



SKU Tree Platform Terms of Use

SKU Tree Pty Ltd ACN 651 956 768

1. Background

Thank you for visiting our Terms of Use (**Agreement**), we are SKU Tree Pty Ltd ACN 651 956 768 of Unit 1, 3 Tanner Street, Breakwater, Victoria, 3219, Australia (**SKU Tree, we, our, us** and other similar terms). We provide an easy-to-use retail service platform known as the SKU Tree Platform (**SKU Tree Platform**).

This Agreement outlines the terms and conditions associated with your use of the SKU Tree Platform. It is your obligation to ensure that you have read, understood and agree to the most recent terms available at <https://skutree.com/terms> (**Website**).

2. Agreement

2.1 Accepting this Agreement

By logging in to the SKU Tree Platform, integrating with its API or implementing one of our widgets you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using the SKU Tree Platform.

You must not use the SKU Tree Platform if you are not able to form legally binding contracts or are under the age of 18. If you create an Account on behalf of your employer or any other entity, you represent and warrant you hold authority to enter into this Agreement on behalf of that entity and that the entity will comply with the obligations contained herein.

2.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 17.1. They aid to clarify the terms and conditions. Please feel free to email us at accounts@skutree.com if you have any questions.

3. Term

3.1 Subscription Period

This Agreement will commence when you create an Account for the SKU Tree Platform and will continue for the Subscription Period or until the date of termination of this Agreement in accordance with clause 15.

3.2 Automatic renewal

If this Agreement is not terminated in accordance with clause 15, at least 14 days prior to the expiry of then current Subscription Period, this Agreement will automatically renew for a period equal to the current Subscription Period.

4. Licence

4.1 Licence

We grant you a non-transferrable, non-exclusive and revocable licence to access the SKU Tree Platform, and where included in a Subscription Package the SKU Tree Platform API and/or the SKU Tree Platform Plugin, for the Subscription Period, subject to the terms and conditions of this Agreement.

4.2 Licence Conditions

The grant of the licence to access the SKU Tree Platform, the API and the Plugin, set out in clause 4.1 is subject to and conditional upon you purchasing, and maintaining a subscription to, an appropriate Subscription Package with the relevant inclusions.

4.3 Our right to suspend

We reserve the right to limit or suspend your licence to access the SKU Tree Platform if you fail to pay the Subscription Fee, or if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement. Suspending your account will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

5. Technical Services

We may, where agreed between the parties in writing, provide Technical Services for the agreed Technical Service Fee. Upon receipt of the Technical Service Fee, we will liaise with you and create a plan for the delivery of the Technical Services.

You must ensure you dedicate sufficient resources and co-operate with us in order to bring about the successful delivery of those Technical Services.

For the avoidance of doubt, any Intellectual Property contained within any deliverables produced, as part of any Technical Services we provide to you, remains with us. To the extent that you may obtain any Intellectual Property rights in those deliverables, you immediately assign those Intellectual Property rights to us, on creation.

6. Payment

We will provide you with a monthly tax invoice for the Subscription Fee, which will be automatically deducted from your account each month.

Technical Service Fees are payable in accordance with any agreed payment terms, and if not specified, within 14 days of the invoice date.

Unless expressed otherwise, the Subscription Fees and Technical Service Fee are quoted in Australian Dollars and are exclusive of GST, withholding taxes, duties and charges imposed or levied in Australia, or overseas, in connection with this Agreement.

You are responsible for all bank fees and charges applied by any payment gateway provider, which you choose to use.

7. Requirements for use

7.1 Access

You acknowledge and agree the SKU Tree Platform will only be accessible using the internet, by users with a valid Account and will not be available "locally" from your own servers or devices.

You acknowledge and agree the use of the Plugin and API is depended on you holding a licence to and maintaining access to the SKU Tree Platform. Where your right to use the SKU Tree Platform is terminated or suspended, your use of the Plugin and API will be terminated or suspended respectively. Furthermore, during periods where the SKU Tree Platform undergoes maintenance, the Plugin and API will temporarily cease to function and enter maintenance mode.

