

# Swyftx Terms of Use

## Notice to customers

Please note that the following clauses in particular contain information significant to your rights and obligations under these terms of use:

Clause 1.3 – provides that these terms can change from time to time (but you may cease using the Platform if you do not agree with the amended terms)

Clause 8.2 – provides that you are responsible for the security of your account, and that if we receive an Instruction from you to carry out a Transaction, we may process it without verifying that the Instruction is actually from you

Clause 8.3 – provides that we can refuse to process a Transaction for any reason

Clause 8.5 – provides that, subject to any rights you may have under Australian Consumer Law, Transactions are non-reversible and non-refundable

Clause 8.9 – provides that we can disclose your personal information to third party payment processors, in accordance with our privacy policy

Clause 9.2 – provides that we can change the Service Fees at any time, with 14 days' notice

Clause 9.7 – provides that in the event you are sent an Account Closure Notice and don't organise a refund of the amounts in your account within 30 days, we may charge Administration Fees to your dormant account each month, which may have the effect of reducing your account balance to zero

Clause 10 – provides that we can modify or withdraw affiliate credits at any time, or modify or withdraw affiliate programs at any time

Clause 14 – provides that, subject to any rights you may have under Australian Consumer Law, we do not provide any warranties or guarantees about the services or Platform, and are not liable to you for any losses you may suffer in connection the services or Platform

Clause 15 – provides that, subject to any rights you may have under Australian Consumer Law, you are not able to claim against us for any financial losses you may suffer in connection with your use of the services or Platform

Clause 15 – provides that you protect us from financial losses caused by your use or misuse of the services or Platform, breach of these terms, or breach of any applicable law

Clause 16 – provides that we can terminate your account at any time

## 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) ("**Company**") and its related entities or body corporates ("**Swyftx**", "**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. If you do not agree with the amended terms, you may cease using the Platform.

- 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:

**Account Closure Notice** means a written notice given by us regarding the closure of your account in accordance with these Terms of Use.

**Administration Fee** means a fee we charge against your account in the circumstances described in clause 9.7 (failed verification). The Administration Fee will equal to 5% of the total Deposits in your account at the time an Account Closure Notice was first issued. This amount remains the same even if the balance of the account is decreased over time.

**Affiliate Credit** has the meaning ascribed to the term under clause 10.1.

**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.

**Converted Customer** has the meaning ascribed to the term under clause 10.1.

**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.

**Deposits** has the meaning ascribed to the term under clause 9.7; and where the context permits **Deposits** or a reference to **Deposits in your account, funds deposited with us** or a similar expression includes, to the extent consistent with clause 19, NZ Fiat Clearing Funds.

**Fiat Assets** means any accepted fiat currency as may be added or removed by us from time to time according to our sole discretion; and where the context permits includes, to the extent consistent with clause 19, NZ Fiat Clearing Funds.

**Instruction** has the meaning ascribed to the term under clause 8.1; and where the context permits includes, to the extent consistent with clause 19, a Direction.

**NZ Fiat Clearing Facility** has the meaning ascribed to that term in clause 19.2.

**NZ Fiat Clearing Funds** has the meaning ascribed to that term in clause 19.4.

**Platform** has the meaning ascribed to the term under clause 1.1.

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

**Service Fees** means our fees for providing the Service, processing Transactions, distributions, conversions, mining Crypto Assets, and any deposit, holding, withdrawal or transfer of any Asset.

**Service** is defined in clause 7.1(a).

**State** means Queensland, Australia.

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

**Transaction** means a transaction 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, Swyftx** means Swyftx Pty Ltd (ACN 623 556 730) and its related entities or bodycorporates.

**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 are inherently risky, and may be subject to extreme price volatility, and that Crypto Assets are not recognised legal tender in Australia and other parts of the world. You warrant that you understand the risks associated with Transactions, the Service, Fiat Assets, Crypto Assets, the NZ Fiat Clearing Facility 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, the NZ Fiat Clearing Facility and any other good, service or product in connection to this Platform.
- 3.4 We are not a regulated exchange and we do not hold an Australian Financial Service Licence or any other similar licence. The Company is registered with AUSTRAC as a digital currency exchange platform for reporting purposes.
- 3.5 We do not provide any investment advice. Any market recommendations, signals, information provided by and/or distributed by us are 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, its keys and any Crypto Assets stored therein, including the security of your computers, devices, software and digital interfaces.

