

Immutable X Terms & Conditions

1 Welcome!

- 1.1 These terms and conditions (**Terms**) are entered into between Immutable X Pty Limited ABN 36 644 717 840 (**we, us or our**) and you, together the **Parties** and each a **Party**. These Terms supplement and incorporate our privacy policy and user knowledge documents posted on the Platform.
- 1.2 We provide a platform to facilitate transactions between parties looking to sell Digital Assets (Sellers) and parties looking to purchase Digital Assets (Buyers). Digital Assets refers to unique non-fungible tokens, implemented on the Ethereum blockchain using smart contracts.
- 1.3 The platform is available at market.x.immutable.com, link.x.immutable.com and via other channels or addresses (**Platform**).
- 1.4 In these Terms, you means (as applicable) (1) the person or entity registered with us as either a Buyer or Seller; or (2) the individual accessing or using the Platform.
- 1.5 If you are using the Platform on behalf of your employer or a business entity, you, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity's personnel to these Terms.

2 Acceptance and Platform Summary

- 2.1 By using the Platform, you will be deemed to have accepted these Terms.
- 2.2 The Platform is a marketplace where Buyers and Sellers can find each other, and advertise, buy and sell Digital Assets online.
- 2.3 We provide the Platform to users (including hosting and maintaining the Platform) to:
 - (a) assist Buyers and Sellers to form contracts for the supply of Digital Assets; and
 - (b) process payments between Buyers and Sellers, (together the **Marketplace Services**).
- 2.4 You understand and agree that we only make available the Platform and the Marketplace Services. We are not party to any agreement entered into between a Buyer and Seller and we have no control over the conduct of Buyers, Sellers or any other users of the Platform, including in relation to the sale of illegally obtained Digital Assets.

Registration

- 2.5 To use the Platform as a Buyer or Seller, you will need to register your Immutable X link key and connect your Ethereum wallet to the Platform (**Registration**).
- 2.6 Buyers may view and browse Listings without Registration, but will need to register to purchase a Digital Asset from a Listing.
- 2.7 If you lose access to your Immutable X link key or forget the details to your Ethereum wallet, you will lose access to the Platform as we cannot assist you with resetting such details.

Listings

- 2.8** A Seller wanting to sell a Digital Asset must register on the Platform and then deposit Digital Assets from their Ethereum wallet (**Wallet**) into their inventory or purchase a Digital Asset on the Platform. The seller can then list the Digital Asset for sale (**Listing**).
- 2.9** When the Seller is creating the Listing, they can choose a price for the Digital Asset (**Seller Fee**).
- 2.10** In consideration for providing the Platform, and providing the Marketplace Services, we add a service fee (as set out on the Platform) on top of the Seller Fee (**Service Fee**). The total price of the Seller Fee, plus the Service Fee and any other applicable charges and taxes is the **Purchase Price** that a Buyer will see on the Platform.
- 2.11** The Listing will automatically populate the details of the Digital Asset based on the Digital Asset's unique ID.
- 2.12** You will not be able to withdraw a Digital Asset from your inventory if it is in a live Listing. You may remove your Listing and then withdraw the relevant Digital Asset from your inventory at any time prior to the Digital Asset being sold.
- 2.13** Once the Digital Asset has been sold (as set out below), it will be transferred to the Buyer and you will no longer be able to withdraw it from your inventory.
- 2.14** As a Seller, you agree:
- (a) that you are legally entitled to, and capable of, selling the Digital Asset described in any Listing;
 - (b) that we may at any time and for any reason remove a Listing from our Platform; and
 - (c) not to engage in any illegal activity, including the sale of stolen or counterfeit assets or wash trading.

Transactions

- 2.15** Once a Buyer has registered, they may purchase Digital Assets from Sellers as set out in Listings on the Platform. Any purchase made through the Platform is an offer by the Buyer to purchase a particular Digital Asset from the Seller for the Purchase Price, at the time the Buyer makes the purchase.
- 2.16** It is the Buyer's responsibility to check the purchase details, including the selected Digital Asset and Purchase Price, before making a purchase through the Platform.
- 2.17** When the Buyer selects a Digital Asset to purchase and pays on the Platform, the offer is deemed accepted by the Seller and results in a separate binding agreement between the Buyer and Seller for the supply of the Digital Asset in accordance with these Terms. Once the payment by the Buyer has been validated, the Digital Asset will appear in the Buyer's inventory within a short period of time (usually a couple of minutes).
- 2.18** Title to Digital Assets will remain with the Seller until the Buyer has paid the Purchase Price in full in accordance with the Terms. From the time the order is placed until title in the Digital Asset passes, the Buyer must not do anything which seeks to create an encumbrance, lien, charge, or other interest over the Digital Asset.
- 2.19** Risk in the Digital Asset will pass to the Buyer as soon as it appears in their inventory. Once risk in the Digital Asset passes, the Buyer will be solely responsible for it.

