

## Terms and Conditions of **Komotion**

These Terms govern

- the use of Komotion, and,
- any other related Agreement or legal relationship with the Owner

in a legally binding way. Capitalized words are defined in the relevant dedicated section of this document.

The User must read this document carefully.

Komotion is provided by:

ICO Registration number: ZA240880

DPO: Jordan Davidson

Komotion Ltd

Boho Five, Bridge Street East

Middlesbrough

Cleveland

TS2 1NY

United Kingdom

**Owner contact email:** [admin@komotion.co.uk](mailto:admin@komotion.co.uk)

"Komotion" refers to

- this website, including its subdomains and any other website through which the Owner makes its Service available;
- applications for mobile, tablet and other smart device systems;
- the Service;
- any applications, sample and content files, source code, scripts, instruction sets or software included as part of the Service, as well as any related documentation;

The following documents are incorporated by reference into these Terms:

- Komotion for Maya EULA (<https://www.komotion.co.uk/komotion-eula>)
- Copyright and Trademark Notice (<https://www.komotion.co.uk/copyright>)

### **WHAT THE USER SHOULD KNOW AT A GLANCE**

- The right of withdrawal only applies to European Consumers. The right of withdrawal, also commonly called the right of cancellation in the UK, is consistently referred to as “the right of withdrawal” within this document.
- Please note that some provisions in these Terms may only apply to certain categories of Users. In particular, certain provisions may only apply to Consumers or to those Users that do not qualify as Consumers. Such limitations are always explicitly mentioned within each affected clause. In the absence of any such mention, clauses apply to all Users.

## **TERMS OF USE**

Unless otherwise specified, the terms of use detailed in this section apply generally when using Komotion.

Single or additional conditions of use or access may apply in specific scenarios and in such cases are additionally indicated within this document.

By using Komotion, Users confirm to meet the following requirements:

- There are no restrictions for Users in terms of being Consumers or Business Users;
- Users aren't located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist-supporting" country;
- Users aren't listed on any U.S. Government list of prohibited or restricted parties;

## **ACCOUNT REGISTRATION**

To use the Service Users must register or create a User account, providing all required data or information in a complete and truthful manner.

Failure to do so will cause unavailability of the Service.

Users are responsible for keeping their login credentials confidential and safe. For this reason, Users are also required to choose passwords that meet the highest standards of strength permitted by Komotion.

By registering, Users agree to be fully responsible for all activities that occur under their username and password.

Users are required to immediately and unambiguously inform the Owner via the contact details indicated in this document, if they think their personal information, including but not limited to User accounts, access credentials or personal data, have been violated, unduly disclosed or stolen.

### **Conditions for account registration**

Registration of User accounts on Komotion is subject to the conditions outlined below. By registering, Users agree to meet such conditions.

- Accounts registered by bots or any other automated methods are not permitted.

### **Account termination**

Users can terminate their account and stop using the Service at any time by doing the following:

- By directly contacting the Owner at the contact details provided in this document.

However, termination of the account will not be possible until the subscription period paid for by the User has expired.

### **Account suspension and deletion**

The Owner reserves the right, at its sole discretion, to suspend or delete at any time and without notice, User accounts which it deems inappropriate, offensive or in violation of these Terms.

The suspension or deletion of User accounts shall not entitle Users to any claims for compensation, damages or reimbursement.

The suspension or deletion of accounts due to causes attributable to the User does not exempt the User from paying any applicable fees or prices.

### **CONTENT ON KOMOTION**

Unless where otherwise specified or clearly recognizable, all content available on Komotion is owned or provided by the Owner or its licensors.

The Owner undertakes its utmost effort to ensure that the content provided on Komotion infringes no applicable legal provisions or third-party rights. However, it may not always be possible to achieve such a result.

In such cases, without prejudice to any legal prerogatives of Users to enforce their rights, Users are kindly asked to preferably report related complaints using the contact details provided in this document.

### **Rights regarding content on Komotion - All rights reserved**

The Owner holds and reserves all intellectual property rights for any such content.

Users may not therefore use such content in any way that is not necessary or implicit in the proper use of the Service.

In particular, but without limitation, Users may not copy, download, share (beyond the limits set forth below), modify, translate, transform, publish, transmit, sell, sublicense, edit, transfer/assign to third parties or create derivative works from the content available on Komotion, nor allow any third party to do so through the User or their device, even without the User's knowledge.

