

# Terms of Service

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## Legal Notice

### **Publisher of the website : Profitate Pty Ltd**

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## Terms and Conditions

These Terms and Conditions (the "Terms and Conditions") govern the relationship between Profitate Pty Ltd, with an ABN of 15675424414 and having its registered address at GPO Box 777, Sydney, NSW Australia, 2001, represented by Lachlan McBride White duly authorized for the purposed hereof ("Profitate Pty Ltd") and any person registered in its own name or in the name and on behalf of a legal entity (the "User") wishing to use the services offered on the Profitate Pty Ltd platform accessible at the address [www.profitate.com.au](http://www.profitate.com.au) (the "Platform").

Profitate Pty Ltd and the User are hereinafter referred to individually as a "Party" and collectively as the "Parties".

If the User is a legal entity allowing its employees, delegates, directors and/or subcontractors to access the Platform (these persons are hereinafter indistinctly referred as a "User"). In such a case, the legal entity undertakes to bring these Terms and Conditions to their attention. It guarantees that these persons will comply with these Terms and Conditions and, in any case,

further warranties Profitate Pty Ltd for any breach by these Users of these Terms and Conditions.

These Terms and Conditions define the conditions under which the User can use the Platform.

Any registration on the Platform implies unreserved acceptance of the Terms and Conditions, which the User acknowledges having read and understood.

## **1. Definitions**

Terms and expressions whose first letter of each word is in capital letters have, within the Terms and Conditions, the meaning assigned to them below, whether they are used in the singular or plural.

1.1 « API » shall mean any of the Application Programming Interface made available by Profitate Pty Ltd on the Platform. The APIs may be developed by Profitate Pty Ltd or by Developers.

1.2 « API Store » shall mean the online API platform hosted by Profitate Pty Ltd.

1.3 « Developer » shall mean the User who has developed her/his own API to make it available to Users via the API Store.

1.4 « Force Majeure » shall mean the events external to the Parties, unpredictable and unstoppable, as defined by French case law, the following events shall be deemed to constitute a case of Force Majeure (without purporting to be an exhaustive list): war (declared or not); terrorist act; invasion; rebellion; blockade; sabotage or act of vandalism; strike or social dispute, total or partial, external to both Parties; bad weather (in particular flooding, storms, and hurricanes); events declared as "natural disasters"; fire; epidemic; transport or supply blockades (particularly energy); failure of electrical energy, heating, air conditioning supplies, of the telecommunication or data transport network; satellite failure.

1.5 « Intrusion Test » shall mean any software tool (including in particular but not limited to Loadrunner, Winrunner, Silk performer, Rational Automation, QALoad, and WebLOAD) designed to automatically emulate the actions of a human and used for data entry, data migration, load tests, performance tests, performance control, performance measuring and/or « stress tests ».

1.6 « User » shall mean the User who wishes to use Profitate's services.

1.7 « Automations » shall mean the automatic or semi-automatic software agents that are part of the APIs that will interact with third-party computer servers.

1.8 « Services » shall mean (i) the automatic hosting and operation services of the API offered to Users.

## **2. Privacy Policy**

We respect your privacy and are committed to protect the information you share with us. We believe that you have a right to know our practices regarding the information we collect when you connect to, access or use the Site. Our policy and practices and the type of information collected via the Site are described in detail in our Privacy Policy available at [www.profitate.com.au/privacy](http://www.profitate.com.au/privacy), which is incorporated herein by reference. You agree that Profitate may use personal information that you provide or make available to Profitate in accordance with the Privacy Policy. If you intend to access or use the Site you must first read and agree to the Privacy Policy.

## **3. Subscription and Access to the Platform**

### **2.1 Subscription**

The User represents and warrants that s/he will be using the Platform only in the course of her/his professional activity and, as a consequence, s/he shall not be considered as a consumer under applicable law.

In case of an incomplete or erroneous declaration during registration, the User's account may be deactivated, ipso jure, without notice and without further formality. The User acknowledges that Profitate Pty Ltd shall not be held liable for any consequences that may arise from such an erroneous or incomplete declaration.

The User declares that s/he is able to enter into contractual relationships.

The registration and the creation of a User account is done using the email address that the User communicated to Profitate Pty Ltd and the password s/he chose (for security and confidentiality reasons, it is recommended to the User to select a password composed of several types of characters and modify it on a regular basis) or through a third-party connection module.

