

Swyftx Terms of Use

1 Acceptance of Terms of Use

- 1.1 This website, app, platform and any service offered under the name “Swyftx” (“**Platform**”) is operated and owned by Swyftx Pty Ltd (ACN 623 556 730) and its related entities or body corporates (“**us**”, “**we**” and “**our**”).
- 1.2 Your use of this Platform is subject to the terms provided below (“**Terms of Use**”). The Terms of Use constitute a binding legal agreement between you and us, and your use of the Platform constitutes your acceptance and acknowledgement of the Terms of Use, our Privacy Policy, and any other policy displayed on the Platform, all of which constitutes the Terms of Use. If you do not agree to the Terms of Use, you must not use the Platform.
- 1.3 We may amend or modify the Platform, the Terms of Use and/or the Privacy Policy at our sole discretion and at any time. Subject to clause 1.4, any amendments are effective 14 days after publication on the Platform. Your continued use of the Platform indicates your continued acceptance of the Terms of Use as modified.
- 1.4 We may amend or modify the Platform, the Terms of Use and/or the Privacy Policy with immediate effect if required to do so in order to comply with any applicable law.
- 1.5 Access to and use of this Platform is subject to you being:
- (a) At least 18 years old and having the legal capacity to enter into a binding contract; and
 - (b) If representing an entity, then disclosing all information to us as necessary and indicated in the Platform.

Accordingly, by using the Platform and/or accepting any Services, you warrant the above to us. If the above conditions are not satisfied, please cease using the Platform immediately.

- 1.6 These Terms of Use will prevail over any other terms or agreement between you and us.

2 Definitions

- 2.1 In these Terms of Use:

Asset means a Crypto Asset and/or Fiat Asset.

Content means any content whatsoever which you upload to the Platform, including but not limited to any bios, experience, descriptions, reviews, usage data, feedback, comments, chats, media.

Crypto Asset means virtual, electronic or cryptographic currency, including tokens or blockchain assets, as may be added or removed by us from time to time according to our sole discretion.

Consideration means, in relation to a Transaction, the consideration payable and exchanged by each party, whether in the form of Crypto Asset or fiat currency.

Counterpart means other persons who are buying or selling Crypto Assets.

Fiat Assets means any accepted fiat currency as may be added or removed by us from time to time according to our sole discretion.

Payment Provider means a third-party payment provider, currently being Money Tech Pty Ltd and Bill Buddy Pty Ltd.

Platform means this website, app, platform and any service offered under the name "Swyftx".

Privacy Policy means our privacy policy available on <https://swyftx.com.au/legal/>.

Service Fees means our fees for providing the Service, processing Transactions, distributions, conversions, mining Crypto Assets, and any deposit, withdrawal or transfer of any Asset. The Service Fees are posted from time to time on the Platform on <https://swyftx.com.au/fees/>.

State means Queensland, Australia.

Service means our services of acting as your agent and assisting you in entering into Transactions with Counterparts.

Terms of Use means these Terms of Use which include the Privacy Policy.

Transaction means a transaction between you and a Counterpart for the sale or purchase of Crypto Assets (whether or not involving Fiat Assets).

Warranties mean any warranties, conditions, terms, representations, statements and promises of whatever nature, whether express or implied.

We, we, us, our means Swyftx Pty Ltd (ACN 623 556 730) and its related entities or body corporates.

User means any user of this Platform whether registered or unregistered.

You, you or **your** mean anyone who uses this Platform, including any individual or entity that you represent.

3 IMPORTANT NOTICES

- 3.1 You acknowledge that buying, selling and trading in Crypto Assets or similar digital goods is inherently risky, is not recognised legal tender in Australia and other parts of the world, is unregulated by any central or government authority, and may be subject to extreme price volatility. You warrant that you understand the risks associated with Transactions, the Service, Fiat Assets, Crypto Assets and any other goods, services or products in connection to this Platform.
- 3.2 You warrant that you have either obtained legal and/or financial advice in relation to the Service, Fiat Assets, Crypto Assets and any other good, service or product in connection to this Platform.
- 3.3 Using this Platform, the Service and entering into Transactions does not occur on a regulated exchange. As such, there are no guarantees as to the creditworthiness of the Counterpart.
- 3.4 We are not a registered exchange and we do not hold an Australian Financial Service Licence or any other similar licence. The Platform is registered with AUSTRAC as a digital currency exchange platform for reporting purposes.
- 3.5 We do not provide any specific investment advice. Any market recommendations, signals, information provided by and/or distributed by us is general in nature and based solely on the judgment of our personnel or from third party information providers. These market

recommendations may or may not be consistent with the market position or intentions of us, or affiliates, and/or employees.