Where explicitly stated on Komotion, the User may download, copy and/or share some content available through Komotion for its sole personal and non-commercial use and provided that the copyright attributions and all the other attributions requested by the Owner are correctly implemented.

Any applicable statutory limitation or exception to copyright shall stay unaffected.

### **CONTENT PROVIDED BY USERS**

The Owner allows Users to upload, share or provide their own content to Komotion.

By providing content to Komotion, Users confirm that they are legally allowed to do so and that they are not infringing any statutory provisions and/or third-party rights.

### **Rights regarding content provided by Users**

Users acknowledge and accept that by providing their own content on Komotion they grant the Owner a non-exclusive, fully paid-up and royalty-free license to process such content solely for the operation and maintenance of Komotion as contractually required.

To the extent permitted by applicable law, Users waive any moral rights in connection with content they provide to Komotion.

Users acknowledge, accept and confirm that all content they provide through Komotion is provided subject to the same general conditions set forth for content on Komotion.

### **Access to provided content**

Content that Users provide to Komotion is made available according to the criteria outlined within this section.

### **Publicly available content**

Content meant for public availability shall be automatically made public on Komotion upon upload or, at the sole discretion of the Owner, at a later stage.

Any personal data, identifier or any other information that Users upload in connection with such content (such as a User-ID, avatar or nickname etc.) shall also appear in connection with the published content.

### **Private content**

Private content provided by Users shall stay private and will not be shared with any third parties or accessed by the Owner without the User's explicit consent.

Users may (and are encouraged to) check on Komotion to find details of who can access the content they provide.

### **ACCESS TO EXTERNAL RESOURCES**

Through Komotion Users may have access to external resources provided by third parties. Users acknowledge and accept that the Owner has no control over such resources and is therefore not responsible for their content and availability.

Conditions applicable to any resources provided by third parties, including those applicable to any possible grant of rights in content, result from each such third parties' terms and conditions or, in the absence of those, applicable statutory law.

### **ACCEPTABLE USE**

Komotion and the Service may only be used within the scope of what they are provided for, under these Terms and applicable law.

Users are solely responsible for making sure that their use of Komotion and/or the Service violates no applicable law, regulations or third-party rights.

Therefore, the Owner reserves the right to take any appropriate measure to protect its legitimate interests including by denying Users access to Komotion or the Service, terminating contracts, reporting any misconduct performed through Komotion or the Service to the competent authorities – such as judicial or administrative authorities - whenever Users engage or are suspected to engage in any of the following activities:

- violate laws, regulations and/or these Terms;
- infringe any third-party rights;
- considerably impair the Owner's legitimate interests;
- offend the Owner or any third party.

### **SOFTWARE LICENSE**

Any intellectual or industrial property rights, and any other exclusive rights on software or technical applications embedded in or related to Komotion are held by the Owner and/or its licensors.

Subject to Users' compliance with and notwithstanding any divergent provision of these Terms, the Owner merely grants Users a revocable, non-exclusive, non-sublicensable and non-transferable license to use the software and/or any other technical means embedded in the Service within the scope and for the purposes of Komotion and the Service offered.

This license does not grant Users any rights to access, usage or disclosure of the original source code. All techniques, algorithms, and procedures contained in the software and any documentation thereto related is the Owner's or its licensors' sole property.

All rights and license grants to Users shall immediately terminate upon any termination or expiration of the Agreement.

Without prejudice to the above, under this license Users may download, install, use and run the software on the permitted number of devices which fulfill the technical requirements specified in the relevant section of Komotion.

The Owner reserves the right to release updates, fixes and further developments of Komotion and/or its related software and to provide them to Users for free. Users may need to download and install such updates to continue using Komotion and/or its related software.

New releases may only be available against payment of a fee.

The User may download, install, use and run the software on one device.

## **TERMS AND CONDITIONS OF SALE**

### **PAID PRODUCTS**

Some of the Products provided on Komotion, as part of the Service, are provided on the basis of payment.

The fees, duration and conditions applicable to the purchase of such Products are described below and in the dedicated sections of Komotion.

To purchase Products, the User must register or log into Komotion.

### **PRODUCT DESCRIPTION**

Prices, descriptions or availability of Products are outlined in the respective sections of Komotion and are subject to change without notice.