3 Communication

- 3.1 We may contact you via the Platform using in-app notifications, or via off-Platform communication channels, such as text message or email.

4 Payment

- 4.1 We make available the Platform and process payment for orders on behalf of Sellers as the agent of the Seller.

Applicable to Buyers only

- 4.2 You agree to pay the Purchase Price at the time you make a purchase.
- 4.3 You must pay the Purchase Price using the Ether currency. You must ensure that your Wallet (which you have connected) has sufficient funds to pay the Purchase Price.
- 4.4 You must not pay, or attempt to pay, the Purchase Price by fraudulent or unlawful means. In the absence of fraud or mistake, all payments made are final.

Applicable to Sellers only

- 4.5 Upon receipt of the Purchase Price from the Buyer, you agree that we may deduct the Service Fee and arrange for the remainder (the Net Sales Proceeds) to be deposited in your Wallet. All such deposits are to be made in the Ether currency. This deposit will normally appear in your Wallet within a few hours of the Buyer making an order, but may be delayed due to factors beyond our control, including Force Majeure Events and delays caused by Third Party Inputs.
- 4.6 You appoint us as your limited payment collection agent solely for the purpose of accepting the Purchase Price from the relevant Buyer. You agree that we will not be required to pay you any amount until we have received the Purchase Price from the relevant Buyer, that we will deduct our Service Fee from the Purchase Price we receive as set out in clause 4.5 above and that we may grant refunds to Buyers in accordance with these Terms.
- 4.7 You agree that when we receive full payment of the Purchase Price for an order from a Buyer, this will constitute payment to you for the Digital Asset and the Buyer's payment obligation to you will be deemed completed at that time and you will have no further claims against the Buyer with respect to that payment.
- 4.8 If we determine a Buyer should be refunded the Purchase Price in accordance with clause 5 (Refunds), we have the right to refuse to pay the Net Sales Proceeds to you. You acknowledge that we may set off any amounts you owe to us from time to time against any amounts we owe to you.
- 4.9 You agree that we may refuse to process any payment if we believe that a transaction is fraudulent, invalid, suspicious or breaches applicable law or these Terms.
- 4.10 This clause 4 will survive the termination or expiry of these Terms.

5 Refunds

- 5.1** As a Buyer, you are not entitled to return Digital Assets or receive a refund for change of mind or other circumstances.
- 5.2** Certain legislation, including the Australian Consumer Law (ACL) in the Competition and Consumer Act 2010 (Cth), and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Platform by us to you which cannot be excluded, restricted or modified (Statutory Rights).
- 5.3** If the ACL applies to you as a consumer, nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Platform provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.
- 5.4** Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Platform) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 5.5** As a Buyer, the goods and services provided by a Seller may also confer on you certain rights under the ACL.
- 5.6** This clause 5 will survive the termination or expiry of these Terms.

6 Intellectual Property and Content

- 6.1** We may allow you to, on or through our Platform:
- (a) post Listings featuring your Digital Assets (UserContent); and
 - (b) access and view User Content and the content and information we make available on the Platform (**Our Content**),
(together, the **Content**).
- 6.2** Unless otherwise indicated, we own or licence all rights, title and interest (including Intellectual Property Rights) in our Platform, Marketplace Services and all of the Content. Your use of our Platform, Marketplace Services and your use of and access to any Content does not grant or transfer to you any rights, title or interest in relation to our Platform, Marketplace Services or the Content.
- 6.3** You must not, without the prior written consent of ourselves or the owner of the Content (as applicable) or except as expressly permitted by these Terms:
- (a) copy or use, in whole or in part, any Content;
 - (b) reproduce, reverse engineer, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any Content designated as paid, exclusive or non-shareable content to any third party; or
 - (c) breach any Intellectual Property Rights connected with our Platform or Marketplace Services, including by altering or modifying any of the Content, causing any of the Content to be framed or embedded in another website, or creating derivative works from the Content.
- 6.4** Subject to your compliance with these Terms, we grant you a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to use our Platform and Marketplace Services, and access and view any Content for your personal use, and any other purpose contemplated by these Terms, in accordance with these Terms. All other uses are prohibited without our prior written consent.

