

Terms and Conditions

Terms and Conditions for API products

of the company FlowerChecker s.r.o.

with its registered office Hrnčířská 813/23, 602 00 Brno, Company ID No.: 03283526, registered in the Commercial Register under the file No. C 84000 kept by the Regional Court in Brno

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1. Definitions

1.1. For the purpose of these Terms and Conditions, the bold terms below have the following meanings:

Additional Services	Digital Services provided by FlowerChecker other than providing Identification Answers or Search Engine Responses. For more information, see Art. 3 of the Terms and Conditions.
Admin Panel	Web tool used for distributing and managing API keys and orders.
Alpha Release	Basic functional mode for newly offered Additional Services, which is offered free of charge, for a limited time, with limited features and without any guarantee of functionality or correctness. Services in Alpha Release are not subject to Service Level Agreement. For more information, see Art. 3 of the Terms and Conditions.
API/APIs	Application Programming Interface/Interfaces provided by FlowerChecker, whose technical documentation is linked from the Admin Panel. For more information, see <u>Sect. 6.1</u> of the Terms and Conditions.
API key	Fifty-digit code necessary for the authentication of the Client's user software to the API.
Civil Code	Act No. 89/2012 Coll., the Civil Code of the Czech Republic, as amended.
Client	Any natural or legal person that concludes a contract with FlowerChecker in accordance with these Terms and Conditions in order to use FlowerChecker Digital Services.
Credit	Value, which represents the number of Requests which the Client is eligible to perform.
Digital Services	Digital Services provided on-line by FlowerChecker through APIs consisting mainly of the Identification Answers and Search Engine Responses. For more information, see Sect. 3.2 of the Terms and Conditions.
FlowerChecker or Kindwise	Company FlowerChecker s.r.o. with its registered office Hrnčířská 813/23, 602 00 Brno, Company ID No.: 03283526 registered in the Commercial Register under the file No. C 84000 kept by the Regional Court in Brno.
Identification Answer	A list of suggested classes which describe the content in the photographic images supplied by the Client and additional textual and graphic information about these classes.
Kindwise	A FlowerChecker's brand, under which FlowerChecker operates its services under these Terms and Conditions.
Output	Identification Answer, Search Engine Response or Additional Services outputs provided at the Request of the Client or its device through API.
Party/Parties	Parties mean FlowerChecker and the Client. A Party means either FlowerChecker or the Client.
Prepaid Mode	Certain number of prepaid Credits based on an agreement between FlowerChecker and the Client. For more information, see Art. 9 of the Terms and Conditions.

Price	The monetary sum requested by FlowerChecker for performing the Request. For more information, see Art. 7 of the Terms and Conditions.
Production Release	Functional mode for Additional Services, which is subject to Service Level Agreement and available in Production Version. For more information, see Art. 3 of the Terms and Conditions.
Production Version	The service regime, which is subject to all rights and obligations stated in these Terms and Conditions, see in particular Art. 6 of the Terms and Conditions.
Request	Uploading photo images or enter text queries by the Client or its device via the API for the purpose of gaining the Output.
Retroactive Pay Mode	Requests are paid monthly on the basis of the issued invoice. For more information, see Art. 10 of the Terms and Conditions.
Search Engine Response	A list of suggested answers to a text query entered by the Client into a search engine via the API, which may include additional graphical and textual information.
Service Level Agreement	Binding provisions between FlowerChecker and the Client on the terms of service and use of the FlowerChecker services. The Service Level Agreement forms the Appendix No. 1, see Sect. 22.12 of the Terms and Conditions, and forms an integral part thereof.
Terms and Conditions	This document regulates mutual rights and obligations between the Parties.
Trial Version	The API usage regime, which is subject to all rights and obligations stated in these Terms and Conditions to a limited extent. For more information, see in particular Sect. 6.10 of the Terms and Conditions.

2. General provisions

- 2.1. These Terms and Conditions govern, in accordance with the provisions of the Sect. 1751 (1) of the Civil Code, mutual rights and obligations in the provision of services between FlowerChecker and the Client.
- 2.2. FlowerChecker is a provider of Digital Services based on machine learning that enable especially:
 - 2.2.1. photo subject identification based on photo images provided by the Client or his/her device via the APIs;
 - 2.2.2. respond to Client's or his/her device queries via the APIs.