While Products on Komotion are presented with the greatest accuracy technically possible, representation through photos, images, colors, sounds or any other means is for reference only and implies no warranty as to the characteristics of the purchased Product.

The characteristics of the chosen Product will be outlined during the purchasing process.

### **PURCHASING PROCESS**

Any steps needed from Product choice to order submission, form part of the purchasing process. The purchasing process includes these steps:

- Users must indicate the desired Product by selecting it, including, where possible, quantity and specific characteristics, to make it appear in the purchase selection.
- Within the purchase selection, Users may review their purchase selection, modify, remove or add items.
- Users will use the checkout button to be redirected to the checkout view.
- Within the checkout view, Users are required, through consecutive steps, to specify their contact details, billing and shipping address, and a shipping and payment method of their choice.
- During the purchasing process, Users may, at any time, modify, correct or change the information provided, and add a gift card, referral code or discount code (Coupon) or altogether abort the purchasing process with no consequence.
- After providing all the required information, Users must carefully review the order and, subsequently, confirm and submit it by using the relevant button or mechanism on Komotion, hereby accepting these Terms and committing to pay the agreed-upon price.
- After having completed the purchase, Users, who have not already done so, may request to store the provided information for future purchases on Komotion creating a personal account. The accounts are created via [Squarespace](#) and they also allow the Users to access the status of the current purchase and their purchase history. The User may read the privacy policy of Squarespace and Komotion to learn more about the data processing and User rights regarding their data.

## **ORDER SUBMISSION**

When the User submits an order, the following applies:

- The submission of an order determines contract conclusion and therefore creates for the User the obligation to pay the price, taxes and possible further fees and expenses, as specified on the order page.
- In case the purchased Product requires active input from the User, such as the provision of personal information or data, specifications or special wishes, the order submission creates an obligation for the User to cooperate accordingly.
- Upon submission of the order, Users will receive a receipt confirming that the order has been received.

All notifications related to the described purchasing process shall be sent to the email address provided by the User for such purposes.

## **PRICES**

Users are informed during the purchasing process and before order submission, about any fees, taxes and costs (including, if any, delivery costs) that they will be charged.

Prices on Komotion are displayed:

- either exclusive or inclusive of any applicable fees, taxes and costs, depending on the section the User is browsing.

## **OFFERS AND DISCOUNTS**

The Owner may offer discounts or provide special offers for the purchase of Products. Any such offer or discount shall always be subject to the eligibility criteria and the terms and conditions set out in the corresponding section of Komotion.

Offers and discounts are always granted at the Owner's sole discretion.

Repeated or recurring offers or discounts create no claim/title or right that Users may enforce in the future.

Depending on the case, discounts or offers shall be valid for a limited time only or while stocks last. If an offer or discount is limited by time, the time indications refer to the time zone of the Owner, as indicated in the Owner's location details in this document, unless otherwise specified.

## **COUPONS**

Offers or discounts can be based on Coupons.

If breach of the conditions applicable to Coupons occurs, the Owner can legitimately refuse to fulfill its contractual obligations and expressly reserves the right to take appropriate legal action to protect its rights and interests.

Notwithstanding the provisions below, any additional or diverging rules applicable to using the Coupon displayed in the corresponding information page or on the Coupon itself shall always prevail.

Unless otherwise stated, these rules apply to the use of Coupons:

- Each Coupon is only valid when used in the manner and within the timeframe specified on the website and/or the Coupon;
- A Coupon may only be applied, in its entirety, at the actual time of purchase – partial use is not permitted;
- Unless otherwise stated, single-use Coupons may only be used once per purchase and therefore may only be applied a single time even in cases involving installment-based purchases;
- A Coupon cannot be applied cumulatively;
- The Coupon must be redeemed exclusively within the time specified in the offer. After this period, the Coupon will automatically expire, precluding any possibility for the User to claim the relevant rights, including cash-out;
- The User is not entitled to any credit/refund/compensation if there is a difference between the value of the Coupon and the redeemed value;
- The Coupon is intended solely for non-commercial use. Any reproduction, counterfeiting and commercial trade of the Coupon is strictly forbidden, along with any illegal activity related to the purchase and/or use of the Coupon.

## **METHODS OF PAYMENT**

Information related to accepted payment methods are made available during the purchasing process.

Some payment methods may only be available subject to additional conditions or fees. In such cases related information can be found in the dedicated section of Komotion.