7.2 Support

Support for the SKU Tree Platform is provided in accordance with the support arrangements as set out on our Website and may vary from time to time.

7.3 SKU Tree Platform outages and system maintenance

If it is necessary to interrupt your use of the SKU Tree Platform, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, the SKU Tree Platform will be unavailable.

You acknowledge access to the SKU Tree Platform may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to the SKU Tree Platform which may change the interface and manner in which it functions.

You agree that we are not liable for any loss, foreseeable or not, arising from any interruption to access, planned or not, and any such interruptions will not constitute a breach by us of these terms.

8. Your use of the SKU Tree Platform

8.1 Registering an Account

In order to use the SKU Tree Platform, you are required to provide us with Personal Information and create an Account with us.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

We reserve the right to reject any new Account in our absolute discretion.

8.2 Account security

Maintaining the security of your Account is important to ensuring your Personal Information and that data which we process on your behalf remains safe. We work hard to keep the SKU Tree Platform secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your business. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via the SKU Tree Platform, whether such activities are authorised by you or not.

Where we provide you with access to the SKU Tree Platform API, your Account security credentials will be required to gain access to the SKU Tree Platform. In accessing the SKU Tree Platform via the API, you will only be permitted to access the system via a secure connection where the security credentials are encrypted in transit.

8.3 Lawful use of the SKU Tree Platform

You undertake not to upload, store or access any data on the SKU Tree Platform if such access or storage would infringe a person's Intellectual Property right, breach any Privacy Law or breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

8.4 Conduct which is expressly prohibited

You may only acquire and make use of the SKU Tree Platform for the sole purpose of meeting your internal business needs. You must not use or include any part of the SKU Tree Platform in any service bureau or fee generating service offered to third parties

You must not:

- (a) in any way tamper with, hinder or modify the SKU Tree Platform;
- (b) knowingly transmit any viruses or other disabling features to or via the SKU Tree Platform;
- (c) use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from the SKU Tree Platform or our Website for any purpose including duplicating the content of the SKU Tree Platform;

- (d) intentionally disable or circumvent any protection or disabling mechanism of the SKU Tree Platform;
- (e) use the SKU Tree Platform in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of the SKU Tree Platform;
- (f) use the SKU Tree Platform in connection with a breach of any law in Australia or the jurisdiction in which you operate; or
- (g) attempt, facilitate or assist another person to do any of the above acts.

9. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website.

10. Confidentiality

A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

Notwithstanding any other provision of this clause 10, a party may disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers and accountants.

Each party will take all reasonable steps to ensure that its employees, agents, and any sub-contractors engaged for the purposes of the Agreement do not make public or disclose the other party's Confidential Information.

A party will not be in breach of this clause 10 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

11. Intellectual Property

We warrant we own or have a licence to use all software components of the SKU Tree Platform, the API and Plugin.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of, all or part of the SKU Tree Platform, the API or the Plugin in any way;
- (b) incorporate all or part of the SKU Tree Platform in any other webpage, site, application or other digital or non-digital format, unless allowed for by the Subscription Package to which you subscribed to; or
- (c) except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in the SKU Tree Platform.

12. Warranties

We aim to provide the best possible user experience, however, subject to the Non-excludable Conditions, we make no warranties or guarantees that the SKU Tree Platform, the Plugin or API is fault free, regarding their fitness for any particular purpose which we have not expressed, or

regarding your access to, or the results of your access to, the SKU Tree Platform, the Plugin or API including their correctness, accuracy, timeliness, completeness, reliability or otherwise.

13. Limitation of Liability

13.1 Implied Conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

13.2 Limitation of Liability

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) the SKU Tree Platform being inaccessible for any reason;
- (b) incorrect or corrupt data, lost data, or any inputs or outputs of the SKU Tree Platform, the Plugin or the API;
- (c) computer virus, trojan and other malware in connection with the SKU Tree Platform, the Plugin or the API;
- (d) security vulnerabilities in the SKU Tree Platform, the Plugin or the API or any breach of security that results in unauthorised access to, or corruption of data;
- (e) negligence arising from our activities or that of our service providers;
- (f) any unauthorised activity in relation to the SKU Tree Platform, the Plugin or the API;
- (g) the occurrence of an Event of Force Majeure;
- (h) your breach of this Agreement; or
- (i) any act or omission by you, your personnel, your associates or any related body corporate under or in relation to this Agreement.

