

# Terms of Use

## 1. Acknowledgement and acceptance of general terms

Your access to and use of [www.smartshares.co.nz](http://www.smartshares.co.nz) (“**Site**”) or use of software or use of content on the Site is confirmation that you have understood these general terms and conditions of access and use (“**Terms**”) and the Privacy Policy, and constitutes your agreement to be bound by them. Please read these terms carefully.

Smartshares Limited (“**Smartshares**”) reserves the right to amend the Terms at any time and you are deemed to be aware of and bound by the amendments to the Terms upon publication on the Site. Accordingly, we recommend that you review the Terms periodically as by continuing to use the Site you are agreeing to be bound by the Terms as amended.

In these Terms and the Privacy Policy, references to “Smartshares” are to Smartshares Limited and its respective directors, officers, agents, employees or contractors.

In these Terms “we”, “us” and “our” are references to Smartshares.

## 2. Ownership of content on the Site

The material displayed on the Site, including without limitation, all real time or other information, text, materials, graphics, software, tools, results derived from the use of software and tools, advertisements, names, logos and trade marks on the Site (“**Content**”) are protected by intellectual property laws unless expressly indicated otherwise. All rights, title and interest in and to the Content and all software code underlying or forming part of the Site are owned, licensed or controlled by Smartshares or the party credited.

## 3. Access to and use of content on the Site

You agree to use the Site in a manner that complies with all applicable laws and regulations and that does not infringe our right or the right of anyone else, and that does not restrict or inhibit anyone else’s use of the Site.

In particular you agree not to:

- a. damage or harm the Site, or any underlying or connected network or system;
- b. use a harvesting bot, robot, spider, scraper, or other unauthorised automated means to access the Site or content featured on it for any purpose;
- c. introduce any viruses, content or code to the Site which are technologically harmful;
- d. use the Site to do anything unlawful, misleading, malicious, or discriminatory;
- e. do anything that could disable, overburden, or impair the proper working of the Site, such as a denial of service attack; or
- f. facilitate or encourage any violations of these Terms.

You may browse the Site for your own personal, internal business, information, research, study and educational purposes only. Smartshares grants to you a limited non-exclusive license to view, copy and print the Content for such purposes only. All copies that you make must retain all copyright and other notices that are on the version on the Site. Except as provided in the previous sentence or as otherwise permitted in writing by Smartshares,



you may not copy, store (either in hard copy or in an electronic retrieval system), use, modify, transmit, revise, reverse engineer, publish, perform, broadcast, reproduce, post, display, create a derivative work from, distribute, sell, license, rent, lease or otherwise transfer any of the Content to a third party including, without limitation, to others in your company or organisation for commercial use. All requests for such permission regarding the Content must be in writing and should be sent to: Smartshares Limited, at PO Box 106 555, Auckland, or by sending an email to [smartshares@smartshares.co.nz](mailto:smartshares@smartshares.co.nz).

You agree not to link directly to any individual page within the Site without our prior written consent. Framing of any Content available through the Site without Smartshare's prior written consent is also prohibited. "Framing" means encapsulating the content of any page within the Site within another website, giving the impression that the content is not from the Site.

Smartshares reserves the right to disable any unauthorised links or frames and disclaims any responsibility for the content available on any other website reached by links to or from the Site.

#### **4. Our rights and remedies**

Without limiting any other rights and remedies available to us, if we believe you have breached or are in breach of these Terms, we may:

- a. limit your activities on the Site;
- b. warn other users of your actions;
- c. issue a warning to you;
- d. suspend or cancel your access to the Site;
- e. co-operate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or locate anyone posting any content in breach of these Terms; and/or
- f. disclose your identity and any other information we hold about you to any law enforcement authority if we believe this would assist to prevent the commission of any crime against a person or persons.

#### **5. Access outside New Zealand**

The Site can be accessed from other countries and may contain references to Smartshares products, services or programs that are not promoted in those countries. These references do not imply that Smartshares intends to promote or offer such products, services or programs in those countries.

Smartshares does not represent that the Content on the Site is appropriate or available for use in other countries, and accessing the material from other countries or territories where such content is illegal is prohibited. Use of the Site is on the understanding and acceptance that you do so on your own initiative and you are solely responsible for compliance with local laws.

#### **6. Disclaimer**

The Site is provided on an "as is" and "as available" basis. Your use of the Site is at your sole risk.