- 6.5** You grant us a non-exclusive, perpetual, irrevocable, worldwide, royalty free, sublicensable and transferable right and licence to use, view, distribute, communicate, copy, store, modify and exploit in any manner the User Content to provide the Platform and Marketplace Services and promote the Platform and Marketplace Services in any media, marketing or promotional material.
- 6.6** You agree that you are solely responsible for all User Content that you make available on or through our Platform and Marketplace Services.
- 6.7** You represent and warrant that:
- (a) you are either the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content as contemplated by these Terms; and
 - (b) neither the User Content, nor the posting, uploading, publication, sending or receiving of the User Content or our use of the User Content on, through or by means of our Platform or Marketplace Services will infringe, misappropriate or violate a third party's Intellectual Property Rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 6.8** Despite anything to the contrary, to the maximum extent permitted by law, you agree to indemnify us and hold us harmless in respect of any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with the User Content you make available on or through the Platform, including as a result of an Intellectual Property Breach.
- 6.9** The Content is not comprehensive and is for general information purposes only. It does not take into account your specific needs, objectives or circumstances, and is not advice. While we use reasonable attempts to ensure the accuracy and completeness of the Content, to the extent permitted by law, we make no representation or warranty regarding the Content. The Content is subject to change without notice. We do not undertake to keep our Platform up-to-date and we are not liable if any Content is inaccurate or out-of-date.
- 6.10** This clause 6 will survive the termination or expiry of these Terms.

7 Warranties

- 7.1** You represent, warrant and agree that:
- (a) you will not use our Platform, including the Content, in any way that competes with our business;
 - (b) there are no legal restrictions preventing you from entering into these Terms;
 - (c) all information and documentation that you provide to us in connection with these Terms is true, correct and complete;
 - (d) you understand that the price of Digital Assets is volatile, and there are risks associated with purchasing Digital Assets including but not limited to, the risk of purchasing counterfeit assets, mislabeled assets, assets that are vulnerable to metadata decay, assets on smart contracts with bugs, and assets that may become untransferable, and by trading on our Platform you acknowledge and accept such risks;
 - (e) you have not relied on any representations or warranties made by us in relation to the Platform (including as to whether the Platform is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms; and

- (f) you will be responsible for the use of any part of the Platform, and you must ensure that no person uses any part of the Platform: (1) to break any law (including participating in money laundering, terrorist financing or wash trading) or infringe any person's rights (including Intellectual Property Rights); (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; (3) to develop, utilize, or disseminate any software or interact with the Platform in any manner, that could harm, or impair it; (4) use any robot, spider, crawler, scraper, script, browser extension, offline reader or other automated means or interface not authorized by us to access the Platform, extract data or otherwise interfere with or modify the rendering of Platform or functionality or (5) in any way that damages, interferes with or interrupts the supply of the Platform.

Seller Warranties

7.2 You represent, warrant and agree that:

- (a) where you are a Seller, you are responsible for complying with all laws, rules and regulations which apply to selling the Digital Assets in your Listings;
- (b) you have all rights to each Digital Asset that you put in a Listing; and
- (c) you will not sell stolen Digital Assets, Digital Assets taken without authorisation or otherwise illegally obtained Digital Assets on the Platform.

8 Exclusions to liability

8.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:

- (a) your or your personnel's acts or omissions;
- (b) loss of, or damage to, any property or any injury or loss to any person;
- (c) any use or application of the Marketplace Services by a person or entity other than you, or other than as reasonably contemplated by these Terms;
- (d) any aspect of the Buyer and Seller interaction including the Digital Items offered by the Seller;
- (e) any Digital Items containing viruses or other harmful components;
- (f) any works, services, goods, materials or items which do not form part of the Marketplace Services (as expressed in these Terms), or which have not been provided by us, including descriptions of any Digital Assets pulled from third party sources;
- (g) any tax liability you incur as a result of buying or selling Digital Assets on the Platform;
- (h) your Computing Environment;
- (i) any third parties or any goods and services provided by third parties, end users or suppliers, providers or other subcontractors which the provision of the Platform may be contingent on, or impacted by;
- (j) the Marketplace Services being unavailable, or any delay in us providing the Marketplace Services to you, for whatever reason; and/or
- (k) any event outside of our reasonable control (including a Force Majeure Event).