3. Subject matter

- 3.1. FlowerChecker undertakes to provide Client with Digital Services within the scope of Sect. 3.2. of these Terms and Conditions and in accordance with these Terms and Conditions and the Client undertakes to use these Digital Services in accordance with these Terms and Conditions and to pay the Price for Digital Services properly.
- 3.2. The Digital Services consist of providing following Outputs at the following Requests:

- 3.2.1. providing Identification Answers at the base of photographic images entered by the Client or his/her device via the API;
- 3.2.2. providing Search Engine Responses at the base of text queries entered by the Client or his/her device via the API;
- 3.2.3. providing outputs from Additional Services at the base of photographic images or text queries entered by the Client or its device via the API.
- 3.3. The Digital Services are provided in Trial Version mode and Production Version mode.
- 3.4. Depending on the development of its software, FlowerChecker is at any time entitled to offer new Additional Services to the Client, including services involving communication with artificial intelligence and services involving third party products. These services are firstly offered in Alpha Release: free of charge, for a limited time, with limited features and without any guarantee of functionality or correctness. The Client is not obliged to use Additional services in Alpha Release.
- 3.5. FlowerChecker will notify the Client when the Additional services are ready in the Production Release. After this notification, the Client is entitled to request access to Additional Services in the Production Release through the Admin Panel. FlowerChecker will make Additional Services available to the Client in the Production Release within 3 working days after Client's request. The Additional Services in the Production Release are provided under the conditions set out in Art. 6 below.

4. Concluding the Contract

- 4.1. The Contract between FlowerChecker and the Client is concluded by completing the registration according to Sect. 4.2 of the Terms and Conditions. By concluding the Contract, the Client agrees with these Terms and Conditions.
- 4.2. The Client expresses his/her interest in concluding the Contract with FlowerChecker on the provision of Digital Services by registering at <https://admin.kindwise.com>. After conclusion of the contract according to Sect. 4.1 above, FlowerChecker will provide access to its Digital Services by providing the Client with API keys.

5. Activation of the Digital Services

- 5.1. The Trial Version is activated by concluding a Contract pursuant to Art. 4 of the Terms and Conditions. The Trial Version ends after thirty days from the date of conclusion of the Contract in accordance with Art. 4 of the Terms and Conditions.
- 5.2. FlowerChecker activates the Production Version within three working days of Prepaid Mode pursuant to Sect. 9.2 and 9.3 of the Terms and Conditions. If the Production Version is not activated by FlowerChecker within the deadline specified in the previous sentence, the Client is entitled to address

FlowerChecker via email and to ask for remedy, see Art. 18 of the Terms and Conditions. In such a case, FlowerChecker has another five working days for activation. FlowerChecker shall notify the Client of the activation of the Production Version without undue delay to the email address, see Art. 18 of the Terms and Conditions.

6. Terms of service and content of the FlowerChecker Digital Services

- 6.1. FlowerChecker Digital Services are provided exclusively via APIs available at the URIs specified in the documentation linked from the Admin Panel. It serves by sending photographic images or text queries by the Client or his/her device. The Output is then made available to the Client through the API.
- 6.2. In accordance with these Terms and Conditions, the Client is entitled to make Requests based on the submission of photographic images or enter text queries via the API.
- 6.3. FlowerChecker is obliged to evaluate the photographic images or text inquiries after the Client's Request and subsequently make the Output available to the Client through the API in accordance with the Service Level Agreement (Appendix No. 1).
- 6.4. By accepting the Request, FlowerChecker:
 - 6.4.1. deducts the prepaid Request from the credit in the Prepaid Mode;
 - 6.4.2. adds the Request to the Retroactive Pay Mode account of the Client.
- 6.5. FlowerChecker is obliged to provide technical support, which is available via email address, see Art. 18 of the Terms and Conditions.
- 6.6. Availability and functioning of FlowerChecker Digital Services is governed by the Service Level Agreement, the content of which may vary based on an individual agreement between FlowerChecker and the Client concluded pursuant to Sect. 22.5 of the Terms and Conditions.
- 6.7. FlowerChecker is required to report the percentage accuracy of the provided Output for each Request. The Client acknowledges that the Outputs are generated by machine learning and as such are provided only with a percentage probability, not with certainty. Responsibility for use of these Outputs therefore rests solely with the Client.
- 6.8. The Client is obliged to refrain from any activity that would or could lead to misuse of FlowerChecker Digital Services, including all information related to its use.
- 6.9. The proper usage of the service is described in the documentation available at <https://admin.kindwise.com/public/docs>.
- 6.10. The conditions specified in Sect. 6.2 to 6.5 and 13.3.2 of the Terms and Conditions do not apply to the Trial Version. The terms of the Trial Version are determined solely by FlowerChecker. In the Trial Version, the Client is entitled

to submit a Request no more than once per second. FlowerChecker is not responsible for the availability, performance, or accuracy of Digital Services in the Trial Version. FlowerChecker reserves the right to change or discontinue the provision of its services in the Trial Version without giving any reason.