The content on the Site is for information only and does not constitute a solicitation, or recommendation to engage in any transaction, or an opinion or recommendation in relation to acquiring or disposing of any financial product. The information is not provided in respect of a named or otherwise identifiable person, and does not take into account a person's particular financial situation or goals and should not be relied upon as a substitute for detailed advice from a financial advisor.

Smartshares does not promote, or make any representation to any person as to quality or suitability for any purpose of any financial product contained or referred to on the Site.

The Content on the Site is derived from sources believed to be accurate and current, subject to a delay of at least 20 minutes on some market data, and subject to data policies indicated on the Site. Smartshares disclaims and excludes all implied conditions or warranties, including but not limited to any warranties of merchantability, fitness for a particular purpose and non-infringement. In particular, Smartshares does not represent or warrant that:

- a. the Content is reliable, accurate or complete; or
- b. any of the functions contained in any Content or your access to the Site, will be uninterrupted or error-free;
- c. the Site, our server or the Content are free of computer viruses or other harmful components, defects or errors; or
- d. your use of the Site or any Content will not infringe the intellectual property rights of third parties.

To the extent permitted by law, Smartshares has no obligation or liability to you, whether a claim is made in contract, tort (including negligence), equity or otherwise, and whether under statute, warranty, indemnity or any other obligation, to pay any direct, indirect or consequential losses, costs, damages, expenses or liabilities which may be suffered or incurred which may directly or indirectly arise out of or in connection with these Terms, the Site or the Content made available on the Site from time to time.

Where liability for breach of any implied warranty or condition cannot be excluded, Smartshares liability is limited at the relevant party's option to either:

1. The supply of the goods (or equivalent goods) or services again; or
2. The payment of the cost of supplying the goods (or equivalent goods) or services again.

Any clause in these Terms, or part thereof, declared invalid shall be deemed severable and does not affect the validity or enforceability of the remainder.

## **7. Indemnity**

You must hold harmless and indemnify Smartshares from and against all loss, actions, proceedings, costs, expenses (including legal fees), claims and damages incurred or suffered by Smartshares arising from:

- a. Any breach by you of the Terms;
- b. Reliance by you on any information obtained through the Site;
- c. Your access and/or use of the Site; and

- d. Reliance upon, or use of, any Content by any person accessing any Content from your computer systems.

## **8. Advertising and links to other websites**

The Site may contain links to third party websites. Smartshares does not control these linked websites and is not responsible for their content or their hyperlinks. Smartshares has in no way been involved with developing or reviewing the content on linked websites. Hyperlinks are provided to you for convenience only, and their inclusion does not imply that Smartshares endorses the linked website or has any responsibility for the Content or uses of such linked website. Smartshares provides no guarantees, representations or warranties as to the nature, content and reliability and is not liable for any electronic content delivered by a third party, including and without limitation to, the accuracy or reliability of any information, data, opinions, advice or statements made on those linked websites or the timeliness of any electronic content. You visit any such linked website entirely at your own risk.

Advertisements, including banner advertising, logos and information, materials and documents relating to or provided by third parties on the Site ("Third Party Material") may contain embedded hyperlinks to websites operated by third parties or their licensees or contractors.

Smartshares does not recommend or endorse the products or services of those third parties. Third Party Material with representations or offers by the third party that are accepted by linking to the third party's website and executing a relevant transaction, are not made by Smartshares, and Smartshares has no responsibility or liability for such transactions. The third party is solely responsible to you for the delivery of any goods or services you purchase on the third party website.

## **9. Resolution of Disputes**

Except to the extent you need to contact us to inform us of any breach of these Terms, you agree not to involve, or attempt to involve us, in any dispute or in the resolution of disputes that arises between you and another user.

If you wish to notify us of any dispute you have with us, you should contact [smartshares@smartshares.co.nz](mailto:smartshares@smartshares.co.nz).

## **10. Privacy Statement**

Our treatment of personal information is set out in our Privacy Policy. By agreeing to these Terms or using the Site, you will be taken to have read and agreed to the terms of the Privacy Policy. You have the right under the Privacy Act 1993 to access and request to update and/or correct your personal information. If you want to check your personal information that we may have collected from you and hold (or to request the correction of any such information), please write to Smartshares Limited, at PO Box 106 555, Auckland, or send an email to [smartshares@smartshares.co.nz](mailto:smartshares@smartshares.co.nz).

## **11. Governing law and jurisdiction**

The use of the Site and these Terms shall be governed by the laws of New Zealand and you submit to the exclusive jurisdiction of the courts of New Zealand.

November 2016