Payment methods marked accordingly are managed directly by the Owner. In this case, the Owner collects and stores the data necessary for the processing of payments and for fulfilling any legal obligation related to them. The User may read the privacy policy of Komotion to learn more about the data processing and Users' rights regarding their data.

Other payment methods – if any – are independently provided by third-party services. In such cases Komotion collects no payment information – such as credit card details – but only receives a notification from the relevant third-party provider once the payment has been successfully completed.

If payment through the available methods fail, the Owner shall be under no obligation to fulfil the purchase order. Any possible costs or fees resulting from the failed or refused payment shall be borne by the User.

#### **AUTHORIZATION FOR FUTURE PAYPAL PAYMENT**

If Users authorize the PayPal feature which allows future purchases, Komotion will store an identification code linked to the Users' PayPal account. This will authorize Komotion to automatically process payments for future purchases or recurring installments of past purchases.

This authorization can be revoked at any time, either by contacting the Owner or by changing the user settings offered by PayPal.

#### **RETENTION OF PRODUCT OWNERSHIP**

Until payment of the total purchase price is received by the Owner, any Products ordered shall not become the User's property.

#### **RETENTION OF USAGE RIGHTS**

Users do not acquire any rights to use the purchased Product until the total purchase price is received by the Owner.

#### **DELIVERY**

##### **Delivery of digital content**

Unless otherwise stated, digital content purchased on Komotion is delivered via download on the device(s) chosen by Users.

Users acknowledge and accept that in order to download and/or use the Product, the intended device(s) may be required to meet the technical requirements specified on Komotion.

Users acknowledge and accept that the ability to download the purchased Product may be limited in time and space.

##### **Performance of services**

The purchased service shall be performed or made available within the timeframe specified on Komotion or as communicated before the order submission.

#### **CONTRACT DURATION**



## **Trial period**

Users have the option to test Komotion or selected Products during a limited and non-renewable trial period, at no cost. Some features or functions of Komotion may not be available to Users during the trial period.

Further conditions applicable to the trial period, including its duration, will be specified on Komotion.

The trial period shall end automatically and shall not convert into any paid Product unless the User actively purchases such paid Product.

## **Subscriptions**

Subscriptions allow Users to receive a Product continuously or regularly over a determined period of time.

Paid subscriptions begin on the day the payment is received by the Owner.

In order to maintain subscriptions, Users must pay the required recurring fee in a timely manner. Failure to do so may cause service interruptions.

## **Termination of open-ended subscriptions**

**Open-ended subscriptions may be terminated at any time by sending a clear and unambiguous termination notice to the Owner using the contact details provided in this document. Terminations shall take effect 3 days after the notice of termination has been received by the Owner.**

## **Terms and conditions applying to extra features**

Users that have an active subscription may purchase single extra add-ons or features, described in the relevant section of Komotion.

Prices, duration, terms of use and termination of such extras may differ from those of the main Product and, unless otherwise specified, do not influence the prices, duration, terms of use and termination of the latter.

## **USER RIGHTS**

### **RIGHT OF WITHDRAWAL**

Unless exceptions apply, the User may be eligible to withdraw from the contract within the period specified below (generally 14 days), for any reason and without justification. Users can learn more about the withdrawal conditions within this section.

### **Who the right of withdrawal applies to**

Unless any applicable exception is mentioned below, Users who are European Consumers are granted a statutory cancellation right under EU rules, to withdraw from contracts entered into online (distance contracts) within the specified period applicable to their case, for any reason and without justification.

Users that do not fit this qualification, cannot benefit from the rights described in this section.

### **Exercising the right of withdrawal**

To exercise their right of withdrawal, Users must send to the Owner an unequivocal statement of their intention to withdraw from the contract.

To this end, Users may use the model withdrawal form available from within the “definitions” section of this document. Users are, however, free to express their intention to withdraw from the contract by making an unequivocal statement in any other suitable way. In order to meet the deadline within which they can exercise such right, Users must send the withdrawal notice before the withdrawal period expires.

When does the withdrawal period expire?

- **In case of purchase of a digital content not supplied in a tangible medium**, the withdrawal period expires 14 days after the day that the contract is entered into, unless the User has waived the withdrawal right.

### **Effects of withdrawal**

Users who correctly withdraw from a contract will be reimbursed by the Owner for all payments made to the Owner, including, if any, those covering the costs of delivery.