- 3.7 It is your responsibility to ensure that the wallet address of the person with whom you enter into a Transaction is correct and up to date. You understand and agree that we are not able to control or affect the performance of return or recovery of any Crypto Assets that you may have mis-sent pursuant to any Transaction.

## **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 in circumstances where such loss or damage is not directly attributable to our acts or omissions.
- 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. We will handle all documents containing personal information in accordance with our Privacy Policy.
- 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.

## **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 In circumstances where it can be reasonably presumed that you have used our services to participate in market manipulation (such as pump and dump schemes, regardless of whether prohibited by law), we reserve the right to close your account. We may not be held liable for any losses associated with this aforementioned market manipulation activity.
- 6.3 When using the Platform, providing Services or receiving Services, and using the NZ Fiat Clearing Facility, you agree that you will not:
- (a) act in a way which is otherwise than courteous and polite to us ;

- (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;
- (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 in relation to Transactions**

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 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) we act solely as your agent in all of your dealings and Transactions on the Platform;
- (d) in relation to each Transaction, the Counterpart (if you are the seller) or you (if you are the buyer) are solely liable for any Consideration due under the Transaction. We merely act as facilitator and agent for such payment on the Platform and we will not be liable for the Consideration under any circumstance, except where loss or damage to the Consideration is due directly to our acts or omissions. You agree that you will not pursue any actions, legal or otherwise, against us for any non-payment that is not due directly to our acts or omissions, 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 outside of our reasonable control in connection with a Transaction, and accordingly, you provide us with the indemnities and releases in clause 15.

## **8 Using the Platform**

8.1 When you issue commands via the Platform ("**Instructions**"), you appoint us as your agent to endeavour to provide the Service and enter into Transactions (on the basis of the Instructions) on your behalf. Subject to clause 19.4(d), 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 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. In case you fail the verification process, we may terminate your account by sending you an Account Closure Notice. In such case, any Deposits held by us in your account will be subject to the refund process specified under clause 9.7 below.
- 8.3 We may refuse any Instructions (subject to clauses 19.4(d) and 19.5), 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 Subject to clause 14.12, 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 certain third-party payment providers and you acknowledge that in using the Platform, the Services or when making any payment in relation to your use of the Services or a Transaction, you are subject to the terms and conditions imposed by those payment providers. We may disclose your personal information to such third party payment providers in accordance with our privacy policy.
- 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 (subject to clause 19.4(c)); and
  - (b) 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. Our website contains additional information about Distributions and relevant fees in relation to each Crypto Asset.

- 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 identify themselves. 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 and (if provided to you) the NZ Fiat Clearing Facility, you must pay us the Service Fees and any other commission and/or other fees as 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. Changes to Service Fees will apply to services provided from the expiry of the notice period.
- 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 by way of a transfer from your bank account as a credit to your NZ Fiat Clearing Account (within the meaning of clause 19.3a)) 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 Subject to clause 14.12, 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.
- 9.7 If you fail our account verification process and/or are sent an Account Closure Notice for any reason, then (subject to clause 19.4(l)) the following process will apply to any request for refund of deposits that you may have made with us ("**Deposits**"):
- (a) you must request your financial institution to contact our financial institutions and subsequent payment processors and initiate a payment investigation or request for reversal of Deposits.
  - (b) our financial institutions and subsequent payment processors will contact us and take our approval for any refund of Deposits, which approval may be withheld at our discretion and/or subject to our internal control process.
  - (c) If your financial institution does not contact our financial institutions and subsequent payment processors (and you do not provide us with a satisfactory reason as to why) within a period of 30 days of receiving the Account Closure Notice, your account will be designated as 'dormant' in our records. While your account remains 'dormant', we will be entitled to deduct the Administration Fee on a monthly basis from the Deposits held in your account. If there are no funds left in the account (including because all funds have been used to pay the Administration Fees), we are entitled to close your account.

