

Fresh Relevance: User 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 user.

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 User Terms and Conditions, so "Customer" means "User" throughout it.

1.2 Definitions

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

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

"**Provider**" means the provider specified in the order confirmation, except when these terms and conditions are being agreed in order to comply with clause 4.1 of the "Fresh Relevance: Reseller Terms and Conditions" in which case "Provider" means the Reseller.

"**Shoppers**" mean people who are using a shopping cart from, or sent email by, the User.

2. Agreement and Term

2.1 The advertising of the Fresh Relevance system on the Provider's website constitutes an "invitation to treat"; and the Customer's order for the Fresh Relevance system constitutes a contractual offer. No contract will come into force between the Provider and the Customer unless and until the Provider accepts the Customer's order in accordance with the procedure detailed in this Clause 2.

2.2 In order to enter into the User Agreement, the Customer can complete the sign-up form on the Fresh Relevance Website, and the User Agreement comes into force if the Provider accepts this offer in writing.

2.3 Once in force, the User Agreement will continue in force for the Minimum Term and indefinitely thereafter, unless terminated in accordance with Fresh Relevance: Common Terms and Conditions Clause 17.

3. Responsibilities of the Provider

3.1 The Provider hereby grants to the Customer a non-exclusive licence to use the Fresh

Relevance system for the Permitted Purpose in accordance with the Documentation and Order Confirmation, during the Term.

- 3.2 The Provider will provide a contact for the Customer's marketing questions, relating to The System, during the Term.
- 3.3 The Provider will provide a support contact for the Reseller's support questions, relating to The System, during the Term.
- 3.4 The Provider will provide Support Services to the Customer, and may apply Upgrades to the Fresh Relevance system, during the Term.
- 3.5 The Provider may sub-contract the provision of contacts or Support Services, without obtaining the consent of the Customer.

4. Responsibilities of the Customer

- 4.1 The licence granted by the Provider to the Customer under Clause 3 is subject to the following limitations:

Except to the extent mandated by applicable law or expressly permitted in the User Agreement, and unless the Customer has signed a Reseller Agreement with the Provider, the Customer must not sub-license its right to access and use the Fresh Relevance system.

The Fresh Relevance system may only be used by the employees, agents and subcontractors of the Customer and:

- (i) where the Customer is a company, the Customer's officers;
- (ii) where the Customer is a partnership, the Customer's partners; and
- (iii) where the Customer is a limited liability partnership, the Customer's members;

5. Customer Materials

5.1 The Customer grants to the Provider a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Fresh Relevance system for the purposes of operating the Fresh Relevance system, providing the Services, fulfilling its other obligations under the User Agreement, and exercising its rights under the User Agreement.

5.2 Subject to Fresh Relevance: Common Terms and Conditions Clause 8.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.

5.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of the User Agreement, will not:

- (a) breach any laws, statutes, regulations or legally-binding codes;
- (b) infringe any person's Intellectual Property Rights or other legal rights; or
- (c) give rise to any cause of action against the Provider or the Customer or any third party,

in each case in England and Wales and under English law.

5.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 5, the Provider may:

- (a) delete or amend the relevant Customer Materials; and/or

(b) suspend any or all of the Services and/or the Customer's access to the Fresh Relevance system while it investigates the matter.