The personal account of each User allows her/him to update her/his personal details.

The login name and password are personal and should not be disclosed to third parties. All uses of the Platform done using the login name and password of the User shall be deemed to have been performed by said User.

In case of disclosure of the User's login name and password, the User must connect to the Platform in order to regenerate a new password.

### **2.2 Access to the Platform**

Users are personally responsible for setting up the IT and telecommunications resources required to access the Platform. Profitate Pty Ltd is exercising its reasonable endeavors to ensure that the Platform is accessible twenty-four (24) hours a day, seven (7) days a week.

Profitate Pty Ltd reserves the right, without notice or compensation, to temporarily or permanently close the Platform in order to perform maintenance operations.

Profitate Pty Ltd may make any changes and improvements to the Platform that it deems relevant.

## **Article 3 – Description of Services**

### **3.1 Services offered to Users**

The Services allow the User to (i) execute and operate the APIs via Profitate Pty Ltd's servers, (ii) host the collected data and (iii) use the data collected.

#### **3.1.1 Operation of APIs**

The Platform allows the User to execute and operate an API on the website s/he has selected in order to perform certain specific actions on such websites.

#### **3.1.2 Data hosting**

According to the choices made by the User, some data may be collected while executing the APIs. In this case, the collected data may be hosted on the Platform or on a third-party server designated by the User. If the collected data is hosted on the Platform, the User can export all or part of her/his collected Data, at any time, on condition that all invoices that have been sent by Profitate Pty Ltd up to that date have been paid in full.

The Platform and, as applicable, the collected data, are hosted on the infrastructure defined and made available to the User by Profitate Pty Ltd, designed and sized at the discretion of Profitate Pty Ltd. This technical infrastructure may be shared by several of Profitate Pty Ltd's Users.

#### **3.1.3 Data usage**

The User will be able to extract the collected data for subsequent use.

## **4. Pricing**

Access to and use of the Platform are offered by Profitate Pty Ltd at the prices quoted.

Some subscriptions are subject to certain usage restrictions (e.g., the volume of collected data, the export of collected data).

The User takes out a subscription for the period that is defined at the time said subscription is taken out (the "Initial Period"). At the end of the Initial Period, and of each successive subscription period, the subscription will be automatically renewed for the same period of time, except in case of cancellation or downgrade of the subscription before the end of the current subscription period.

The User may cancel the renewal of their subscription by providing at least 7 days notice prior to the next Term. Refunds may be granted on a case by case basis.

The User warrants to Profitate Pty Ltd that s/he has the necessary authorization to use the payment method that s/he selected when validating the order. The purchase will be debited from the User's account at the time the order is processed. Profitate Pty Ltd will take all necessary steps to ensure the security and confidentiality of data provided online. The transaction will be processed through Process Out and the Payment Services Provider, which alone will have access to the credit card details provided on the Platform at the time of payment. Profitate Pty Ltd reserves the right to suspend the processing of any order and any delivery if credit card payment authorization is refused by an officially accredited organization or in case of non-payment. When the payment method has been selected, the User must pay for the order using the secure Payment Services Provider interface, which will legally finalize the purchase agreement that s/he has made with Profitate Pty Ltd. Online provision of credit card details and the final validation of the order by the User constitute proof of order and all sums due for the products selected in the order will become payable.

In case of failure to pay a subscription installment, the User's will not be able to access to the resources of the subscription ordered.

## **Article 5 – User Obligations**

### **5.1 Users undertakings**

The Users undertake to:

- (i) have the necessary authorizations to access websites via APIs;
- (ii) comply with the terms and conditions of use of the websites they visit through the APIs;
- (iii) not to extract a substantial (in terms of quality and/or quantity) part of a database;
- (iv) not to access confidential information without permission;
- (v) not to infringe on any third party's rights, including in particular copyright, patent, trademark, trade secret or any other intellectual property or proprietary rights;
- (vi) not to violate any law, statute, ordinance or regulation, including, without limitation, the laws and regulations governing the protection of personal data.

In any case, Profitate Pty Ltd has, a priori, no control over the Automations, the Collected Data, the operations carried out and/or other content of Users on the Platform because the Users decide on their use.