## 10 Affiliate Program

- 10.1 We may run an affiliate program for the Platform from time to time that will allow you to refer non-Users (“**Converted Customer**”) to the Platform in exchange for an affiliate credit (“**Affiliate Credit**”).
- (a) The Affiliate Credit will be calculated as a percentage of any fee charged by us for a Transaction (but not on any other charges, fees, levies, etc) carried out by the Converted Customer.
  - (b) The percentage used to calculate the Affiliate Credit:
    - (i) will be specified on the Platform and may include a base rate and a bonus rate. These rates are subject to change and may be modified or withdrawn by us in our sole discretion; and
    - (ii) will be the current percentage set by us for a Transaction carried out by a Converted Customer, regardless of the time they became customers.
- 10.2 Subject to clause 10.4, you will be eligible to receive the Affiliate Credit and any such Affiliate Credit will accrue to your account for as long as the Converted Customer maintains their account with us, provided you are not in breach of these Terms of Use.
- 10.3 If you accumulate more than \$10 in your account as Affiliate Credit and provided your account has been verified in accordance with these Terms of Use, we will automatically make your Affiliate Credit balance available for withdrawal or use on the Platform.
- 10.4 All affiliate programs will be conducted at our sole discretion and may be activated, modified or withdrawn by us without prior notice. If a new affiliate program is introduced you will be notified by email about the new affiliate program and our intention to transfer you to the new affiliate program.
- 10.5 The Affiliate Credits will be earned only in accordance with the terms and conditions of the affiliate program you are enrolled in. This includes any new Affiliate Credits accruing from Converted Customers referred before the transfer to a new program.
- 10.6 You acknowledge and agree that the Affiliate Credit may vary as a result of any variation in the Service Fees chargeable by us under this Agreement.
- 10.7 You agree that you will not use your own affiliate link to create and register an alternate account for yourself. This practice will be considered abuse of the affiliate program and may result in immediate termination of your referral account and forfeiture of your accumulated Affiliate Credit and Bonus.

## 11 Intellectual Property Rights

- 11.1 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.
- 11.2 You agree to comply with and maintain all copyright notices and other restrictions on Platform content accessed on or via the Platform.
- 11.3 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



or Platform content without our prior written permission or the relevant third-party licensor or exploit such content for commercial benefit.

- 11.4 You acknowledge and agree that damages may not be an adequate remedy for a breach of this clause 11 and that equitable or injunctive relief may be necessary.

## **12 Third Party Service Providers**

- 12.1 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.

## **13 Third party links**

- 13.1 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.
- 13.2 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.

## **14 Disclaimer and limitation of liability**

- 14.1 SUBJECT TO CLAUSE 14.12 AND 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.
- 14.2 SUBJECT TO CLAUSE 14.12, WE DO NOT GUARANTEE OR GIVE ANY WARRANTIES THAT ANY ORDER PLACED BY YOU WILL BE EXECUTED AT THE PRICE SHOWN TO YOU OR REQUESTED BY YOU. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUFFERED BY YOU IN THE EVENT YOUR ORDER EXECUTES AT A LESS FAVOURABLE PRICE FOR ANY REASON, INCLUDING BY REASON OF ORDER EXECUTION DURING PERIODS OF ILLIQUIDITY OR HIGHER VOLATILITY.
- 14.3 You acknowledge that when you use the Platform, enter into a Transaction, receive Services, and use the NZ Fiat Clearing Facility (including as beneficiary of the trust of the NZ Fiat

- Clearing Funds) you do so entirely at your own risk and relying on your own enquiries and judgement.
- 14.4 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.
- 14.5 Any advice provided on the Platform is of a general nature only.
- 14.6 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 and subject to clause 14.12, 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.
- 14.7 Subject to clause 14.12, 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) we exclude all liability for any loss or damage caused as trustee of your NZ Fiat Clearing Funds and otherwise in connection with the NZ Fiat Clearing Facility, other than loss or damage caused by our own dishonesty or wilful misconduct;
  - (c) 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 (subject to clause 19.9 in relation to NZ Fiat Clearing Funds);
  - (d) our liability is excluded to the extent that you contributed to the liability;
  - (e) 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
  - (f) our liability is subject to your duty to mitigate your loss.
- 14.8 We are not responsible for any loss or damage caused, directly or indirectly, by any events, actions or omissions beyond our control 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.
- 14.9 Subject to clause 14.12, 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.
- 14.10 Subject to clause 14.12, 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.

- 14.11 All subclauses of this clause 14 are cumulative to one another.
- 14.12 If you are an Australian User, our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service (as defined under the Australian Consumer Law), you are entitled:
- (a) to cancel your service contract with us; and
  - (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

- 14.13 If you are an Australian user, your rights under these terms do not go beyond your entitlements at law. We do not provide any additional warranties, guarantees, or representations other than as required to be provided by law.

## 15 Release and Indemnity

- 15.1 Subject to clause 14.12, 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.
- 15.2 Subject to clause 14.12, 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.
- 15.3 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) the use of the Platform,
    - (iii) any Services,
    - (iv) the NZ Fiat Clearing Facility and the trust of the NZ Fiat Clearing Funds pursuant to clause 19;
    - (v) any User or Counterparty;
    - (vi) any damage to property, personal injury or death;
    - (vii) your breach of these Terms of Use;

- (viii) any matter for which we have purported to disclaim liability under these Terms of Use;
- (ix) any Third Party Service Providers (within the meaning of clause 12) or payment providers (as described in clause 8.9);
- (x) your use, misuse, or abuse of the Platform; and
- (xi) your breach or failure to observe any applicable law, including taxation laws.

## 16 Termination

16.1 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.

## 17 Force Majeure

17.1 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, epidemic, pandemic, quarantine restrictions, 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.

17.2 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.

17.3 We exclude all liability, loss or claims to the extent that they were caused or contributed to by a Force Majeure.

## 18 General

18.1 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](mailto:hello@swyftx.com.au), and we will send you all email notices from an email address ending with [@swyftx.com.au](mailto:@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.

18.2 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.

- 18.3 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.
- 18.4 These Terms of Use, the trust of the NZ Fiat Clearing Funds under clause 19 and the administration of such trust 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.

## 19 **New Zealand Users' Specific Terms**

- 19.1 This section 19 applies only if you are located in New Zealand.
- 19.2 We may (at our sole discretion) provide you with a facility ("**NZ Fiat Account Clearing Facility**") under which we will hold fiat currency for you and apply that fiat currency as directed by you in connection with your activities via the Platform, on and subject to the terms set out in this clause 19.
- 19.3 A NZ Fiat Clearing Facility will operate as follows, and offer the following functionality:
- (a) We will open a fiat currency account ("**Fiat Clearing Account**") for you in our books.
  - (b) You may from time to time transfer an amount of fiat currency from your bank account to us, as a credit to your NZ Fiat Clearing Account.
  - (d) Where you enter into a Transaction for which the Consideration is payable in fiat currency:
    - (i) where you are the buyer under the Transaction, you direct us to pay that Consideration, as a debit to your NZ Fiat Clearing Account; and
    - (ii) where you are the seller under the Transaction, you direct us to receive that Consideration, as a credit to your NZ Fiat Clearing Account.
  - (e) You can from time to time direct us to transfer an amount of fiat currency from your NZ Fiat Clearing Account to your bank account.
- 19.4 Fiat currency ("**NZ Fiat Clearing Funds**" and "**your NZ Fiat Clearing Funds**") received by us in cleared funds will be receipted to your NZ Fiat Clearing Account on the following terms, subject to clause 19.5:
- (a) We will hold your NZ Fiat Clearing Funds as bare trustee for your benefit, on and subject to the terms of this clause 19 and (to the extent not inconsistent with this clause 19) the remaining provisions of these Terms of Use.
  - (b) We will promptly on receipt deposit your NZ Fiat Clearing Funds in, or transfer it to, a segregated account ("**NZ Bank Trust Account**") that we maintain with a bank in New Zealand, Australia or elsewhere. We may hold your Fiat Clearing Funds across different NZ Bank Trust Accounts.