- 6.11. For the avoidance of doubt, the Client undertakes to comply with the obligations of using FlowerChecker Digital Services set forth in particular in these Terms and Conditions, and acknowledges that in the event of improper use of these Digital Services in the form of overloading or another disturbing their function and availability, the Contract may be terminated by the FlowerChecker and the Client may be held liable for damages.
- 6.12. The Client is obliged to keep the API key strictly confidential, together with the access to the Admin Panel. Any request to Digital Services authorized by the Client's API key will be deemed to come from the Client.
- 6.13. In the event that the Client becomes aware that the API key has been compromised, it is the responsibility of the Client to deactivate the API key as soon as possible and to inform FlowerChecker of such occurrence.
- 6.14. All Client's submitted photographs and queries, as well as all Outputs from the Digital Services, are available to the Client via the API key for 6 months after receipt.

7. Price

- 7.1. The price per Credit in the Prepaid Mode is described in Attachment No. 2.
- 7.2. The price may be changed on the basis of an individual agreement between the Client and FlowerChecker concluded in accordance with Sect. 22.5 of the Terms and Conditions.

8. Payment Options

- 8.1. The Price pursuant to Sect. 7 of the Terms and Conditions may be paid as:
 - 8.1.1. Prepaid Mode pursuant to Art. 9;
 - 8.1.2. Retroactive Pay Mode pursuant to Art. 10;

9. Prepaid Mode

- 9.1. By executing the Prepaid Mode according to Sect. 9.2 of the Terms and Conditions, the right to payment of the Price calculated according to Art. 7 of the Terms and Conditions arise. By prepaying Credit in the Prepaid Mode, a certain number of Requests are purchased that may be used under the terms of this Art. 9 of the Terms and Conditions.
- 9.2. The Client receives the Credit based on an individual agreement with FlowerChecker. This agreement is subsequently confirmed by a proforma invoice that FlowerChecker sends to the Client at the email address, see Art. 18 of the Terms and Conditions. Due date of the Price and payment terms are set by the proforma invoice.

- 9.3. After payment of the amount according to the proforma invoice, FlowerChecker informs the Client about his/her Prepaid Credit via the email address, see Art. 18 of the Terms and Conditions.
- 9.4. The validity of the Prepaid Credit is three months from the date of notification of the Prepaid Credit according to Sect. 9.3 of the Terms and Conditions. FlowerChecker is obliged to notify the Client via email address, see Art. 18 of the Terms and Conditions, about the impending expiration of the Prepaid Credit seven days before its expiration.
- 9.5. The Client is entitled to raise questions about his/her Prepaid Credit via email address, see Art. 18 of the Terms and Conditions, at most once per calendar week.
- 9.6. If the Client runs out of the Prepaid Credit or the Prepaid Credit expires, the Client's API key shall be deactivated until the Client purchases the Prepaid Credit again. When the API key is deactivated, FlowerChecker does not have any obligations against the Client described in Sect. 5.2 of the Terms and Conditions.

10. Retroactive Pay Mode

- 10.1. The right to payment of the Price calculated according to Art. 7 of the Terms and Conditions arises after executing the Request and is paid on the basis of an invoice issued on the last day of the calendar month. The invoice is due within 30 days.
- 10.2. The minimum payment per calendar month is €100. If the Client's payment per calendar month does not reach this minimum amount, €100 will be charged.
- 10.3. The Client may ask FlowerChecker via email address, see the Art. 18 of the Terms and Conditions, to activate or deactivate Retroactive Pay Mode. Activation is subjected to the consent of FlowerChecker. Activation and deactivation preserve the existing API keys. Activation or deactivation shall take effect from the following calendar month.
- 10.4. FlowerChecker reserves the right to charge a penalty for overdue invoices. The penalty equals to 0.2% of the invoiced amount for each day the invoice remains unpaid.

If the Client fails to pay invoices on time on three separate occasions, the Retroactive Pay Mode will be automatically cancelled. In such a case, the Client will be switched to the Prepaid Mode, and credits will need to be available for the identifications to be processed.

11. Responsibility for providing Digital Services and damage

- 11.1. FlowerChecker is responsible for the provision and availability of Digital Services in the Production Version mode under the terms of the Service Level Agreement (Attachment No. 1).