13.3 Limits to liability associated with goods and services

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to:

- (a) in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and
- (b) in the case of services: the resupply of the services or the payment of the cost of having the services resupplied.

13.4 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of the SKU Tree Platform, the Plugin or the API, including any costs arising from your breach of this Agreement, your infringement of any third party Intellectual Property rights associated with this Agreement, any harm to, claim or action by a third party (including to that third party's personal property) which arise directly or indirectly from your use of the SKU Tree Platform, the Plugin or the API.

14. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 14 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 14. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 14 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

15. Termination

15.1 Termination notice

You may terminate this Agreement by sending us a Cancellation Notice . This satisfies the requirements for termination to be provided in writing.

15.2 Termination for convenience

Either party may terminate this Agreement by providing the other party notice in writing. Termination will take effect, at the end of then current Subscription Period, if the notice is provided at least 14 days prior to the Renewal Date or following Subscription Period, if the notice is provided within 14 days prior to the Renewal Date.

15.3 Termination for cause

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

15.4 Actions upon termination

Upon termination:

- (a) you must immediately stop using the SKU Tree Platform;
- (b) we reserve the right to permanently erase any data associated with your Account; and
- (c) you will no longer have access to your Account.

16. General

Assignment - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent.

Entire Agreement - This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

Governing law - The laws of Victoria and the Commonwealth of Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Notices - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and
- (b) which you send, must be either delivered or posted by prepaid post to the address set out at clause 1 or sent by email to our email address set out at clause 2.2.

Relationship - Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties.

Severability - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

Variations to this Agreement - We may vary this agreement by giving one month written notice to you. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 15.1.

17. Definitions and interpretation

17.1 Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account or the **SKU Tree Platform Account** means the username and access credentials used when you access the SKU Tree Platform.

Agreement means these terms and conditions and any document incorporated into them by reference.

Cancellation Notice means a notice sent by either party, in accordance with clause 15, requesting the termination of this Agreement.

Confidential Information means information that is by its nature confidential, including but not limited to information relating to either party's personnel, policies, practices, clientele, business strategies, Intellectual Property rights, the system operations associated with the SKU Tree Platform and security credentials. But does not include information already rightfully known to the receiving party at the time of disclosure by the other party or in the public domain other than as a result of a disclosure in breach of its obligations of confidentiality under this Agreement.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Payment Terms mean the requirement to make payment immediately on commencement of this Agreement and each subsequent Renewal Date in accordance with the Subscription Package selected.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Privacy Law means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website as amended by us from time to time.

Renewal Date means the day a new Subscription Period is intended to begin.

SKU Tree Platform API or API means the application programming interface which allows users systems to access the SKU Tree Platform.

SKU Tree Platform Plugin or Plugin means the software components compatible with the SKU Tree Platform presenting platform data on the user's website.

Subscription Fee means the periodic price for the the SKU Tree Platform Subscription Package as set out on our Website or otherwise in writing between the parties.

Subscription Package means one of the subscription packages advertised on our Website from time to time or otherwise in writing between the parties.

Subscription Period means the period of time specified in the Subscription Package.

Technical Service Fee means any price agreed between the parties payable to us in exchange for the Technical Services.

Technical Services means any services agreed in writing to be provided by us to you which relates to your website, the SKU Tree Platform or the implementation or maintenance of the SKU Tree Platform API or Plugin.

You or your means the person or entity using the SKU Tree Platform.

Us, we or our means SKU Tree Pty Ltd ACN 651 956 768.

Website means the website located at <https://skutree.com/> and any of its subdomains.

17.2 Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
- (b) any reference to a trustee includes any substituted or additional trustee;
- (c) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;

- (d) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (e) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (f) headings are for convenience and will not affect interpretation;
- (g) words in the singular will be taken to include the plural and also the opposite;
- (h) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body;
- (i) a reference to a party's conduct includes omissions as well as acts; and
- (j) if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute.