



Ask the Market Terms of Use

Superfluous Pty Ltd ACN 643 016 228

1. Background

Thank you for visiting our Marketplace Terms of Use (**Agreement**), we are Superfluous Pty Ltd ACN 643 016 228 (**we, our, us** and other similar terms). We provide an online job and services marketplace known as Ask the Market (**Ask the Market**).

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

2. Agreement

2.1 Accepting this Agreement

By using Ask the Market, you agree to comply with and be bound by the terms and conditions of this Agreement. These terms govern your access to and use of Ask the Market. If you do not agree to these terms, you have no right to obtain information from or otherwise continue using Ask the Market.

These terms are binding on any use of Ask the Market. You must not use Ask the Market 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 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 throughout the Agreement or in clause 14 and aid to clarify the terms and conditions. Please feel free to email us at support@askthemarket.com.au if you have any other questions relating to this Agreement.

3. Ask the Market

3.1 Content and hyperlinks

The content on Ask the Market is largely produced by other people using Ask the Market (**Users**) and not us. It is to be used or relied on at your own risk. We make no warranty or representations as to the accuracy of the content of other Users.

Ask the Market may contain hyperlinks and other pointers to websites operated by third parties. We do not control these third party websites and are therefore not responsible for the hyperlinks, information or downloads available on them. You visit third party websites entirely at your own risk.

Where we provide hyperlinks, we do so only for your convenience and do not indicate, expressly or implicitly, any endorsement, sponsorship or approval by us of the content on the third party website.

3.2 Support

We provide support to assist you with technical issues which arise from the use of Ask the Market. Support is available via support@askthemarket.com.au

3.3 Ask the Market accessibility

Ask the Market operates using third party cloud infrastructure and telecommunication services (**Third Party Infrastructure**). From time to time Ask the Market may become inaccessible or unavailable. We neither control nor are we liable for faults in Third Party Infrastructure nor the consequences which arise from such faults.

You acknowledge and agree that Ask the Market requires access to the internet and will not function as anticipated without internet access.

3.4 Updates to Ask the Market

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove content from, redesign, improve, take offline (temporarily or permanently) or otherwise alter Ask the Market at our sole and absolute discretion. From time to time, without notice, access to all or part of Ask the Market may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to Ask the Market as soon as practicable.

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

4. Your use of Ask the Market

4.1 Prohibited conduct

You must not:

- (a) make misleading or deceptive statements regarding any service you offer via Ask the Market;
- (b) use an Account for which you are not the Account holder of;
- (c) use automated means to upload content, log in or attempt to log into an Account, download or otherwise access Ask the Market in any way;
- (d) attempt to gain unauthorised access to or impair any aspect of Ask the Market;
- (e) in any way tamper with, hinder or modify Ask the Market;
- (f) provide false or misleading information;
- (g) knowingly transmit any viruses or other disabling features to or via Ask the Market;
- (h) intentionally disable or circumvent any protection or disabling mechanism related to Ask the Market;
- (i) install or store any software applications, code or scripts on or through Ask the Market;
- (j) use Ask the Market in any way which could be reasonably expected to interfere with or damage our network, any other operator's network, or another User's enjoyment of Ask the Market; or
- (k) attempt any of the above acts or facilitate or assist another person to do any of the above acts.

4.2 Submitted Content

You undertake not to upload, alter, configure, access or store any data or Submitted Content to Ask the Market:

- (a) if such access would result in a breach of any third party Intellectual Property rights, Privacy Law or any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory) or the jurisdiction in which you are operating;
- (b) which is false, misleading, deceptive, improper, harmful, threatening, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, hateful or is otherwise objectionable;
- (c) which includes nudity, sex, pornography, adult-oriented content, or explicative or inappropriate language;
- (d) which advertises for sale - drugs, alcohol, pharmaceuticals, products containing nicotine or weapons;
- (e) which advertises goods or services which are illegal to provide in your jurisdiction or the jurisdiction to which you are offering them;
- (f) content that advertises or links to posting or auto-posting products or services, email harvesting products or services, account creation or auto-creation products or services, flagging or auto-flagging products or services or bulk telephone numbers;
- (g) that is likely to offend, insult, discriminate or humiliate based on race, religion, ethnicity, gender, age or sexual orientation; or
- (h) which is otherwise deemed inappropriate in our sole discretion.

We reserve the right to take down and destroy any Submitted Content, including User profiles, in our sole discretion, and without notice. It is entirely your responsibility to keep copies of any Submitted Content uploaded to Ask the Market and you must not rely on us storing copies for you.

While we reserve the right to take down any Submitted Content, including User profiles, which are in breach of this Agreement, you acknowledge and agree we are not required to monitor Submitted Content, nor are we responsible for it.

5. User Account

5.1 Creating an Account

You acknowledge and agree that to create an Account with us you are required to provide us with Personal Information.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account and operating Ask the Market. 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.

5.2 User Account type

There are three different account types which a User may select, these are:

- (a) **Personal:** A Personal Account allows you to post on Ask the Market requests for services.
- (b) **Job Seeker:** A Job Seeker Account provides you the same functionality as a Personal Account, with the addition of allowing you to also respond to jobs advertised on Ask the Market.
- (c) **Business:** A Business Account provides you the same functionality as a Job Seeker Account, with the addition of allowing you to also post job opportunities and respond to requests for services on Ask the Market.

You acknowledge and agree you will only have access to the functionality of Ask the Market that is available to the Account type which you create.

5.3 Account permissions

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 on your behalf. You are responsible for the activities undertaken using your Account which occur via Ask the Market, whether such activities are authorised by you or not.

5.4 License

We grant you a non-transferrable, non-exclusive, non-sublicensable, worldwide, royalty free and revocable licence to use Ask the Market, on the terms contained in this Agreement (**License**). The Licence to use Ask the Market is subject to and conditional to your compliance with the terms of this Agreement, and in particular your compliance with clause 4 (Your use of Ask the Market).

5.5 Suspending your Account

We reserve the right to limit or suspend your licence to access Ask the Market if:

- (a) where applicable, you fail to pay the Membership Fee;
- (b) in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement;
- (c) your Account information is incomplete;
- (d) your Account is not used for a period greater than 12 months; or
- (e) we suspect a security breach associated with your Account.

Suspending your licence will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Membership Fee.

6. Membership Packages

Where you create an Account and subscribe to one of our Membership Packages, this clause 6 applies.

6.1 Term

Your Membership Package will commence when you create an Account and will continue for the Membership Period unless this Agreement is terminated earlier in accordance with clause 6.4.

If your Membership Package is not terminated in accordance with clause 6.4 at least prior to the expiry of the then current Membership Period, your Membership Package will automatically renew for another Membership Period.

6.2 Payment

Where you subscribe to one of our paid Membership Packages, we will provide you with a tax invoice upon payment. Such Membership Fees will be automatically deducted via the payment method nominated on your Account as each tax invoice is issued.

Unless expressed otherwise, Membership Fees 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.

6.3 No return of funds and no chargebacks

You acknowledge that once a payment is processed via Ask the Market it is non-refundable, except as otherwise required by law.

To the extent permitted by law, you agree not to ask your bank or other financial institution to chargeback any fees charged via Ask the Market. If you initiate a chargeback in violation of this Agreement, you agree that we may dispute or appeal the chargeback and instigate collection against you and take such other action we deem appropriate.

6.4 Termination for breach

We may end this Agreement immediately if in our reasonable opinion you materially breach this Agreement, are involved in any illegal activity, we cease to provide Ask the Market, your Account remains suspended for a period of more than 14 days or for any other reason after notifying you 30 days in advance of our intention to terminate this Agreement.

6.5 Termination for convenience

You may terminate this Agreement with us by closing your Account or notifying us in writing. Termination will take effect at the end of the then current Membership Period.

6.6 Actions upon termination

Upon Termination:

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

- (d) where this Agreement has been terminated in accordance with clause 6.4, you must not attempt to access Ask the Market or register a new Account without our prior written consent.

7. Agreements between Users

You acknowledge that we are not a party to the relationship or any dealings between Users who engage one another via Ask the Market. Without limitation, you are solely responsible for:

- (a) determining the suitability of other Users before entering into a contract with them;
- (b) negotiating, agreeing to, and executing any terms or conditions of an agreement you have with other Users; and
- (c) complying with the obligations of any agreement you have with other Users.

We do not guarantee that Users are able to pay or will pay other Users, nor are we liable if a User is in default to another User.

You acknowledge and agree that in relation to any agreements between Users, you are solely responsible for ensuring all tax and superannuation obligations are met and you must make your own enquiries into any industrial relations, workplace health and safety, employment or sub-contracting implications associated with any agreement you enter into with another User.

We do not:

- (a) verify any feedback or information provided by Users about other Users;
- (b) undertake any due diligence, vet or otherwise perform background checks on Users;
- (c) supervise, direct, control, or evaluate Users or their work, impose quality standards or a deadline for completion of any User services, nor do we dictate the performance, methods or processes a User uses to perform their services; or
- (d) set or have any control over a User's pricing, work hours, work schedules, or work location, nor are we involved in any other way in determining the nature and amount of any compensation that may be charged by or paid to a User for their services.

8. Privacy

8.1 Privacy Policy

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.

8.2 Sharing your contact details

Ask the Market operates as a system to connect Users with each other. By creating an Account, you consent to us sharing your Personal Information with other Users. You should not include information or submit content to Ask the Market if you do not want it to be shared with other Users.

9. Intellectual Property

9.1 Our Intellectual Property

We warrant we own or have a licence to use the Intellectual Property in Ask the Market.

You warrant you will not do any of the following, or permit any person over whom you have effective control to:

- (a) copy or reproduce, or create an adaptation or translation of, all or part of Ask the Market in any way, except to the extent that reproduction occurs automatically through its ordinary use;
- (b) incorporate all or part of Ask the Market in any webpage, site, application or other digital or non-digital format;
- (c) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of Ask the Market on any medium; or
- (d) 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 Ask the Market.

9.2 You retain ownership of Submitted Content

If you provide us with any Submitted Content, such content stays yours. This Agreement does not transfer ownership of Submitted Content to us.

When you provide Submitted Content, you grant us a non-exclusive, worldwide, perpetual, royalty-free, sublicensable, transferable right and license to use, host, store, reproduce, modify, create derivative works of (such as those resulting from translations, adaptations or other changes we make so that Submitted Content works better with Ask the Market), communicate, publish, publicly display, publicly perform and distribute Submitted Content for the purposes of allowing us to provide, improve, promote and protect Ask the Market. You waive any claims against us relating to any moral rights or similar rights worldwide that you may have in the Submitted Content.

You represent that you own all rights to your Submitted Content or otherwise have (and will continue to have) all rights and permissions to legally use, share, display, transfer and license your Submitted Content to the extent that it is used within Ask the Market.

10. Limitation of liability

10.1 Non-Excludable Conditions

This clause must be read subject to 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 (**Non-Excludable Conditions**).

10.2 Implied Conditions

We exclude all implied guarantees, conditions and warranties from this Agreement except any Non-Excludable Conditions.

10.3 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 from:

- (a) Ask the Market being inaccessible for any reason;
- (b) incorrect or corrupt data, lost data, or any inputs or outputs of Ask the Market;
- (c) any computer virus, trojan and other malware in connection with Ask the Market;
- (d) security vulnerabilities in Ask the Market or any breach of security that results in unauthorised access to, or corruption of data;
- (e) negligence caused by us or our service providers;
- (f) any dispute arising between Users or your engagement with another User, including any reliance on Submitted Content or default of payment;
- (g) any dispute arising between Users or your engagement with another User of Ask the Market;
- (h) any loss or damage to property, personal injury or death arising directly or indirectly in connection with this Agreement;
- (i) the actions or inactions of any other User or other third party to this Agreement;
- (j) any unauthorised activity in relation to Ask the Market;
- (k) the occurrence of an Event of Force Majeure;
- (l) your use of or reliance on Ask the Market for a purpose other than its reasonably expected purpose;
- (m) your breach of this Agreement; or
- (n) any act or omission by you, your personnel, your associates or any related body corporate under or in relation to this Agreement.

