



## Product Agreement Terms – February 2013

The Product Agreement Terms ("Terms") as amended by Mornington Peninsula Kids ("We") from time to time will apply to any Product (paid or complimentary) Mornington Peninsula Kids supply to The Client now and in the future. In providing Content for a Product, the Client is acknowledging that they have read the document Product Agreement Terms and agree to them completely.

**AGREEMENT** means the terms on which Mornington Peninsula Kids supplies a Product to the Client.

**CLIENT** refers to the organization or entity employing Mornington Peninsula Kids' services to provide the Product.

**CONTENT** means any information provided by The Client to be used by Mornington Peninsula Kids to produce the Product.

**LAW** means all law, regulations, rules and applicable industry codes of practice and standards.

**PRICE** means the prices or charges payable by The Client for a Product, whether payable in full or in installments.

**PRODUCT** means any advertising product that Mornington Peninsula Kids offer from time to time on a paid or free basis on any medium.

**THIRD PARTY TERMS** means:

1. the terms of Google Inc. and its related entities are set out on the webpage <https://adwords.google.com.au/select/tsandcsfinder> (or such other webpage determined by Google Inc. and its related entities from time to time);
2. the terms of Yahoo! Set out on the webpage <http://searchmarketing.yahoo.com/enAU/legal/piterms.php> (or such other webpage determined by Yahoo! from time to time);
3. the terms of other Third Party Search Engine Owners, to the extent they apply to any of the Client's Content displayed in Your Product;
4. the terms of Third Party Sites or Application that Mornington Peninsula Kids distribute the Client's Content to, that Mornington Peninsula Kids link to, or that Mornington Peninsula Kids otherwise integrate with a Product, from time to time (which may include online media and social networking sites); and
5. all policies, rules and guidelines referred to in the above terms.

### 1 About these Terms

- 1.1 The provision of each Product constitutes a separate Agreement.
- 1.2 The terms on which Mornington Peninsula Kids supply Products to The Client are:
  - a) the Terms;
  - b) the Agreement;
  - c) any specific terms Mornington Peninsula Kids provide to The Client prior to the Agreement;
  - d) our Product rules, policies and guidelines
  - e) any advertising proof.

### 2 Term of Your Agreement

- 2.1 Each Agreement begins on the date that The Client signs the Agreement and will continue until the earlier of:
  - (a) completion of that Agreement; or
  - (b) termination of the Agreement in accordance with these Terms.
- 2.2 If the Agreement relates to a Basic or Priority website listing, it will automatically be rolled over and The Client's advertisement will continue to be published on website peninsulakids.com.au at the then current price unless The Client advises Mornington Peninsula Kids otherwise before the completion of the Agreement period.
- 2.3 Mornington Peninsula Kids will automatically send an invoice for the next 12 month period 30 days prior to the completion of the current Agreement period.

### 3 Content and Presentation

- 3.1 Mornington Peninsula Kids are not obligated to collect Content for The Client but may do so.
- 3.2 The Client is responsible for providing all Content that is required to activate the Product.
- 3.3 The Client must provide any Content requested by the date requested and in the manner specified. Mornington Peninsula Kids is not able to supply a Product to The Client until this is done.
- 3.4 The Client is responsible for regularly checking Content and ensuring that it is kept current and accurate. The Client can update Content by emailing [media@peninsulakids.com.au](mailto:media@peninsulakids.com.au)
- 3.5 The Client takes all responsibility for Content supplied to Mornington Peninsula and ensuring that it is legal and not breaching any state or federal laws.
- 3.6 Mornington Peninsula Kids maintains the right to reject, remove, change or suspend Content without notification.
- 3.7 Mornington Peninsula Kids may at anytime change the presentation, appearance, location, order, category or the like of a Product or the Client's Content.
- 3.8 Mornington Peninsula Kids cannot guarantee the how a Product or Content will be presented on all devices or applications.
- 3.9 Mornington Peninsula Kids may use the Client's Content, including name, address and phone number, in other Products that Mornington Peninsula Kids supply, as well as in sites and applications that Mornington Peninsula Kids develop, from time to time. Mornington Peninsula Kids will determine the presentation of the Client's Content in these Products, sites and applications.
- 3.10 The Client agrees that Mornington Peninsula Kids may Syndicate some or all of a Product or the Client's Content to Third Party Sites or Applications and sites or applications owned and/or controlled by Mornington Peninsula Kids.
- 3.11 The Client acknowledges that a Product or the Client's Content may be displayed either by Mornington Peninsula Kids or third parties together with other content (such as reviews). The Client agrees that Mornington Peninsula Kids are not responsible for that other content.
- 3.12 The Client grants Mornington Peninsula Kids a royalty free licence to use, reproduce, modify, adapt, communicate to the public and sub-license the Content the Client provides.
- 3.13 The Client agrees that Mornington Peninsula Kids own all intellectual property rights in regards to all Products.
- 3.14 Should the Client require help with Content presentation, Mornington Peninsula Kids will arrange a graphic artist to assist at a cost to the Client.

### 4 Use of Social Media

- 4.1 The Client agrees to Mornington Peninsula Kids promoting their Content via social media.
- 4.2 The Client acknowledges that all social media has positive and negative elements to it and by participating in it the Client may experience both elements.
- 4.3 The Client acknowledges that opinions written on any social media forum are not necessarily the opinions of Mornington Peninsula Kids.
- 4.4 The Client acknowledges that promotions on social media are open for comment by the public and that Mornington Peninsula Kids is not responsible, nor can they be held accountable in any instance ever, for comments made on any Mornington Peninsula Kids social media regarding or related to the Client ever.

### 5 Communication between Parties

- 5.1 Mornington Peninsula Kids communicates with the Client via email. It is the Client's responsibility to ensure that a correct email address is supplied; the email service is operational and that the Client regularly checks the email account for correspondence.
- 5.2 Mornington Peninsula Kids will not be held responsible for following up with the Client to confirm an email has been received.
- 5.3 The Client acknowledges that should they not respond accordingly to an email by the requested date, Mornington Peninsula Kids will be restricted in their ability to provide the Product.
- 5.4 Mornington Peninsula Kids will not be liable for refunding any fees associated with not been able to provide the Product due to lack of communication with the Client.

## 6 Payment

- 6.1 Mornington Peninsula Kids may invoice the Client in various ways. The Client must pay Mornington Peninsula Kids the Price that applies to any Product by the due date specified on the invoice. This obligation survives completion or termination (for whatever reason) of the applicable Agreement or cancellation of any Product.
- 6.2 If the Client does not pay Mornington Peninsula Kids any amount that is owed by the due date or if any payment is declined or otherwise not received because of insufficient funds in the Client's account, the Client agrees to paying:
  - a) any reasonable debt collection and legal costs incurred by Mornington Peninsula Kids;
  - b) a late payment fee as set out on the invoice;
  - c) any dishonor fees incurred as a result to trying to obtain payment.
- 6.3 Mornington Peninsula Kids maintains the right to charge a payment processing fee for credit card transaction.
- 6.4 Where the Client requests a direct debit arrangement, the result of any payment will be reflected against any account for the Product within five business days.
- 6.5 Where the Client requests a direct debit arrangement, the Client agrees to pay all associated fees that are incurred by Mornington Peninsula Kids by employing a third party.
- 6.6 The Client agrees to Mornington Peninsula Kids increasing the amount of a direct debit to correspond with increases in Product prices.
- 6.7 Unless specifically stated otherwise, all amounts or fees in relation to the Products do not include any GST. At a time when GST is payable, it will be added at the time of invoicing.

## 7 Changes to the Terms of the Product

- 7.1 Mornington Peninsula Kids may change any terms in the Client's Agreement or any Product at any time.
- 7.2 Mornington Peninsula Kids may change any Prices of any Product at any time.
- 7.3 Mornington Peninsula Kids will not give the Client prior individual notice of changes if Mornington Peninsula Kids reasonably believes that the changes will benefit, not affect or only have a small affect on the Client.
- 7.4 If the Client can demonstrate that changes will have a detrimental affect, the Client may cancel their Agreement without incurring cancellation fees.
- 7.5 The Client shall receive 7 days written notice via email of any changes to the Terms and Conditions.