- 11.2. FlowerChecker is not responsible for the provision and availability of Digital Services in the Trial Version.
- 11.3. FlowerChecker is not liable for damages or injury caused by actions based on inaccurate, misleading, incomplete or wrong responses to client Requests - whether it be a misidentification of species or a misattribution of attributes of a proposed class.
- 11.4. The Client is liable for damage caused to FlowerChecker by violating these Terms and Conditions as well as related documentation.

12. Ending of the Contract

- 12.1. The Contract between FlowerChecker and the Client may be terminated by withdrawal from the Contract pursuant to Art. 13 of the Terms and Conditions, termination of the Contract pursuant to Art. 14 of the Terms and Conditions, or automatically under Art. 15 of the Terms and Conditions.

13. Withdrawal from the Contract

- 13.1. FlowerChecker has the right to withdraw from the Contract concluded under these Terms and Conditions, in addition to the reasons for withdrawal from the Contract arising from legal regulations, also under the following conditions:
 - 13.1.1. The Client misuses his/her access to FlowerChecker Digital Services or any related information or service by his/her acting, particularly contrary prohibitions pursuant to Sect. 17.3;
 - 13.1.2. The Client endangers the operation and provision of the FlowerChecker Digital Services or related services by his/her acting, particularly contrary prohibitions pursuant to Sect. 17.3;
 - 13.1.3. The Client is insolvent;
 - 13.1.4. The Client is declared bankrupt.
- 13.2. FlowerChecker shall indicate in the withdrawal from the Contract at least the identification (business name, registered office, identification number), the reason for withdrawal, eventually the request for the information about the account number to which the amount corresponding to the unused Credit is to be returned, the date and signature of the person authorized to act on behalf of FlowerChecker.
- 13.3. The Client has the right to withdraw from the Contract concluded under these Terms and Conditions, in addition to the reasons for withdrawal from the Contract arising from legal regulations, also under the following conditions:
 - 13.3.1. FlowerChecker does not activate the Production Version according to Sect. 5.2 of the Terms and Conditions;
 - 13.3.2. API repeatedly does not evaluate the photographic images and does not send Output to the Client based on Requests within 24 hours;
 - 13.3.3. FlowerChecker is insolvent;

- 13.3.4. FlowerChecker is declared bankrupt.
- 13.4. The Client shall indicate in the withdrawal from the Contract at least the identification (company/name, registered office, identification number), the reason for withdrawal, eventually the request for the information about the account number to which the amount corresponding to the unused Identification Credit is to be returned, the date and signature of the person authorized to act on behalf of the Client.
- 13.5. Withdrawal from the Contract becomes effective on the day of delivery to the other Party, see Art. 18 of the Terms and Conditions.
- 13.6. FlowerChecker is obliged to return to the Client half of the amount of the unused Credits to the account specified by the Client in the withdrawal of the Contract or upon request, within 30 days from the effective date pursuant to Sect. 13.5 of the Terms and Conditions. FlowerChecker shall invalidate the Client's API key within the deadline specified in the previous sentence, and the contract between the Parties shall be ended. This provision does not apply if the Client is a Consumer.
- 13.7. In case of Retroactive Pay Mode, the Client is obliged to pay for Requests executed in the month in which withdrawal from the Contract became effective.

14. Termination of the Contract

- 14.1. FlowerChecker is entitled to terminate the Contract without giving any reason. In case of Retroactive Pay Mode, FlowerChecker is entitled to terminate the Contract concluded under these Terms and Conditions only with giving a reason.
- 14.2. FlowerChecker shall indicate in the termination form at least the identification (business name, registered office, identification number), the reason for termination, the request for the information about the account number to which the amount corresponding to the unused Identification Credit is to be returned, the date and signature of the person authorized to act on behalf of FlowerChecker.
- 14.3. The Client is entitled to terminate the Contract concluded under these Terms and Conditions without giving any reason.
- 14.4. The Client shall state in the termination form at least the identification (company/name, registered office, identification number), date and signature of the person authorized to act on behalf of the Client.
- 14.5. The notice of termination becomes effective on the day of its delivery to the other Party, see Art. 18 of the Terms and Conditions. From the effective date of the notice of termination, a three-month notice period begins during which the Client is entitled to make Requests up to the amount of the existing unused Credit.