However, any additional costs resulting from the choice of a particular delivery method other than the least expensive type of standard delivery offered by the Owner, will not be reimbursed.

Such reimbursement shall be made without undue delay and, in any event, no later than 14 days from the day on which the Owner is informed of the User’s decision to withdraw from the contract. Unless otherwise agreed with the User, reimbursements will be made using the same means of payment as used to process the initial transaction. In any event, the User shall not incur any costs or fees as a result of such reimbursement.

### **Exceptions from the right of withdrawal**

The right of withdrawal does not apply to contracts:

- for the provision of services, after the service has been fully performed if the performance has begun with the consumer’s prior express consent, and with their acknowledgement that their right of withdrawal is lost once the contract has been fully performed;
- for the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer’s prior express consent and with their acknowledgment that their right of withdrawal is thereby lost;

## **LIABILITY AND INDEMNIFICATION**

### **EU USERS**

#### **Indemnification**

The User agrees to indemnify and hold the Owner and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners and employees harmless from and against any claim or demand — including but not limited to lawyer's fees and costs — made by any third party due to or in relation with any culpable use of or connection to the Service, violation of these Terms, infringement of any third-party rights or statutory provision by the User or its affiliates, officers, directors, agents, co-branders, partners and employees to the extent allowed by applicable law.

#### **Limitation of liability**

Unless otherwise explicitly stated and without prejudice to applicable statutory product liability provisions, Users shall have no right to claim damages against the Owner (or any natural or legal person acting on its behalf).

This does not apply to damages to life, health or physical integrity, damages resulting from the breach of an essential contractual obligation such as any obligation strictly necessary to achieve the purpose of the contract, and/or damages resulting from intent or gross negligence, as long as Komotion has been appropriately and correctly used by the User.

Unless damages have been caused by way of intent or gross negligence, or they affect life, health or physical integrity, the Owner shall only be liable to the extent of typical and foreseeable damages at the moment the contract was entered into.

In particular, within the limits stated above, the Owner shall not be liable for:

- any loss of business opportunities and any other loss, even indirect, that may be incurred by the User (such as, but not limited to, trading losses, loss of revenue, income, profits or anticipated savings, loss of contracts or business relationships, loss of reputation or goodwill, etc.);
- damages or losses resulting from interruptions or malfunctions of Komotion due to acts of force majeure, or unforeseen and unforeseeable events and, in any case, independent of the will and beyond the control of the Owner, such as, but not limited to, failures or disruptions of telephone or electrical lines, the Internet and / or other means of transmission, unavailability of websites, strikes, natural disasters, viruses and cyber attacks, interruptions in the delivery of products, third-party services or applications;
- any losses that are not the direct consequence of a breach of the Terms by the Owner;
- any damage, prejudice or loss occurring due to viruses or other malware contained in or connected to files available for download from the internet or via Komotion. Users are responsible for implementing sufficient security measures – such as anti-viruses and firewalls to prevent any such infection or attack and for securing backup copies of all data or information exchanged via or uploaded to Komotion.

Notwithstanding the above, the following limitation applies to all Users not qualifying as Consumers:

In any event of liability, the compensation may not exceed the total payments that have been, will be or would be received by the Owner from the User based on the contract over a period of 12 months, or the period of the duration of the Agreement, if shorter.

## **AUSTRALIAN USERS**

### **Limitation of liability**

Nothing in these Terms excludes, restricts or modifies any guarantee, condition, warranty, right or remedy which the User may have under the Competition and Consumer Act 2010 (Cth) or any similar State and Territory legislation and which cannot be excluded, restricted or modified (non-excludable right). To the fullest extent permitted by law, our liability to the User, including liability for a breach of a non-excludable right and liability which is not otherwise excluded under these Terms of Use, is limited, at the Owner's sole discretion, to the re-performance of the services or the payment of the cost of having the services supplied again.

