account and suspend the provision of the System until such time as any outstanding invoices have been settled in full in cleared funds.
- 6.6 In the event of an invoice being disputed by the Reseller for valid and reasonable grounds Provider may agree to continued provision of the System for a further 30 days whilst discussions take place to resolve the basis of the dispute. Where there have been previous unfounded disputes over invoices with the Reseller Provider may at its discretion suspend the System to the Reseller without allowing any 30 day extension for resolution of the dispute. If the Reseller disputes any portion of an invoice based upon use of the Services, Provider's records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert.
- 6.7 Provider reserves the right to carry out credit checks on Reseller and any of Reseller's Clients, and initially to provide a restricted Service subject to the results of such credit checks.