10.4 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.

10.5 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, whether directly or indirectly, in connection with this Agreement or your use of Ask the Market including any costs arising from:

- (a) your breach of this Agreement;

- (b) any dispute arising between you and another User;
- (c) any claim by a User which you engage with in relation to any entitlements, harassment, discrimination or workplace health and safety;
- (d) your negligence, misrepresentations, wilful misconduct or fraud and any such conduct arising from the use of your Account;
- (e) your infringement of any third party Intellectual Property rights associated with this Agreement;
- (f) your breach of any law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory) or the jurisdiction in which you are operating;
- (g) 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 Ask the Market, the goods or the services procured under this Agreement or goods or services you procure from other Users via Ask the Market; or
- (h) your breach of any law.

11. Warranties

Subject to the Non-Excludable Conditions, we make no warranties or guarantees that Ask the Market is fault free, regarding its fitness for any particular purpose, which we do not otherwise express, or regarding your access to, or the results of your access to Ask the Market, including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

We do not make any representations or guarantees regarding:

- (a) the qualifications, capabilities or background of any User;
- (b) the quality or completeness of any services provided by a User;
- (c) any insurance requirements not being met or any claims arising from a contract between Users;
- (d) the truth or accuracy of any Submitted Content;
- (e) any workplace health and safety issue, workplace dispute associated with any agreement between Users;
- (f) any claims arising from an agreement between Users; nor
- (g) a User's ability or willingness to meet its obligations to another User.

You warrant Ask the Market has been obtained at your own discretion and risk and that you will use Ask the Market strictly in accordance with any guidelines or recommendations contained in any information provided by us or on our Website. Furthermore, you warrant you have made your own investigations into the suitability of Ask the Market and are not relying on any representation not expressly made by us.

12. 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 0 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 0. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 0 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.

13. General

Assignment - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent. You must not assign, encumber, declare a trust over or otherwise create an interest in your rights in this Agreement without our consent, which must not be unreasonably withheld.

Entire agreement - This Agreement sets out all the parties' rights and obligations relating to the subject matter of the Agreement, and it supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

Event of Force Majeure - The parties' obligations, other than an obligation to pay money, under this Agreement are suspended for the duration of and to the extent they are affected by an Event of Force Majeure.

Governing law - This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland and the Commonwealth of Australia.

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 which we send to you, will be sent to you via the email address provided to us in your Account. By accepting these terms, you give your consent to receive communications from us by email and push notifications. Your notices to us should be directed to Ask the Market or sent via the facilities made available to you on our Website.

Relationship of the parties - Nothing in this Agreement is intended to create any partnership, joint venture, agency or employment relationship between the parties.

Survival - Clauses 9, 10, 11, 12 and any other clause in this Agreement which is expressed to survive or by its nature survives, will survive termination or expiry of this Agreement for any reason.

Severance - If anything in this Agreement is unenforceable, illegal, or void then it is severed, and the rest of this Agreement remains in full force and effect.

Variations to this Agreement - We may vary this Agreement at any time by posting, with 1 month notice, the new Terms of Use on our Website. If you do not accept the terms of the variation you may terminate this Agreement in accordance with clause 6.

14. Definitions

In this Agreement:

Account means the username and access credentials used when you access Ask the Market.

Business Account means a type of Account as outlined in clause 5.2(c).

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.

Job Seeker Account means a type of Account as outlined in clause 5.2(b).

Membership Fee means the price for your Membership Package as set out on our Website from time to time.

Membership Package means one of our subscription packages advertised on our Website from time to time.

Membership Period means the period of time as outlined in the Membership Package on our Website from time to time.

Personal Account means a type of Account as outlined in clause 5.2(a).

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.

Submitted Content means all information including audio, documents, graphics, HTML, text, software and materials which is uploaded by Users to Ask the Market.

User means the individual using Ask the Market

Website means <https://askthemarket.com.au> and any of its subdomains.

You or your means the person or entity who has entered into this Agreement.