## 8 Competing Organisations

- 8.1 The Client understands that Mornington Peninsula Kids offers a directory listing services open to the general public. It does not endorse businesses, nor does it provide exclusivity to categories.
- 8.2 The Client acknowledges that by being a member of a directory listing service, the website becomes more attractive to the general public to visit and therefore greater visibility of the Client's Content.
- 8.3 The Clients agrees to Mornington Peninsula Kids referring any business on its website to any member of the public at any time via any medium, without question, reason or reaction. The Client accepts that Mornington Peninsula Kids can choose when and if to refer to them in these situations.

## 9 Privacy and Confidentiality

- 9.1 The Client agrees to keep all information provided by Mornington Peninsula Kids confidential & not disclose the content to any third party unless permission to do so is requested and granted.
- 9.2 Mornington Peninsula Kids is committed to protecting the privacy of the Client. Mornington Peninsula Kids only requests personal information that is required.
- 9.3 Mornington Peninsula Kids only collects information from the Client that is necessary at the time of collection.
- 9.4 Mornington Peninsula Kids takes great care to ensure that information records are accurate and are treated with full regard to the privacy of the Client.
- 9.5 The Client maintains the right to request access to personal information about them held by Mornington Peninsula Kids.
- 9.6 Mornington Peninsula Kids use the information for internal purposes only. It is not shared with third parties nor does Mornington Peninsula Kids disclose or sell personal information to third parties for use in mailing lists or databases.

## 10 Termination of an Agreement

- 10.1 The Client may terminate an Agreement with 30 day written notice.
- 10.2 Mornington Peninsula Kids maintains the right to terminate an Agreement should the Client fail to make payment within 30 days of invoice due date.
- 10.3 Mornington Peninsula Kids may terminate an Agreement should it place Mornington Peninsula Kids at risk, either legally or otherwise,
- 10.4 Mornington Peninsula Kids maintains the right to terminate an Agreement without cause by providing 30 days' written notice and refunding costs on a pro-rata basis.
- 10.5 Should the Client choose to terminate the Agreement and payment has been made upfront, there will be no refund returned.
- 10.6 Should a direct debit arrangement be in place when the Client elects to terminate the Agreement, the Client will be charged the lesser of the following: remainder of the Agreement fees or \$70.

## 11 Warranties and Limitation of Liability

- 11.1 While Mornington Peninsula Kids takes the greatest of care, no guarantee can be made that the Product will be free from errors or omissions.
- 11.2 Mornington Peninsula Kids makes no guarantee what a Product will be supplied within a given timeframe, unless specifically outlined.
- 11.3 Mornington Peninsula Kids is a directory based business and as such does not guarantee restriction of competition. All entities will be given an opportunity to list contact details with Mornington Peninsula Kids. How an entity chooses to appear is a choice the entity makes when selecting Product options.
- 11.4 Mornington Peninsula Kids is not in a position to ascertain whether a business is providing unauthorized goods or services, unless contacted by legal authorities. Should the Client be concerned about the legality of another listed business, the Client should contact the appropriate authorities. Mornington Peninsula Kids will take no action until an authoritative body contacts them.
- 11.5 Should Mornington Peninsula Kids fail to comply with a statutory guarantee in relation to consumer protection laws, the Product will be supplied at a second time free of charge to The Client.
- 11.6 Mornington Peninsula Kids is not responsible for any actions a third party takes with the Client's Content or Product.
- 11.7 Mornington Peninsula Kids is not liable for not providing a Product when there are causes outside of their control restricting supply.
- 11.8 In no event will Mornington Peninsula Kids be liable for any incidental, consequential, or indirect damages (including, but not limited to, damages for loss of profits, business interruption, loss of programs or information, and the like) arising out of the use of or inability to use the service, or any information, or transactions provided on the service, or downloaded from the service, or any delay of such information or service.
- 11.9 The Client warrants that they own all intellectual property of the Content they provide.
- 11.10 The Client warrants that nothing in the Content they provide breaks any laws, is false, misleading or deceptive.
- 11.11 The Client agrees to Indemnify Mornington Peninsula Kids against all claims, demands, damages, costs, penalties, suits and liabilities of any nature caused directly or indirectly by The Client's Content.