- 3.6 If you choose to remove Crypto Assets from our managed wallet service and store your Crypto Assets by your own means, you are solely responsible for maintaining the security and integrity of your own Crypto Assets wallet. You are also solely responsible to manage the security of your computers, devices, software and digital interfaces.

4 Registration

- 4.1 You may be required to register on the Platform to access certain features of the Platform.
- 4.2 When you register and activate your account, you will provide us with personal information such as your name, email address, the name of the legal entity you are representing and other details. You must ensure that this information is accurate and current. We will handle all personal information we collect in accordance with our Privacy Policy.
- 4.3 You will create a username and password. You are responsible for keeping this username and password secure and are responsible for all use and activity carried out under this username. You must not share your account credentials with any third party. We do not authorise anyone to use the Platform on your behalf, and we will not be liable for any loss or damage arising from any kind of activity, unauthorised or otherwise, that takes place under your account.
- 4.4 On registration, we may also ask for any other information which we may deem reasonably necessary to enable you to enjoy the benefits of the Platform. We may require you to provide evidence and documents confirming certain information.
- 4.5 If you provide any information that is untrue, inaccurate, not current, or incomplete, or we have reasonable ground to suspect that such information is untrue, inaccurate, not current, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Platform.
- 4.6 You must not impersonate some other individual, business or company. In case you try to present yourself as another individual or company, your account may be suspended, and legal action may be taken against you.
- 4.7 You agree not to create an account or use the Platform if you have been previously removed or suspended by us from the Platform. This includes any indirect use or accounts, such as through an entity, associate, affiliate or otherwise.

5 Uploaded Content

- 5.1 Where the Platform allows you to upload any Content, you:
- (a) represent and warrant to us that you have all right, title, interest and authority in the Content;
 - (b) represent and warrant to us that you have the permission to use the name and likeness of each person whose image appears in any Content in the manner contemplated by these Terms of Use;
 - (c) represent and warrant to us that the use or exploitation of Content will not infringe the rights of any third party (including, but are not limited to, intellectual property rights and privacy rights); and

- (d) agree and undertake to us to pay all amounts which become owing to any person (whether by way of royalty or otherwise) as a result of or in connection with your submission of the Content to or via the Platform.
- 5.2 It is your responsibility to back up any of Content to your own systems. We do not guarantee that the Platform will always be available at all times.
- 5.3 To the maximum extent permitted by law, you release us and indemnify us from any claim or loss in relation to Content being stored in our servers.
- 5.4 You agree to us sharing your Content (including any part of the Content which constitutes 'personal information' under privacy laws) with other Users to the extent required for you to use the Platform for its intended purpose.
- 5.5 This clause 5 will survive termination of these Terms of Use.

6 Your conduct

- 6.1 You are responsible for the use of the Platform and for any use of the Platform made using your account. You agree not to access, copy, or otherwise use the Platform including our intellectual property and trademarks, except as authorized by this Terms of Use or as otherwise authorised in writing by us.
- 6.2 When using the Platform, providing Services or receiving Services, you agree that you will not:
 - (a) act in a way which is otherwise than courteous and polite to us or any User;
 - (b) breach any policy displayed on the Platform or any law which may be applicable to the use of the Platform;
 - (c) result in you or us breaching any law, regulation, rule, code or other legal obligation;
 - (d) add any content that is or could reasonably be considered to be obscene, inappropriate, defamatory, disparaging, indecent, seditious, offensive, pornographic, threatening, abusive, liable to incite racial hatred, discriminatory, profane, in breach of confidence, in breach of privacy or harassing;
 - (e) upload Content that contains unsolicited or unauthorised advertising (including junk mail or spam);
 - (f) use any automated systems including "robots" and "spiders" besides any access which is permitted through our public API, all of which must still be subject to these Terms of Use;
 - (g) interfere with or compromise our Platform's integrity or decipher any server transmissions;
 - (h) impose an unreasonably large load on our infrastructure;
 - (i) upload viruses, worms, or invalid data to the Platform;
 - (j) collect or retain any personally identifiable information contained in the Platform;
 - (k) access the Platform by any means other than authorised herein, including virtual private networks which are expressly forbidden;
 - (l) stalk, harass, bully or harm others; or
 - (m) impersonate any person or entity.