- 14.6. In case of Retroactive Pay, the Client is entitled to execute Requests in accordance with Art. 10 of the Terms and Conditions during the three-month notice period.
- 14.7. FlowerChecker is, in the case of termination from its side, obliged to return to the Client the amount of the unused Credit to the account specified by the Client in the termination of the Contract or upon request, within 30 days from the effective date pursuant to Sect. 14.5 of the Terms and Conditions. FlowerChecker shall invalidate the Client's API key within the deadline specified in the previous sentence, and the agreement between the FlowerChecker and the Client shall be terminated.
- 14.8. The Client, in case of termination from its side, shall not be entitled to a refund corresponding to the amount of the unused Credit.

15. Automatic termination

- 15.1. If the Client fails to prepay the Credit under Sect. 9.2 and 9.3 of the Terms and Conditions within seven days of the expiration of the Trial Version, FlowerChecker reserves the right to invalidate the Client's API keys and the Contract between FlowerChecker and the Client terminates.

16. Confidentiality

- 16.1. All competitively significant, identifiable, valuable and in relevant business circles not normally available facts and information related to the Parties which one of the Parties becomes aware of in connection with FlowerChecker Digital Services are considered trade secrets. The Parties undertake to maintain confidentiality regarding the trade secrets of the other Party, as well as the facts and information which they shall mark as confidential.
- 16.2. The Parties undertake to take all measures necessary to maintain confidentiality. The Parties are entitled to use the trade secrets, information and facts specified in Sect. 13.1 of the Terms and Conditions only to the extent necessary for the proper fulfilment of the obligations and exercise of rights arising from these Terms and Conditions. The confidentiality obligation shall continue to apply after termination of the Contract.
- 16.3. Confidentiality does not apply to business secrets, information and facts that:
 - 16.3.1. have been exempt from confidentiality by a written consent of both Parties;
 - 16.3.2. are generally known or have been published other than as a result of the negligence of one of the Parties;
 - 16.3.3. the recipient knows them before communicated by the Party;
 - 16.3.4. are requested by a court, a prosecutor's office or a competent administrative body or another competent body on the basis and in accordance with the law;
 - 16.3.5. are published on the basis and in accordance with the law.

17. License

- 17.1. In the event that the performance pursuant to these Terms and Conditions includes the disclosure of a copyright work or another subject of intellectual property rights, FlowerChecker grants the Client a license under the conditions set forth in this Art. 17 of the Terms and Conditions.
- 17.2. FlowerChecker grants a license to the Client according to Sect. 17.1 of the Terms and Conditions:
 - 17.2.1. for the proper performance of the rights and obligations set forth in these Terms and Conditions, namely a license for using the work in question in the way necessary for the performance of the Contract or the use of the Service, as well as for development, testing, operation and support of mobile application, drones and other similar applications, devices and programs, including commercial purposes. For purposes pursuant the previous sentence the FlowerChecker services may be also integrated into such applications, devices and programs;
 - 17.2.2. for the duration of the Contract concluded under these Terms and Conditions;
 - 17.2.3. without territorial restriction;
 - 17.2.4. with a quantitative limit of one license per Client.
- 17.3. For the avoidance of doubt, the Client is not entitled under the license granted under this Art. 17 of the Terms and Conditions:
 - 17.3.1. to grant a sublicense (to grant part of her/his rights arising from the use of FlowerChecker Digital Services) or to assign the license (to grant all his/her rights and obligations arising from the use of FlowerChecker Digital Services and from the Client's Contract with FlowerChecker) to a third party without the prior written consent of FlowerChecker;
 - 17.3.2. to reproduce, translate, process, modify (including modifications and maintenance), or otherwise alter the FlowerChecker APIs or software, including by association with another work or otherwise, by himself/herself or through a third party. Prohibitions pursuant the previous sentence shall not apply to cases introduced in Sect. 17.2.1;
 - 17.3.3. to use FlowerChecker Digital Services in a manner that could cause any damage to FlowerChecker, in particular to use FlowerChecker Digital Services to develop his/her own automatized system, program or application based on the same principle as FlowerChecker Digital Services.
- 17.4. In the event that fulfilment of these Terms and Conditions, or the result of the service in the form of Output includes a copyright work or another subject of intellectual property right, the provisions of Sect. 17.2 and 17.3 of these Terms and Conditions do not apply, but for works such as photographs or text

descriptions, FlowerChecker grants the Client the following non-exclusive license:

- 17.4.1. The Client is entitled to use the work only in ways that correspond to the use of the Digital Service consisting in further processing of the Output in relation to the end users through the service of a mobile or other application, including commercial use;
 - 17.4.2. the license is territorially and quantitatively unlimited;
 - 17.4.3. the license is granted for the duration of the property rights to the copyright work or another subject of the intellectual property right;
 - 17.4.4. The Client is entitled to transfer the license to a third party and, for the avoidance of doubt, FlowerChecker gives its consent, in which case the Client undertakes to inform FlowerChecker about this, including about who is the successor to this authorization;
 - 17.4.5. The Client is entitled to grant a sublicense to a third party, and for the avoidance of doubt, FlowerChecker gives its consent.
- 17.5. The Client grants a license to FlowerChecker for all photographs provided from its devices and/or its end users. This license is non-exclusive, unlimited and irrevocable. Under this license, FlowerChecker is entitled to use and modify photographs for commercial purposes, especially for developing FlowerChecker software including developing machine learning or other forms of artificial intelligence and for providing photographs to customers of FlowerChecker Digital Services as a part of Identification Answer or Search Engine Response or other Outputs. FlowerChecker will ensure that any human faces in the photographs are blurred before further use by FlowerChecker so that the person cannot be identified. License granted according to this Sect. 17.5. also entitles FlowerChecker to share provided photographs under the license CC-BY-SA 4.0 or later.
- 17.6. For the avoidance of doubt, the Parties may, in the form specified in the relevant provision of the Art. 18 of these Terms and Conditions, agree on other license parameters pursuant to this Art. 17 of these Terms and Conditions.
- 17.7. The Client undertakes to ensure its authorization to grant the above licenses to FlowerChecker. If the Client grants FlowerChecker a license without authorization, the Client shall be liable for any damage caused thereby.

18. Communication and delivery

- 18.1. Unless any other special means of communication is agreed between the Parties, any communication on the basis of these Terms and Conditions or contracts under these Terms and Conditions shall be in accordance with this Art. 18 of the Terms and Conditions. Unless a specific method of communication is specified in these Terms and Conditions, personal delivery, registered mail, courier service or electronic mail shall be deemed an effective way of delivery to the addresses of the Parties that are listed in the public

register maintained pursuant to law in the form specified in Sect. 4.2 of the Terms and Conditions or about which the Parties notify each other in writing.

- 18.2. The preferred form of communication is electronic communication via email addresses under the following conditions:
 - 18.2.1. If, pursuant to these Terms and Conditions, legal action against the Client is made electronically by email, the email address specified in the form, see Sect. 4.2 of the Terms and Conditions, or the last email address specified by the Client to FlowerChecker as preferred, shall be used.
 - 18.2.2. If legal action is to be taken against FlowerChecker under Sect. 5.2 and 9.5 of these Terms and Conditions, the email address support@FlowerChecker.com shall be used. The email address of the previous sentence will be used in all cases of electronic communication with FlowerChecker.
- 18.3. Electronic notices correctly addressed shall be deemed delivered on the day of delivery to the recipient's email box, see Sect. 18.2 of these Terms and Conditions. Electronic communication performed by means of email addresses different from those in Sect. 18.2 or through other electronic tools shall be deemed ineffective against the other Party.
- 18.4. Letter notices correctly addressed shall be deemed to be delivered:
 - 18.4.1. on the day of physical delivery of the notification, if the notification is sent by a courier or a postal operator (except by registered mail) or delivered in person; or
 - 18.4.2. on the day of delivery certified on the delivery note, if the notification is sent by registered mail and if it is actually delivered; or
 - 18.4.3. if the notice sent by a postal operator fails to be delivered or if the receipt of the notice is denied, after 5 days from the date of deposit of the notice at the relevant post office.

19. Consumer Rights

- 19.1. If the Client is a consumer, the provisions of this section shall apply in preference.
- 19.2. For the avoidance of doubt, provisions of these Terms and Conditions that may be considered abusive pursuant to Section 1814 of the Civil Code shall not apply to the Client-consumers.
- 19.3. In a case of legal dispute arising from contract between FlowerChecker and Client-consumer based on these Terms and Conditions, which cannot be settled by agreement, the Client-consumer is entitled to submit a proposal for an out-of-court settlement of such a dispute to the Czech Trade Inspection Authority (www.adr.coi.cz, adr@coi.cz). Client-consumer also may use the on-line EU platform for resolving disputes.

- 19.4. Digital Services provided by FlowerChecker are a digital content that is not delivered on a tangible medium. If the performance of the contract began with the Client-consumer's express prior consent before the expiration of the withdrawal period and the Client-consumer has been informed of the consequences, the Client-consumer is not entitled to withdraw from the contract after the performance has begun, according to Sect. 1837 (I) of the Civil Code.
- 19.5. The provisions of these Terms and Conditions about applicable law and jurisdiction do not deprive the Client-consumer of his rights guaranteed by mandatory provisions of law which would be applicable in otherwise.
- 19.6. FlowerChecker reserves the right to extend or amend the scope of provided Digital Services due to:
- 19.6.1. adding features or functions, enhancements to existing features;
 - 19.6.2. change of algorithms;
 - 19.6.3. fulfilling contractual obligations to other suppliers in the chain;
 - 19.6.4. compliance with legal requirements.