8.2 This clause 8 will survive the termination or expiry of these Terms.

9 Limitations on liability

9.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) we will not be liable for Consequential Loss;
- (b) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of that Party's personnel), including a failure to mitigate; and
- (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Marketplace Services to you or, in our sole discretion, to us repaying you the amount of the Service Fees paid by you to us in respect of the supply of the Marketplace Services to which the Liability relates, or where there are no Service Fees paid, \$100.

9.2 This clause 9 will survive the termination or expiry of these Terms.

10 Termination

10.1 If at any time you do not agree to these Terms, you should immediately cease using our Platform. Before you cease using the Platform, you should remove any live Listings from the Platform then withdraw any Digital Assets in your inventory. If you do not remove your Listings, then Buyers may still purchase Digital Assets from you.

10.2 We may suspend your access to the Platform or terminate these Terms immediately on written notice to you, including by blocking your ability to trade Digital Assets on the Platform, if:

- (a) at any time, we discontinue our Platform, in whole or in part;
- (b) you (or any of your personnel) breach any provision of these Terms or we reasonably suspect that you (or any of your personnel) have breached any provision of these Terms;
- (c) there is any reason outside our control which has the effect of compromising our ability to provide the Marketplace Services, including a Force Majeure Event; or
- (d) you are unable to pay your debts as they fall due.

10.3 These Terms will terminate immediately upon written notice by you, if we:

- (a) are in breach of a material term of these Terms, and that breach has not been remedied within 10 business days of being notified by you; or
- (b) are unable to pay our debts as they fall due.

10.4 Upon expiry or termination of these Terms:

- (a) we will cease providing the Marketplace Services and the Platform to you; and
- (b) any live Listings of yours will automatically be removed.

10.5 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

10.6 This clause 10 will survive the termination or expiry of these Terms.

11 Collection Notice

- 11.1** We collect personal information about you in order to enable you to access and use the Platform, to enable you to perform transactions on the Platform, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our privacy policy.
- 11.2** We may disclose that information to third party service providers who help us deliver our Platform (including information technology service providers, data storage, web-hosting and server providers, professional advisors, third party payment processors and our business partners) or as required by law. If you do not provide this information we may not be able to provide you with access to our Platform. In certain circumstances, we may disclose your personal information to third parties located, or who store data, outside Australia.
- 11.3** Our privacy policy contains further information about:
- (a) how we store and use your personal information;
 - (b) how you can access and seek correction of your personal information;
 - (c) how you can make a privacy-related complaint; and
 - (d) our complaint handling process.
- 11.4** By providing personal information to us, you consent to us collecting, holding, using and disclosing your personal information in accordance with our privacy policy.

12 General

- 12.1 Assignment:** You must not assign or deal with the whole or any part of your rights or obligations under these Terms without our prior written consent.
- 12.2 Disputes:** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief).
- 12.3 Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 12.4 Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control (including but not limited to epidemics, pandemics, and Government sanctioned restrictions and orders, whether known or unknown at the time of entering into these Terms) (Force Majeure Event).
- 12.5 Governing law:** These Terms governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 12.6 Notices:** Any notice given under these Terms must be in writing addressed to us at the address at the end of these Terms or to you at the address in your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of

transmission in the case of transmission by email (or, where the time of transmission is not on a business day, 9am on the next business day).

- 12.7 Online execution:** These Terms may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 12.8 Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship (except to the extent set out in the Payment clause as limited payment collection agent) between the Parties.
- 12.9 Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

13 Definitions

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and Systems.

Consequential Loss includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

Intellectual Property means any domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Intellectual Property Breach means any breach by you (or any of your personnel) of any of our Intellectual Property Rights (or any breaches of third party rights including any Intellectual Property Rights of third parties).

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

System means all hardware, software, networks and other IT systems used by you from time to time, including a network.

For any questions or notices, please contact us at:
Immutable Pty Ltd (ABN 89 626 193 351)
Contact: <https://support.immutable.com/hc/en-us>

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