## **US USERS**

## **Disclaimer of Warranties**

**Komotion is provided strictly on an “as is” and “as available” basis. Use of the Service is at Users’ own risk. To the maximum extent permitted by applicable law, the Owner expressly disclaims all conditions, representations, and warranties — whether express, implied, statutory or otherwise, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third-party rights. No advice or information, whether oral or written, obtained by user from owner or through the Service will create any warranty not expressly stated herein.**

**Without limiting the foregoing, the Owner, its subsidiaries, affiliates, licensors, officers, directors, agents, co-branders, partners, suppliers and employees do not warrant that the content is accurate, reliable or correct; that the Service will meet Users’ requirements; that the Service will be available at any particular time or location, uninterrupted or secure; that any defects or errors will be corrected; or that the Service is free of viruses or other harmful components. Any content downloaded or otherwise obtained through the use of the Service is downloaded at users own risk and users shall be solely responsible for any damage to Users’ computer system or mobile device or loss of data that results from such download or Users’ use of the Service.**

**The Owner does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the Service or any hyperlinked website or service, and the Owner shall not be a party to or in any way monitor any transaction between Users and third-party providers of products or services.**

**The Service may become inaccessible or it may not function properly with Users’ web browser, mobile device, and/or operating system. The owner cannot be held liable for any perceived or actual damages arising from Service content, operation, or use of this Service.**

**Federal law, some states, and other jurisdictions, do not allow the exclusion and limitations of certain implied warranties. The above exclusions may not apply to Users. This Agreement gives Users specific legal rights, and Users may also have other rights which vary from state to state. The disclaimers and exclusions under this agreement shall not apply to the extent prohibited by applicable law.**

## **Limitations of liability**

**To the maximum extent permitted by applicable law, in no event shall the Owner, and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners, suppliers and employees be liable for**

- any indirect, punitive, incidental, special, consequential or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses, arising out of or relating to the use of, or inability to use, the Service; and**
- any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Service or User account or the information contained therein;**
- any errors, mistakes, or inaccuracies of content;**
- personal injury or property damage, of any nature whatsoever, resulting from User access to or use of the Service;**

- any unauthorized access to or use of the Owner's secure servers and/or any and all personal information stored therein;
- any interruption or cessation of transmission to or from the Service;
- any bugs, viruses, trojan horses, or the like that may be transmitted to or through the Service;
- any errors or omissions in any content or for any loss or damage incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available through the Service; and/or
- the defamatory, offensive, or illegal conduct of any User or third party. In no event shall the Owner, and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners, suppliers and employees be liable for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount paid by User to the Owner hereunder in the preceding 12 months, or the period of duration of this agreement between the Owner and User, whichever is shorter.

This limitation of liability section shall apply to the fullest extent permitted by law in the applicable jurisdiction whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if company has been advised of the possibility of such damage.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, therefore the above limitations or exclusions may not apply to User. The terms give User specific legal rights, and User may also have other rights which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under the terms shall not apply to the extent prohibited by applicable law.

#### Indemnification

The User agrees to defend, indemnify and hold the Owner and its subsidiaries, affiliates, officers, directors, agents, co-branders, partners, suppliers and employees harmless from and against any and all claims or demands, damages, obligations, losses, liabilities, costs or debt, and expenses, including, but not limited to, legal fees and expenses, arising from

- User's use of and access to the Service, including any data or content transmitted or received by User;
- User's violation of these terms, including, but not limited to, User's breach of any of the representations and warranties set forth in these terms;
- User's violation of any third-party rights, including, but not limited to, any right of privacy or intellectual property rights;
- User's violation of any statutory law, rule, or regulation;
- any content that is submitted from User's account, including third party access with User's unique username, password or other security measure, if applicable, including, but not limited to, misleading, false, or inaccurate information;
- User's willful misconduct; or

- **statutory provision by User or its affiliates, officers, directors, agents, co-branders, partners, suppliers and employees to the extent allowed by applicable law.**

## **COMMON PROVISIONS**

### **NO WAIVER**

The Owner's failure to assert any right or provision under these Terms shall not constitute a waiver of any such right or provision. No waiver shall be considered a further or continuing waiver of such term or any other term.

### **SERVICE INTERRUPTION**

To ensure the best possible service level, the Owner reserves the right to interrupt the Service for maintenance, system updates or any other changes, informing the Users appropriately.

Within the limits of law, the Owner may also decide to suspend or terminate the Service altogether. If the Service is terminated, the Owner will cooperate with Users to enable them to withdraw Personal Data or information in accordance with applicable law.

Additionally, the Service might not be available due to reasons outside the Owner's reasonable control, such as "force majeure" (eg. labor actions, infrastructural breakdowns or blackouts etc).

