



TERMS OF SERVICE: KAYWA QR CODE

(includes the use of other 2D Barcodes like Datamatrix or NFC)

1. Scope of the Terms of Service

The Terms of Service define the terms under which KAYWA AG ("KAYWA") provides services for its QR Code clients ("QR Code clients").

Clients are all persons who access the QR Code Management System/QR Code API to create Campaigns, QR Codes, Tickets or Coupons, reedit them and/or to view and export statistical data.

KAYWA reserves itself the right to update and change the Terms of Service without further notice or acceptance by the clients.

To use the the QR Code management system/QR Code API, clients must be at least 16 years old. The Terms of Service are also applicable to the use of the Service on a trial basis.

2. Description of Service

QR Code API: <http://api.qrcode.kaywa.com> QR Code Management System: <http://qrcode.kaywa.com> ,
<http://mobiletags.kaywa.com> and/or <http://qrcode.kaywa.me>

KAYWA provides its QR Code clients with a web based Management System or API to create, and reedit Campaigns and/or QR Codes, Coupons and Tickets. QR Codes can be downloaded in different data formats (EPS, PDF, PNG etc.). The API and Management System provide statistical data about the scans of the created QR Codes live. This data is immediatly visible on the API or in the Management System and can be exported to Excel.

3. Contractual obligation on registration

The client provides KAYWA with all necessary information, especially with a valid email address and/or his mobile phone number. In case of payment by invoice or credit card, this also applies for the address and the credit card details. The client accepts the use of his email address for KAYWA's information purposes concerning its service and its terms of service. The client agrees to provide true, accurate, current and complete information about himself.

The client also agrees to maintain and promptly update the data to keep it true, accurate, current and complete by sending an email to KAYWA.

The client agrees to maintain the confidentiality of the password and account and is fully responsible for all activities that occur under his password or account. The client is liable for unauthorized uses of the KAYWA services, as long as it is his failure. If the client knows, that a third party has knowledge of his password, he should immediatly change it or - if this is not possible - inform KAYWA about it without further delay.

4. Payment Terms

By Invoice

After the payment by the client, the account on the Management System is opened or the QR Code API becomes fully functional.

The client receives a confirmation after opening up his account. If the payment process can not be closed completely, the account will not be opened. Has the amount been paid during this time period, Kaywa will reopen the account again.

All currency references are in US Dollars. Please note, unless Kaywa gives notice to the contrary, payment for the service is billed on a recurring basis (monthly or yearly) and is non-refundable.

By paying on Paypal, Kaywa and the client accept Paypals Terms of Service. By paying with Credit Cards, Kaywa nadn the client accept the Terms of Service of the Credit Card issuer.

Premium and Enterprise clients may get billed by invoice and the account opened on agreement. If the payment process can not be closed completely within the agreed period of time, the account and the data residing on it will be stored for another 30 days. After these 30 Days, the account will be suspended and all data will be lost.

5. Roll Over / Termination

Termination

If the client cancels the service before the end of the term, his cancelation will take effect at the end of the paid term only. After cancelation, the client will no longer have access to his account and all information contained therein may be deleted by Kaywa. Kaywa accepts no liability for such deleted information or content.

Roll Over

The payment of annually billed accounts is non-refundable. The cancellation for the following year should arrive at least 30 days before the beginning of the next year. The cancellation must happen on the account page of the client or be in written form and arrive at the due date. It lies in the hands of the client to provide Kaywa with this information at the right time. Else the service continues automatically.

Kaywa may immediately terminate the service if the client does not follow the terms of service or if he does something unlawful. The client has to bear all costs which occur during such an instant dismissal. Further, the client agrees that all terminations for cause shall be made in Kaywa's sole discretion and that Kaywa shall not be liable to the client or any third-party for any termination of his account, any associated email address, or access to the Service.

6. Privacy Policy

Kaywa takes your privacy seriously. Please read our Privacy Statement for details.

For all information, which is made public by yourself, we exclude any liability.

7. Terms of Use

The client is fully responsible for the content behind and the display of his QR Codes. He refrains from

doing anything unlawful and/or not in accordance with the terms of service. All clients commit themselves to follow the ethic and generally accepted rules of the internet community. This includes owning the copyright of pictures, logos or illustrations used by the client to create Design QR Codes.