- (c) A NZ Bank Trust Account may contain both your NZ Fiat Clearing Funds and funds that we hold on trust for other New Zealand Users.
- (d) Your NZ Fiat Clearing Funds will be used only in accordance with:
  - (i) your directions given to us (either generally or specifically) via the Platform or in writing (including electronically/by email) (“**Directions**”); and for this purpose, a direction under clause 19.3 to use the NZ Fiat Clearing Account in relation to a Transaction will constitute a Direction by you to pay the Consideration to the relevant seller out of your NZ Fiat Clearing Funds or receive the Consideration from the relevant buyer as an accretion to your NZ Fiat Clearing Funds (as the case may be); or
  - (ii) as authorised or permitted by this clause 19.
- (e) We will pay your NZ Fiat Clearing Funds (or such part of your NZ Fiat Clearing Funds as you may from time specify in the relevant Direction) to you upon your Direction, by transfer to your nominated bank account.
- (f) You irrevocably authorise us to comply with all Directions given via the Platform that are identified with your password and username or given in writing (including electronically/by email) from persons we in our sole judgment believe are apparently authorised by you as Directions given by you, as being Directions from you.
- (g) We will comply with your Directions as soon as reasonably practicable, subject to clause 9.3.
- (h) No interest accrues on your Fiat Clearing Funds.
- (i) You irrevocably authorise us to settle any amount that you owe us out of your NZ Fiat Clearing Funds, by transferring a sum of money equal to that amount from the NZ Bank Trust Account (as a deduction from your NZ Fiat Clearing Funds and debit to your NZ Fiat Clearing Account) to ourselves for our own benefit. To avoid doubt, we will not be beneficially entitled to such sum of money until after its transfer out of the NZ Bank Trust Account has been completed.
- (j) We may make any deductions or withholdings from your NZ Fiat Clearing Funds that are from time to time required by law or are permitted under these Terms of Use (including under clauses 19.4(i) and 19.4(j)) (collectively, “**Authorised Deductions**”).
- (k) We will account to you for your NZ Fiat Clearing Funds. The accounts for your NZ Fiat Clearing Account will be the same as the accounts for your NZ Fiat Clearing Funds.
- (l) If you close your NZ Fiat Clearing Account or we terminate your access to the Platform, we will promptly (subject to clauses 8.12 and 9.3 as relevant) transfer your NZ Fiat Clearing Funds, net of any **Authorised Deductions**, to your nominated bank account (or if you have not previously nominated a bank account for this purpose, then to the most recent bank account from or to which fiat currency was transferred by or to you under this clause 19); and you irrevocably authorise us to make such transfer. To avoid doubt, clause 9.7 will not apply in this case.

19.5 Notwithstanding any other provisions of this clause 19, we are not required to accept any funds as a credit to your NZ Fiat Clearing Account and accretion to your NZ Fiat Clearing Funds, or to comply with any Direction, where (or in our sole discretion, to the extent that):

- (a) to do so would cause the balance of your NZ Fiat Clearing Account and NZ Fiat Clearing Funds to:
  - (i) reduce to less than zero; or
  - (ii) reduce to an amount that is less than the total of all amounts required to complete all Directions you have previously given us (to the extent not yet completed) and cover all Authorised Deductions (to the extent yet to be made);
- (b) we have determined not to enter into or perform the relevant Transaction as your agent, pursuant to clause 8.3;

- (c) a third party asserts an interest in or claim to your NZ Fiat Clearing Funds, unless (and then only to the extent that) a court of competent jurisdiction orders otherwise;
  - (d) to do so would in our reasonable opinion likely breach or contravene an applicable legal or regulatory requirement or restriction; or
  - (e) we do not provide the NZ Fiat Clearing Facility in relation to the relevant fiat currency (in our sole discretion) at the relevant time.
- 19.6 You represent and warrant to us, on a continuing basis, that no third party has any right, interest, claim or title in or to any funds paid or transferred to us as a credit to your NZ Fiat Clearing Facility or forming part of your NZ Fiat Clearing Funds, and that you are lawfully entitled to give us each Direction which you in fact give us.
- 19.7 You may close your NZ Fiat Clearing Account and terminate your use of the NZ Fiat Clearing Facility by giving us an Instruction to that effect. We may further at any time in our sole discretion close your NZ Fiat Clearing Account and terminate your access to the NZ Fiat Clearing Facility (and you release us from all liability, loss, or claims suffered by you as result of or arising out of such closure and termination). Any such closure and termination (whether by you or by us) does not release you from any of your obligations and liabilities that may have arisen or been incurred prior to the date of termination.
- 19.8 To avoid doubt, all other clauses of these Terms of Use apply to the matters provided for in this clause 10, to the extent not inconsistent with the specific provisions of this clause 19.
- 19.9 Nothing in clause 14.7(c) limits our liability to repay your NZ Fiat Clearing Funds (net of Authorised Deductions) on and subject to the terms of clause 19.