### **SERVICE RESELLING**

Users may not reproduce, duplicate, copy, sell, resell or exploit any portion of Komotion and of its Service without the Owner's express prior written permission, granted either directly or through a legitimate reselling program.

### **PRIVACY POLICY**

To learn more about the use of their Personal Data, Users may refer to the privacy policy of Komotion.

### **INTELLECTUAL PROPERTY RIGHTS**

Without prejudice to any more specific provision of these Terms, any intellectual property rights, such as copyrights, trademark rights, patent rights and design rights related to Komotion are the exclusive property of the Owner or its licensors and are subject to the protection granted by applicable laws or international treaties relating to intellectual property.

All trademarks — nominal or figurative — and all other marks, trade names, service marks, word marks, illustrations, images, or logos appearing in connection with Komotion are, and remain, the exclusive property of the Owner or its licensors and are subject to the protection granted by applicable laws or international treaties related to intellectual property.

### **CHANGES TO THESE TERMS**

The Owner reserves the right to amend or otherwise modify these Terms at any time. In such cases, the Owner will appropriately inform the User of these changes.

Such changes will only affect the relationship with the User for the future.

The continued use of the Service will signify the User's acceptance of the revised Terms. If Users do not wish to be bound by the changes, they must stop using the Service. Failure to accept the revised Terms, may entitle either party to terminate the Agreement.

The applicable previous version will govern the relationship prior to the User's acceptance. The User can obtain any previous version from the Owner.

If required by applicable law, the Owner will specify the date by which the modified Terms will enter into force.

Any change of these Terms shall be communicated in writing no later than one month prior to becoming effective. Should Consumers not accept the modified Terms, they shall have the right to terminate the Agreement without any penalty nor right to claim compensation up to four months following the day on which the modified Terms have become effective.

### **ASSIGNMENT OF CONTRACT**

The Owner reserves the right to transfer, assign, dispose of by novation, or subcontract any or all rights or obligations under these Terms, taking the User's legitimate interests into account. Provisions regarding changes of these Terms will apply accordingly.

Users may not assign or transfer their rights or obligations under these Terms in any way, without the written permission of the Owner.

### **CONTACTS**

All communications relating to the use of Komotion must be sent using the contact information stated in this document.

### **SEVERABILITY**

Should any provision of these Terms be deemed or become invalid or unenforceable under applicable law, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions, which shall remain in full force and effect.

### **EU Users**

Should any provision of these Terms be or be deemed void, invalid or unenforceable, the parties shall do their best to find, in an amicable way, an agreement on valid and enforceable provisions thereby substituting the void, invalid or unenforceable parts.

In case of failure to do so, the void, invalid or unenforceable provisions shall be replaced by the applicable statutory provisions, if so permitted or stated under the applicable law.

Without prejudice to the above, the nullity, invalidity or the impossibility to enforce a particular provision of these Terms shall not nullify the entire Agreement, unless the severed provisions are essential to the Agreement, or of such importance that the parties would not have entered into the contract if they had known that the provision would not be valid, or in cases where the remaining provisions would translate into an unacceptable hardship on any of the parties.

### **US Users**

Any such invalid or unenforceable provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent. These Terms constitute the entire Agreement between Users and the Owner with respect to the subject matter hereof, and supersede all other communications, including but not limited to all prior agreements, between the parties with respect to such subject matter. These Terms will be enforced to the fullest extent permitted by law.

## **AUTHORITATIVE VERSION OF THESE TERMS**

These Terms are drawn up and revised in English. Other language versions of these Terms are provided for information purposes only. In the event of any inconsistency between different linguistic versions, the original version shall always prevail.

## **GOVERNING LAW**

These Terms are governed by the law of the place where the Owner is based, as disclosed in the relevant section of this document, without regard to conflict of laws principles.

### **Exception for European Consumers**

However, regardless of the above, if the User qualifies as a European Consumer and has their habitual residence in a country where the law provides for a higher consumer protection standard, such higher standards shall prevail.

## **VENUE OF JURISDICTION**

The exclusive competence to decide on any controversy resulting from or connected to these Terms lies with the courts of the place where the Owner is based, as displayed in the relevant section of this document.

### **Exception for European Consumers**

The above does not apply to any Users that qualify as European Consumers, nor to Consumers based in Switzerland, Norway or Iceland.