The client is fully responsible for his contents and will bear all costs, if Kaywa has costs due to the contents behind a QR Code or presentation/context of the QR Code of a client. The client has to ensure that his use of the Kaywa QR Code is lawful.

The client accepts to respect all national and international agreements and treaties especially concerning patents, trademarks, trade secrets, copyright, rights of privacy or publicity or any other proprietary rights of any party. The client agrees to never direct a QR Code to or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable. This applies especially to the circulation or linking or offering of pornographic and/or violent materials, incitement to crime of any kind and discrimination of any kind.

Kaywa is not bound to oversee and control the content behind QR Codes of its clients. The following is strictly forbidden on any account:

- * contents, which harm privacy rights (Swiss Law: StGB 179)
- * Racist and discriminatory contents (Swiss Law: StGB 261bis)
- * Contents which include violence (Swiss Law: StGB 135)
- * Incitement to violence (Swiss Law: StGB 259)
- * Pornographic Materials (Swiss Law: StGB 197)
- * Informations and data which harm Copyrights, Trademarks or any other proprietary rights

If Kaywa would gain knowledge of a such a case, Kaywa has the right to immediately terminate the business relationship and to block and/or erase the account. Claims for compensation, as well as other legal measures are reserved.

It is also forbidden to direct a QR Code to transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any telecommunications equipment or computer software or hardware. Kaywa reserves itself the right, to deactivate any account without warning, till the case is resolved.

For contents which need a lot of bandwidth, like for example accounts with legal file downloads, you have to get our approval.

8. Contents

The client assures that he has the full rights of all information, data, text, software, music, sound, photographs, graphics, video, messages, goods, products, services or other materials published on his account. Therefore the client is solely and entirely responsible in any third party claim or demand. The client agrees to indemnify and hold Kaywa harmless from any such claim or demand.

Kaywa does not claim ownership of the content behind the QR Codes from its clients. By submitting content on a Kaywa account, the client grants Kaywa a world-wide, royalty-free, and non-exclusive license to reproduce and publish the QR Codes solely for the purpose of displaying, distributing and promoting your QR Codes on KAYWA's Internet properties.

9. Liability

Kaywa will make reasonable efforts to maintain the service. The use of the accounts is nevertheless at the sole risk of the client.

Kaywa does not warrant that the service will be uninterrupted, timely, secure or error-free. Kaywa is not responsible for any damage which has been caused by third parties (virus, hacking etc.). The information provided by the client as well as the claims by any third party lies only within the responsibility of the client. Kaywa is also not responsible for any other damage (problems occurring during data transmissions, loss of data, customer information or vendor data, etc.).

Kaywa is not liable in case of access or transmission problems occurring with a third party (for example T-Mobile, Swisscom, Vodafone etc.) or due to force majeure, repairs, maintenance or introduction of new technologies.

KAYWA could only made responsible in an act of gross negligence by KAYWA itself. The gross negligence has to be proven by the party which will make the claim. The liability is maximum the price of an account for one year.

KAYWA reserves itself the right to sue for damages all clients which misuse data or use it for a criminal purpose, hack or attack the KAYWA infrastructure. KAYWA reserves itself also the right to sue all clients who disrespect the rules in this terms of service.

10. In case of dysfunctions

To help our clients, KAYWA created a web based support. You can find it at <http://support.kaywa.com>. You need a Kaywa ID to use it which you can open at <http://id.kaywa.com>.

For more general questions, you can send an email to support@kaywa.com. Outside of business hours or for serious problems, please call us at:
Europe +41 43 818 29 40 or +41 78 607 75 06
USA +1 415 374 0701

In case of dysfunctions, KAYWA tries to act as quickly as possible. No claims can be made, if the service is temporarily unavailable due to dysfunctions, repairs, introduction or installation of new technologies or similar cases.

If there are special requirements concerning the availability of the service, they have to be arranged in a separate Service Level Agreement (SLA).

11. Invalidity of parts of the terms of service

Should parts of this terms of service be effectless or be considered void or invalid, other parts should not be touched by this. They remain intact and valid. The void or invalid parts have to be replaced by similar, legally valid terms.

12. Place of jurisdiction

This terms of service are governed by Swiss law. The place of jurisdiction is Zurich, Switzerland. KAYWA has however the right to sue a client at any legal venue.

Updated on: August 2013