FlowerChecker will notify the Client-consumer of such change. If this change results in a decrease in Client-consumer's access to provided services, the Client-consumer is entitled to terminate the Contract within 30 days of being notified of the change according to Sect. 2389q (3) of the Civil Code.

20. Management of Personal Data

- 20.1. When Client, who acts as a data controller under GDPR, concludes the main Contract according to Art. 4 above, Client also enters into a gratuitous contract with FlowerChecker for the processing of personal data pursuant to Art. 28 Sect. 3 GDPR. This personal data processing contract is governed by Art. 28 and following GDPR and this Article 20. FlowerChecker as a processor undertakes to fulfil all its obligations pursuant to Art. 28 (3) GDPR.
- 20.2. Subject matter of processing are personal data of third parties that might appear in data Client disclosed to FlowerChecker, such as photographs and text inquiries of Client's end users. Regarding this data Client acts as a data controller and FlowerChecker acts as a data processor. FlowerChecker only processes this personal data according to Client expressed written and documented instructions, which comply with the law, and is entitled to involve other sub-processors in the processing of this data. FlowerChecker also undertakes to ensure that the sub-processors will meet all obligations of FlowerChecker as data processor according to this Article 20 and Art. 28 GDPR.
- 20.3. The data are processed for the duration of a main contract between FlowerChecker and Client under these Terms and Conditions, i. e. for the duration of Client's API key. The data of third parties, e. g. Client's end users, are anonymized after 6 months of receipt. Client is entitled to download these data to its device before the deactivation of API key. FlowerChecker and its

sub-processors cannot be held responsible for damages arising from loss of data entered after the API key deactivation.

- 20.4. The nature and purpose of processing consists of activities related to the subject matter of main Contract, especially storage of data, entered to FlowerChecker apps or websites by Client or its end users, for the period specified in the Service Level Agreement (SLA), using these data for internal analysis and improvement of services and in order to gain more accurate Outputs, and alteration of these data for the purpose of their anonymization (especially blurring faces in photos) after 6 months of their receipt. FlowerChecker will assist the Client by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR.
- 20.5. Categories of processed data subjects are mainly Client's end users. The type of processed personal data are geolocation data based on IP address, text inquiries and photos entered by end users and sent by Client through Client's API key for the purpose of gaining Identification Answer or Search Engine Response or other Output.
- 20.6. As a data controller, the Client is fully responsible for compliance with the principles of personal data processing within the meaning of Art. 5 GDPR in relation to the personal data of third parties that Client disclosed to FlowerChecker.
- 20.7. FlowerChecker undertake to always meet a high standard of trust and confidentiality. FlowerChecker shall ensure that its employees or subcontractors handling personal data are bound by an obligation of confidentiality within the meaning of the GDPR or other legal regulation and are informed of the possible consequences in the event of a breach of this obligation.
- 20.8. FlowerChecker also undertake to implement appropriate technical and organizational measures to ensure a level of security appropriate according to Art. 28 (1) and Art. 32 GDPR.
- 20.9. FlowerChecker and Client mutually undertake to cooperate with each other in case of suspected misuse of personal data and to take measures to minimize the risk of abuse of such data.
- 20.10. If Client is an individual end user and not a personal data controller, FlowerChecker Privacy Policy (Attachment No. 3) and Cookie policy (Attachment No. 4) shall apply.

21. Management of Client-generated Content

- 21.1. This Article 21 manages rights and obligations of FlowerChecker and Client concerning Regulation (EU) 2022/2065 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) – “DSA”.
- 21.2. FlowerChecker does not use any special policies, procedures, measures and tools used for the purpose of content moderation. However, FlowerChecker

reserves the right to remove, disable access to or demote content saved by Client or its end users through Client's API key, if this content does not comply with the law. From the date this restriction is imposed, FlowerChecker provide affected Client with statement of reasons pursuant Art. 17 DSA. If the Client disagrees with this statement of reasons, Client can file a lawsuit against it before the court having jurisdiction under Art. 22.11 hereof.