## **US Users**

**Each party specifically waives any right to trial by jury in any court in connection with any action or litigation.**

**Any claims under these terms shall proceed individually and no party shall join in a class action or other proceeding with or on behalf of others.**

## **UK Users**

Consumers based in England may bring legal proceedings in connection with these Terms in the English courts. Consumers based in Scotland may bring legal proceedings in connection with these Terms in either the Scottish or the English courts. Consumers based in Northern Ireland may bring legal proceedings in connection with these Terms in either the Northern Irish or the English courts.

## **US USERS**

### **Surviving provisions**

This Agreement shall continue in effect until it is terminated by either Komotion or the User. Upon termination, the provisions contained in these Terms that by their context are intended to survive termination or expiration will survive, including but not limited to the following:

- the User's grant of licenses under these Terms shall survive indefinitely;
- the User's indemnification obligations shall survive for a period of five years from the date of termination;



- the disclaimer of warranties and representations, and the stipulations under the section containing indemnity and limitation of liability provisions, shall survive indefinitely.

## **DISPUTE RESOLUTION**

### **AMICABLE DISPUTE RESOLUTION**

Users may bring any disputes to the Owner who will try to resolve them amicably.

While Users' right to take legal action shall always remain unaffected, in the event of any controversy regarding the use of Komotion or the Service, Users are kindly asked to contact the Owner at the contact details provided in this document.

The User may submit the complaint including a brief description and if applicable, the details of the related order, purchase, or account, to the Owner's email address specified in this document.

The Owner will process the complaint without undue delay and within 21 days of receiving it.

### **ONLINE DISPUTE RESOLUTION FOR CONSUMERS**

The European Commission has established an online platform for alternative dispute resolutions that facilitates an out-of-court method for solving any dispute related to and stemming from online sale and service contracts.

As a result, any European Consumer can use such platform for resolving any dispute stemming from contracts which have been entered into online. The platform is [available at the following link](#).

#### **France: Mediation**

Within one year of submitting a written complaint to the Owner regarding any dispute stemming from these Terms, Consumers have the right to initiate a mediation procedure before

- any mediation body approved by the French Government. The relevant list is available [at the following link](#).

## **DEFINITIONS AND LEGAL REFERENCES**

### **Komotion (or this Application)**

The property that enables the provision of the Service.

### **Agreement**

Any legally binding or contractual relationship between the Owner and the User, governed by these Terms.

### **Business User**

Any User that does not qualify as a Consumer.

### **Coupon**

Any code or voucher, in print or electronic form, which allows the User to purchase the Product at a discounted price.

### **European (or Europe)**

Applies where a User is physically present or has their registered offices within the EU, regardless of nationality.

### **Example withdrawal form**

*Addressed to:*

*ICO Registration number: ZA240880 DPO: Jordan Davidson Komotion Ltd Boho Five, Bridge Street East Middlesbrough Cleveland TS2 1NY United Kingdom  
admin@komotion.co.uk*

*I/We hereby give notice that I/we withdraw from my/our contract of sale of the following goods/for the provision of the following service:*

\_\_\_\_\_ *(insert a description of the goods/services that are subject to the respective withdrawal)*

- *Ordered on:* \_\_\_\_\_ *(insert the date)*
- *Received on:* \_\_\_\_\_ *(insert the date)*
- *Name of consumer(s):* \_\_\_\_\_
- *Address of consumer(s):* \_\_\_\_\_
- *Date:* \_\_\_\_\_

*(sign if this form is notified on paper)*

### **Order Confirmation**

Indicates the email that the Owner sends as shipping confirmation at the moment when the purchased products, or parts of them, are being dispatched.

### **Owner (or We)**

Indicates the natural person(s) or legal entity that provides Komotion and/or the Service to Users.

### **Product**

A good or service available for purchase through Komotion, such as e.g. physical goods, digital files, software, booking services etc.

The sale of Products may be part of the Service.

### **Service**

The service provided by Komotion as described in these Terms and on Komotion.

### **Terms**

All provisions applicable to the use of Komotion and/or the Service as described in this document, including any other related documents or agreements, and as updated from time to time.

### **User (or You)**

Indicates any natural person or legal entity using Komotion.

### **Order Processing Receipt**

Indicates the email that the Owner sends upon receipt of the order.

**Consumer**

Any User qualifying as a natural person who accesses goods or services for personal use, or more generally, acts for purposes outside their trade, business, craft or profession.

Latest update: January 20, 2020