7 Our role

- 7.1 You acknowledge and agree that:
- (a) you appoint us as your agent to act on your behalf and enter into Transactions with other Counterparts (“**Service**”).
 - (b) a Transaction is a separate agreement directly between you and the Counterpart. We are not a party to the Transaction in any way, and its formation will not, under any circumstance, create any relationship of employment, partnership or otherwise between us and you, or us and any User or Counterpart, except as stated in paragraph 7.1(a);
 - (c) at no point are you ever buying or selling Crypto Assets directly to us, or entering into a Transaction with us. We act solely as your agent in all of your dealings and Transactions on the Platform and other Traders;
 - (d) in relation to each Transaction, it is you and the Counterpart, not us, who will be solely liable for any Consideration due under the Transaction. We merely act a facilitator and agent for such payment on the Platform and we will not be liable for the Consideration under any circumstance. You agree that you will not pursue any actions, legal or otherwise, against us for any non-payment, and that this provision constitutes a bar to any such actions or proceedings.
- 7.2 We are not liable in any way for anything which occurs in connection with a Transaction, and accordingly, you provide us with the indemnities and releases in clause 14.

8 Using the Platform

- 8.1 When you issue commands via the Platform (“**Instructions**”), you appoint us as your agent to endeavour and provide the Service and enter into Transactions (on the basis of the Instructions) on your behalf. You irrevocably authorise us to do anything necessary on your behalf to give effect to the Instructions or a relevant Transaction, including applying or deducting any Assets from your account.
- 8.2 You agree to be exclusively responsible for any Instruction received by us electronically that is identified with your password and username and for any electronic, video, oral and written instruction to us from persons we in our sole judgment, believe are apparently authorised by you. Verification is at our sole discretion and evidence of personal identification may be requested to confirm your identity.
- 8.3 We may refuse any instructions, or to perform any Transaction, at our sole and absolute discretion. We will not be liable for any failure to identify or enter into a Transaction.
- 8.4 It is your sole responsibility to ensure to enter correct and accurate instructions, including without limitation any names, addresses, account numbers and amounts.
- 8.5 All Transactions are final, non-reversible and non-refundable unless we agree otherwise in writing (in our sole discretion).
- 8.6 In the circumstance where you have received, acquired, or accumulated any Assets due to an error, glitch or loophole, we may take reasonable action, including but not limited to restricting access or deducting the relevant Assets from your account, to recover the Assets from your account. We will notify you if such an error has occurred and it is our right to recover the misappropriated Assets.

- 8.7 It is your responsibility to check your account and monitor the movement of your Crypto Assets including any pending, lapsed or cancelled through your transaction history and to re-execute any transactions which fail.
- 8.8 All deposits and withdrawals made are subject to the limits displayed on our Platform. This amount may change from time to time at our sole discretion.
- 8.9 All payments made in the course of your use of the Platform are made using our Payment Providers. In using the Platform, the Services or when making any payment in relation to your use of the Services or a Transaction, you warrant that you have read, understood and agree to be bound by the Payment Provider terms and conditions which are available on their website.
- 8.10 You acknowledge that:
- (a) Crypto Assets or funds deposited with us in your account are not kept separate from those of other Users in our account;
 - (b) whilst your account may be stated in AUD, you acknowledge that in reality we may be holding an equivalent amount in USD or any other asset for you instead;
 - (c) there may be small discrepancies between amounts displayed on the Platform and actual amounts held or transacted. This is usually due to rounding issues and market fluctuations.
- 8.11 Some Crypto Assets may entitle you to additional entitlements or distributions, including without limitation, dividends, air drops, forks or other Crypto Asset distributions (“**Distributions**”). Whilst we will make reasonable efforts to support and distribute these Distributions, we do not guarantee or give any Warranties in relation to any such Distribution or support of the Distributions. Further, we are entitled to charge additional fees in relation to the Distributions.
- 8.12 In the event that you deposit any Assets with us and subsequently fail any KYC or compliance check, you acknowledge that we are entitled to hold the Assets for a period of time deemed reasonable by us at our sole discretion, in order for potential claimants to cover forward. If we are satisfied that there are no other claimants to the Asset, we will refund the Asset to you.

9 Service Fees and payments

- 9.1 In consideration of the Services, you must pay us the Service Fees and any other commission and/or other fees as per the amount displayed on the Platform from time to time.
- 9.2 We may change the Service Fees and add additional fees or commissions from time to time at our discretion, with 14 days’ notice.
- 9.3 Payments made over the thresholds and limits stated on the platform may be held for increased durations (depending on support load) and subject to manual processing fees or charges.
- 9.4 You acknowledge and agree that where a request for any payment (whether pursuant to a Transaction or as part of the Service Fees) is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Service Fees.