- 21.3. The Client is entitled to notify FlowerChecker about content within FlowerChecker Digital Services that Client considers to be illegal. The notification shall be sent to dpo@flowerchecker.com and shall include:
 - 21.3.1. a sufficiently substantiated explanation of the reasons why the Client alleges the information in question to be illegal content;
 - 21.3.2. a clear indication of the exact electronic location of that information, such as the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content adapted to the type of content and to the specific type of hosting service;
 - 21.3.3. the name and email address of Client submitting the notice, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;
 - 21.3.4. a statement confirming the bona fide belief of Client submitting the notice that the information and allegations contained therein are accurate and complete.
- 21.4. Where the notice contains the electronic contact information of the Client that submitted it, the FlowerChecker shall, without undue delay, send a confirmation of receipt of the notice to that Client.
- 21.5. The FlowerChecker shall also, without undue delay, notify that Client of its decision in respect of the information to which the notice relates, providing information on the possibilities for redress in respect of that decision.

22. Final provisions

- 22.1. The Parties declare that they have all the rights and the ability to fulfil the obligations arising from these Terms and Conditions and from the contracts containing these Terms and Conditions and that there are no legal obstacles preventing or limiting the fulfilment of their obligations and that by concluding contracts envisaged by these Terms and Conditions shall not violate any legal regulation.
- 22.2. The Parties declare that they assume the risk of changing circumstances within the meaning of Sect. 1765 (2) of the Civil Code.
- 22.3. The Parties settle that the legal relationships arising between them in the provision of FlowerChecker Digital Services and related services, including related legal relationships arising in performance or breach of the Contract (including damages for breach of contractual obligation or unjust enrichment, which originate in a contractual relationship within the meaning of this Section) shall be governed by these Terms and Conditions or individually

agreed provisions of contracts concluded within these Terms and Conditions. The Parties exclude the application of other Terms and Conditions or any other contractual conditions unless expressly referred to in these Terms and Conditions or in an individually agreed provision of a purchase or a similar contract concluded under these Terms and Conditions.

- 22.4. The provisions of contracts concluded under these Terms and Conditions shall prevail over the provisions of these Terms and Conditions.
- 22.5. The Terms and Conditions, contracts concluded under these Terms and Conditions or legal relationship arising therefrom may only be changed in writing by the Parties. Unilateral legal acts amending or terminating a contract concluded under these Terms and Conditions or a legal relationship arising therefrom in another way than by the fulfilment of obligations under the Contract must be made in the form envisaged by the legal order, but at least in written form.
- 22.6. FlowerChecker reserves the right not to enter into a Contract with the Client without giving a reason.
- 22.7. FlowerChecker reserves the right to change these Terms and Conditions unilaterally. FlowerChecker will inform the Client about such alterations 30 days before they come into effect. The Client is entitled to reject the alterations and terminate the contract for this reason within 30 days from the date of notification.
- 22.8. If it becomes apparent that any provision of these Terms and Conditions or a Contract concluded under these Terms and Conditions is or has become invalid, contrary to the will of the Parties ineffective or inapplicable, or that such invalidity, ineffectiveness or non-applicability will inevitably occur (especially as a result of a change of legal regulations), this does not affect the validity, effectiveness or applicability of the other provisions of the applicable Contract. In such cases, the Parties undertake to provide mutual cooperation and to take appropriate legal acts in order to replace an invalid, ineffective or inapplicable provision with another provision in order to preserve and fulfil the purpose of these Terms and Conditions.
- 22.9. The Parties agree that in case of disputes concerning obligations arising from contracts arising under these Terms and Conditions or concerning legal relationships arising in connection with these Terms and Conditions or in relation to contracts arising under these Terms and Conditions, they shall make reasonable effort to resolve these disputes by mutual agreement.
- 22.10. The Parties agree that the law applicable to contracts arising under these Terms and Conditions or any legal relationships arising out of or in connection with these Terms and Conditions (including obligations to compensate for damage resulting from a breach of contractual obligations or to give unjust enrichment) is the legal order of the Czech Republic (with the exception of conflict-of-law rules of private international law).
- 22.11. For the settlement of disputes concerning obligations arising from contracts arising under these Terms and Conditions or relating to legal relationships

arising out of or in connection with these Terms and Conditions (including obligations to compensate for damage resulting from a breach of contractual obligations or to give unjust enrichment), the courts of the Czech Republic have jurisdiction. The jurisdiction of other courts shall not be accepted.

22.12. The following attachments form an integral part of these Terms and Conditions:

22.12.1. Attachment No. 1 [Service Level Agreement](#)

22.12.2. Attachment No. 2 [Pricing](#)

These Terms and Conditions are effective from 1st of July 2024.