



# Terms and Conditions

As at 10<sup>th</sup> August 2021

These Terms and Conditions are intended to ensure you understand the basis upon which FabeSmith Limited, trading and known as KetoSuite, (“we”, “us” or “KetoSuite”) will act in the provision of the Services or use of the KetoSuite Website you are accessing when using the KetoSuite website. Acceptance of delivery, use or receipt of any Services will (notwithstanding any statement to the contrary by you or your agents) constitute acceptance of these Terms and Conditions. By using our Services or use of the KetoSuite Website, you declare that you have read, understood and agree to be bound by this Terms and Conditions.

## 1. Data and Cookies

- 1.1. We may collect log files data such as, internet protocol (IP) addresses, browser type, Internet Service Provider (ISP), date and time stamp, referring/exit pages, and the number of clicks.
- 1.2. We may collect cookies, which are used to store information including visitors' preferences, and the pages on the website that the visitor accessed or visited. The cookies collected may be used by KetoSuite to improve our Service.

## 2. Meta Information

- 2.1. We may access and use additional meta information related with your account and use, including the date, time and location of the access. You agree to KetoSuite having access to this information.
- 2.2. The meta data generated from your account may be used by KetoSuite to improve our Service.

## 3. Exclusion of Warranties

- 3.1. If you are acquiring the Services for business purposes, the guarantees under the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.
- 3.2. Unless you have rights under the Consumer Guarantees Act 1993 or other legislation, which cannot be excluded or limited, there are no warranties express or implied. This disclaimer includes implied warranties as to merchantability and fitness for a particular purpose.
- 3.3. We do not warrant that the website will not have down time or be free from errors, that Services will meet your requirements, that the Services will be error-free, or that any defects will be remedied.
- 3.4. You agree that the use of the Services is at your sole discretion and risk.

## 4. Membership

- 4.1. Your subscription to our Services will continue until terminated.

## 5. Billing

- 5.1. To access our services you will need to provide a valid payment method, from which we will make the appropriate subscription fee deduction in accordance with the package you have selected. The relevant subscription fee will be deducted on your billing day for the coming billing month or billing period of Service.
- 5.2. All fees are excluding GST, or any other applicable taxes and duties. You agree to pay these items, as applicable, in addition to the price.
- 5.3. If we are unable to make the relevant monthly deduction from the payment method you have provided, we will notify you of this via email and suspend your subscription. We will attempt to make a deduction again within 10 days and if we are unable to make a deduction we will terminate your subscription.

## 6. **Limitation of Liability**

- 6.1. Neither party will be liable to the other party for any loss or damage arising from delay or failure to perform obligations due to any matter beyond either of our reasonable control.
- 6.2. Neither party or their employees and agents shall be liable to the other for any claim for breach of Contract (except as in the next paragraph below) or Statute or breach of duty in Tort (including negligence) or for any claim in Equity or otherwise at law.
- 6.3. Neither party will, in any case, be liable for any losses or damages whether general, exemplary, punitive, direct, indirect or consequential, including loss of business profits. Notwithstanding this if we are found to be liable then such liability will be capped at the fees charged for the services.

## 7. **Alteration of Terms of Conditions**

- 7.1. We reserve the right to alter, amend or change these Terms and Conditions at any time. Any changes can be made by posting an updated version on our website. If you continue to use our Services or access our website, you will be deemed to have accepted these changes.

## 8. **Intellectual Property**

- 8.1. You acknowledge and agree that we own all the rights, title and interest in the Services and our website.
- 8.2. In relation to the public recipes, we retain ownership of all intellectual property rights of all types but grant you a non-exclusive, royalty-free, non-transferable licence to use, copy and modify the recipes.
- 8.3. In relation to modified or newly created recipes you produce, you grant us a non-exclusive, royalty-free, transferable license to use, copy and modify your modified or newly created recipes. When using your modified or newly created recipes, we will include a credit line acknowledging your name.
- 8.4. You have no rights under these Terms and Conditions in relation to any other intellectual property associated with the Services.

## 9. **Privacy**

- 9.1. We have a privacy policy which is accessible on our website. We shall not edit, or disclose any personal information except as required by law or to comply with the Services.
- 9.2. We may pass anonymised data about you and your use of the Service to advertisers or third parties. This information will not include your personal details.

## 10. **Term and Termination**

- 10.1. You can cancel your KetoSuite subscription at any time, and you will continue to have access to your profile through the end of your billing month or billing period. If you chose to terminate your subscription with KetoSuite, it is your responsibility to advise us by emailing [info@ketosuite.com](mailto:info@ketosuite.com).
- 10.2. We may terminate the provision of the Services at any time.

## 11. **Representative**

- 11.1. Our representative is Andrew Smith, [info@ketosuite.com](mailto:info@ketosuite.com).

## 12. **Disputes**

- 12.1. If a dispute arises between us about interpreting or implementing the provisions of these Terms and Conditions, then we will use all reasonable endeavours to resolve the dispute by negotiation in good faith. We will attend at least one meeting to discuss and attempt to resolve the dispute as a condition precedent to taking other steps concerning the dispute (including but not limited to commencing any legal proceedings, other than an application for injunctive relief).
- 12.2. If the dispute cannot be resolved by negotiation within 5 working days after the dispute arose, the parties will refer the dispute to mediation by a mediator jointly appointed by them. If the parties cannot agree on a mediator and a process for mediation within 10 working days of a request by one to the other to attend mediation, the parties must mediate the dispute in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of NZ Inc. or its successor, and that organisation will select the mediator and determine the mediator's compensation.
- 12.3. If the dispute is not resolved within 5 working days of its reference to mediation, then the parties will refer the dispute to arbitration by a single arbitrator agreed on by all the parties to the dispute or, failing agreement the appointment of the arbitrator will be made by the President (or equivalent officer) or his or her nominee for the time being of the New Zealand Institute of Arbitrators. Arbitration costs will be apportioned between the parties in a manner determined by the arbitrator.

## 13. **General**

- 13.1. These terms apply to all transactions where we supply Services to you. If there is any inconsistency between these terms and any other arrangement with us, these terms prevail unless otherwise agreed by us in writing.
- 13.2. If any provision of these terms and conditions is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining provisions.

- 13.3. This contract and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. Both parties submit to the exclusive jurisdiction of the New Zealand Courts.