## 20 Staking

- 20.1 This clause 20 sets out the conditions upon which we will make a staking rewards program (“**Rewards Program**”) available to you in respect of the Eligible Cryptocurrencies listed on our website from time to time. By participating in the Rewards Program, you agree that you have read, understood and accepted the terms of this clause 20. For the purposes of this clause 20, “**Eligible Cryptocurrency**” means a Crypto Asset designated by Swyftx from time to time for staking in connection with the Rewards Program.
- 20.2 **Participation:** You may elect to participate in the Rewards Program for any of your Eligible Cryptocurrency holdings in your Swyftx account, subject to a cap on the aggregate amount of each Eligible Cryptocurrency (such amount as determined by us in our sole and absolute discretion) able to be staked by all Users that hold that Eligible Cryptocurrency (“**Swyftx Staking Cap**”). We will publish the Swyftx Staking Cap for each Eligible Cryptocurrency on the Platform from time to time. We act as an intermediary to enable you to participate in staking and do not charge any fee or commission in relation to you staking your Eligible Cryptocurrencies.
- 20.3 **Rewards:** If you elect to stake Eligible Cryptocurrencies via the Rewards Program, you may receive rewards at the rates published on the Platform from time to time. The rates we publish reflect as closely as practicable the staking rewards that may be applicable to staking the Eligible Cryptocurrency directly and not via Swyftx. Rewards generated by you participating in the Rewards Program will be credited to your Swyftx account. Notwithstanding the foregoing, you acknowledge and agree that Swyftx does

not guarantee that you will receive any particular amount of rewards, or any rewards at all, under the Rewards Program.

- 20.4 **Crediting rewards:** Rewards earned via the Rewards Program are calculated continuously from the time at which you elect to stake Eligible Cryptocurrencies up to the time you elect to withdraw your staked Eligible Cryptocurrencies from the Rewards Program. Rewards are credited to your Swyftx account on a daily basis, or as otherwise disclosed on the Platform from time to time. Rewards are automatically added to your total of staked Eligible Cryptocurrencies, which may compound the rewards you receive through the Rewards Program. The amount of any rewards credited to you is final and binding. A record of rewards credited to your account will be available in your Swyftx account. You will only become entitled to rewards under the Rewards Program at the time such rewards are credited to your account. You do not own, and may not otherwise deal with, any rewards which may have accrued under the Rewards Program, but have not yet been credited to your account. If you cease to hold an account at the time any rewards would have been credited to your account, we will be entitled to retain such rewards on our own account.
- 20.5 **Withdrawal:** You may withdraw (or “unstake”) your staked Eligible Cryptocurrencies from the Rewards Program at any time without penalty. Upon withdrawal from the Rewards Program, you may buy, sell, or transfer your Crypto Assets in accordance with these Terms of Use and the operation of the Platform.
- 20.6 **No guarantee of staking Rewards Program:** While we take steps to ensure that the Rewards Program is accessible 24 hours a day and 7 days a week, we cannot guarantee uninterrupted or error-free operation of the Rewards Program, or that we will correct all defects or prevent third-party disruptions or unauthorised third party access. In the event of such disruptions, any staked Eligible Cryptocurrencies may not be generating any staking rewards.
- 20.7 **Risks of staking and liability:** The Rewards Program is subject to all the risks associated with holding the Eligible Cryptocurrencies, some of which are referred to in these Terms of Use. Swyftx merely acts as an intermediary and does not endorse or provide any representation, warranty or guarantee in connection with staking any Eligible Cryptocurrency, any Eligible Cryptocurrency generally or the Rewards Program. Any rates or similar calculations we publish in relation to the Rewards Program are for information purposes only, and you should not rely on such information published by Swyftx when making any decisions in relation to Crypto Assets (including, without limitation, in relation to buying, selling, holding, staking or participating in the Rewards Program). To the maximum extent permitted by law, we will not be liable for any damages, loss, costs (including legal costs) and other expenses incurred by you in connection with staking or any Rewards Program.