- 9.5 The Service Fees are strictly non-refundable unless we determine otherwise, which we may do at our sole discretion and on a case-by-case basis.
- 9.6 The Service Fees and any other amount due will be automatically debited from any Transaction or otherwise from the Assets held in your account.

10 Intellectual Property Rights

- 10.1 Except where otherwise indicated or implied by context, we are the sole owners or licensees of all intellectual property comprised in the Platform (including all intellectual property comprised in the Platform content), and nothing in these Terms of Use constitutes a transfer of any intellectual property rights in or related to the Platform or Platform content.
- 10.2 You acknowledge and agree that the Platform and the content contained therein are protected by copyright, trademarks, service marks, patents, design registrations, and other proprietary rights and laws, and you agree to comply with and maintain all copyright notices and other restrictions on content accessed on or via the Platform.
- 10.3 You must not do anything which breaches or otherwise interferes with our intellectual property rights or the intellectual property rights of any of its third-party licensors. You may not distribute, reproduce, publish, alter, modify or create derivative works from the Platform content without our prior written permission or the relevant third-party licensor or exploit such contents for commercial benefit.
- 10.4 You acknowledge and agree that damages may not be an adequate remedy for a breach of this clause 10 and that equitable or injunctive relief may be necessary.

11 Third Party Service Providers

- 11.1 We may use third parties to process Transactions or payments, to conduct risk analysis and/or offer Crypto Assets, as applicable for the requested Transaction and for the selected payment method ("**Third Party Service Providers**"). Third Party Service Providers may include, without limitation, exchange platforms. We reserve the right to change and replace any Third Party Service Provider at our sole discretion. Services provided by Third Party Service Providers are governed exclusively by the terms of use of such Third Party Service Providers, and we have no responsibility or liability with respect to any of their acts or omissions and any result thereof. We do not accept any responsibility for any delay, error, act or omission of a Third Party Service Provider. You may ask us to provide a list of our Third Party Service Providers and their terms.

12 Third party links

- 12.1 The Platform may contain links to (and integrations with) websites that are owned and operated by third parties. This may include other suppliers and service providers who provide goods or services in connection with the Services. We have no control over these external websites, which are governed by terms and conditions and privacy policies independent of us.
- 12.2 You acknowledge and agree that when you access a third-party website available via a link contained on the Platform:
- (a) you do so at your own risk and understand that you should review the privacy policy and terms and conditions of that website;

- (b) we are not liable for the content, accuracy, lawfulness, appropriateness, or any other aspect of that third-party website; and
- (c) you acknowledge and agree that to the full extent permitted by applicable law, we will not be liable for any loss or damage suffered by you or any other person as a result of or in connection with your access or use of any third-party website available via a link on the Platform.

13 Disclaimer and limitation of liability

- 13.1 To the maximum extent permitted by law, we exclude all Warranties whatsoever unless expressly stated, including but not limited to in relation to any use of the Platform, any User or any Services offered.
- 13.2 You acknowledge that when you use the Platform, enter into a Transactions, and receive Services, you do so entirely at your own risk and relying on your own enquiries and judgement.
- 13.3 We do not vet, endorse or recommend any particular User, Counterpart, and any rating information displayed (if any) on the platform consists of statements of opinion and not statements of fact or recommendations. We make no Warranties whatsoever in relation to any User.
- 13.4 Any advice provided on the Platform is of a general nature only.
- 13.5 To the extent that any law restricts our right to exclude Warranties under these Terms of Use, these Terms of Use must be read subject to those provisions and nothing in these Terms of Use is intended to alter or restrict the operation of such provisions. If those statutory provisions apply, notwithstanding any other provision of these Terms of Use, to the extent that we are entitled to do so, we limit our liability pursuant to such provisions:
 - (a) the supply of the services again; or
 - (b) the payment of the cost of having the services supplied again.
- 13.6 Our liability arising in connection with these Terms of Use or the Platform is limited as follows:
 - (a) we exclude all liability for consequential, special, indirect or remote loss, including loss of opportunity or business;
 - (b) our total maximum liability arising in connection with these Terms of Use is capped to the total amount of any Service Fees relevant to the particular matter;
 - (c) our liability is excluded to the extent that you contributed to the liability;
 - (d) we exclude all liability for anything you have been aware of for longer than six months and you have not commenced a claim in court. You waive and release us from any such liability or claim; and
 - (e) our liability is subject to your duty to mitigate your loss.
- 13.7 We are not be responsible for any loss or damage caused, directly or indirectly, by any events, actions or omissions beyond the control of our including, without limitation, loss or damage resulting, directly or indirectly, from any delays or inaccuracies in the transmission of orders and/or information due to breakdown or failure of transmission or communication facilities, or electrical power outage.

- 13.8 We provide the Platform on an “as is” and on an “as available” basis without any Warranties as to continuous, uninterrupted or secure access to the Platform, that its servers are free of computer viruses, bugs or other harmful components, that defects will be corrected, or that you will not have disruption or other difficulties in using the Platform.
- 13.9 In the event that we terminate the Platform or your access to the Platform pursuant to these Terms of Use, you release us from all liability, loss or claims suffered by you as result of or arising out of such termination.
- 13.10 All subclauses of this clause 13 are cumulative to one another.

14 Release and Indemnity

- 14.1 You agree to release the Released Parties from all Loss or Claims arising out of or in any way connected with any Relevant Matter. You further waive any and all rights and benefits otherwise conferred by any statutory or non-statutory law of any jurisdiction that would purport to limit the scope of a release or waiver.
- 14.2 You agree to indemnify, defend and hold harmless the Released Parties from any Loss or Claims arising out of or in any way connected with any Relevant Matter.
- 14.3 In this clause:
- (a) **Claim** means a claim, action, proceeding or demand made against a person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
 - (b) **Loss** means a damage, loss, cost, expense or liability incurred by the person concerned however arising, including without limitation penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
 - (c) **Released Parties** means us and our officers, directors, shareholders, agents, employees, consultants, associates affiliates, subsidiaries, sponsors, and other third-party partners.
 - (d) **Relevant Matter** means anything in relation to or in connection with:
 - (i) any Transactions;
 - (ii) any Services and use of the Platform;
 - (iii) any User or Counterpart;
 - (iv) any damage to property, personal injury or death;
 - (v) your breach of these Terms of Use;
 - (vi) any matter for which we have purported to disclaim liability for under these Terms of Use;
 - (vii) any Third Party Service Providers or Payment Provider;
 - (viii) your use, misuse, or abuse of the Platform; and
 - (ix) your breach or failure to observe any applicable law, including taxation laws.

15 Termination

- 15.1 You acknowledge and agree that:
- (a) we may terminate your access to the Platform at any time without giving any explanation;
 - (b) we may terminate these Terms of Use immediately by notice to you in writing if you are deemed to breach these Terms of Use or associated policies in any way, in our sole discretion; and
 - (c) termination of these Terms of Use or your access to the Platform does not release you from any of your obligations and liabilities that may have arisen or been incurred prior to the date of such termination.

16 Force Majeure

- 16.1 In this clause, **Force Majeure** means a circumstance beyond our reasonable control which occurs without our fault or negligence, and includes without limitation an act of God, inevitable accident, storm, flood, fire, earthquake, peril of navigation, strike, lock-out, boycott or other industrial dispute, hostility, war (declared or undeclared), riot, insurrection, act of terrorism, executive or administrative order or act of either general or particular application of a government (whether de jure or de facto) or of any official purporting to act under the authority of such a government, prohibition or restriction by domestic or foreign laws, regulations or policies and quarantine or customs restrictions.
- 16.2 Any of our obligations to you will be suspended during the time and to the extent that we are prevented from or delayed in complying with that obligation due to a Force Majeure.
- 16.3 We exclude all liability, loss or claims to the extent that they were caused or contributed to by a Force Majeure.

17 General

- 17.1 All notices must be in writing and must be made through the Platform or by email. You must send all of your email notices through, and we will send all of your email notices to, the email address used for your registered account. All email notices to us must be sent to hello@swyftx.com.au, and we will send you all email notices from an email address ending with @swyftx.com.au. Notices are taken to be read on the day they are received, unless they are received after 5 PM or not on a business day in the State, in which case they are deemed to be received on the next business day in the State.
- 17.2 You must not assign, sublicense or otherwise deal in any other way with any of your rights under these Terms of Use. We may assign our rights under these Terms of Use at our sole discretion.
- 17.3 If a provision of these Terms of Use is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 17.4 These Terms of Use are governed by the laws of the State and each party submits to the exclusive jurisdiction of the courts of the State and all courts of appeal from there.
- 17.5 Any waiver of any term on these Terms of Use by us can only be done in express writing. Any failure on our part to enforce a term does not constitute a waiver and we reserve the right in relation to all breaches unless expressly stated otherwise.

- 17.6 The contents of these Terms of Use constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.
- 17.7 A provision of these Terms of Use which can and is intended to operate after its conclusion will remain in full force and effect – including all indemnities and releases.