The Users acknowledge that Profitate Pty Ltd shall in no event be held liable in the event that the Users fail to comply with the provisions of this Article 5.1.

## **5.2 Users undertakings**

In the absence of the prior written authorisation of Profitate Pty Ltd, it is prohibited to:

- (i)publish or to transmit, on or using the Platform, content of an illegal, threatening, humiliating, defamatory, obscene, hateful, child pornographic or blasphemous nature, or any other message that could constitute a crime or an offense, that could incur civil liability, breach legislation or incite others to do so, or content that could be used for any purposes that are contrary to law or to these Terms and Conditions;
- (ii)use the Platform in such a way as to, from our point of view, either negatively impact the performance or the functionalities of the Platform, or of any other computer system or network used by Profitate Pty Ltd or by any other third party, or negatively affect Platform Users;
- (iii)download or transmit into the Platform or use any hardware, software or routines containing viruses, Trojan horses, worms, time bombs or other programs and processes designed to damage, interfere with or attempt to interfere with the normal operation of the Platform, or to appropriate the Platform, or to resort to any means whatsoever to saturate our systems or breach third party rights;

Profitate Pty Ltd undertakes to respond promptly to any request related to use of the Platform that is obviously illegal and that would breach the rights of a third party. To this end the User (i) acknowledges and accepts that its use of the Platform may be immediately suspended, temporarily or definitively; and (ii) warrants Profitate Pty Ltd for any harm, expense or damage that such a use of the Platform could create for it.

Intervention by Profitate Pty Ltd on the Platform is strictly limited to: (i) those operations necessary for the provision of developments ordered from Profitate Pty Ltd by a User; (ii) maintenance and/or support required to keep the Platform operational; (iii) deleting obviously illegal content hosted on the Platform of which Profitate Pty Ltd has been made aware.

# **Article 6 – Licence to use the Platform**

## **6.1 Right to use the Platform**

Profitate Pty Ltd grants to the User a personal, non-exclusive, non-transferable, without the right to sub-license, right to use the Platform in the entire world, as long as the User's account is active on the Platform.

## 6.2 Limitations

The User shall refrain itself, directly or indirectly, and shall refrain any person that is to use the Platform on its behalf (including its employees, agents, business partners and sub-contractors), unless with Profitate Pty Ltd's prior express written consent, from:

- (i)decompiling, disassembling the Platform, carrying out reverse engineering to create products derived from the Platform or attempt to discover or re-create the source code, the ideas on which it is based, the algorithms, file formats or programming or inter-operational interfaces of the Platform. If the User should wish to obtain information to allow the Platform to interact with another software, the User undertakes to request such information from Profitate Pty Ltd, which may provide the User with the required information, subject to payment by this latter of the associated costs;
- (ii)suppressing or deleting any reference or label related to the intellectual property rights of Profitate Pty Ltd and/or of any third party;
- (iii)transferring, using or exporting the Platform in violation of applicable legislation;
- (iv)integrate or associate the Platform with other software or documents or create, compose or derivate works relying on all or part of the Platform;
- (vi)performing any use of the Platform other than those allowed under these Terms and Conditions.

## Article 7 – Personal data protection

### 7.1 Processing of personal data by Profitate Pty Ltd

Profitate Pty Ltd respects the privacy rights of the User and recognizes the importance of protecting the information collected about him/her. This Article 7 is about how Profitate Pty Ltd collects, stores, and uses the personal information that the User provides it withto it.

Profitate Pty Ltd will, for its own use, process personal data related to the User, those data being (i) communicated by the User at the time of her/hisits registration or (ii) later on through her/his personal account on the Platform.

The information for which communication to Profitate Pty Ltd is mandatory are identified as such upon registration and/or the purchase of a service.

Unless upon request or with the express consent of the User and in strict compliance with his/her directives, Profitate Pty Ltd will not proceed with any other personal data processing other than those describeddescribes in this Article 7.

#### 7.1.1 Legal basis for processing

By registering, subscribing or using the Services, the User consents to the use of his/her personal data in line with these Terms and Conditions.

Furthermore, in order to use the Platform and benefit from Services, the User accepted the terms and conditions.

This document formalizes a contractual relationship between the User and Profitate Pty Ltd, which serves in particular as the legal basis for the collection and processing of the User's personal data by Profitate Pty Ltd.

### **7.1.2 Purposes of the processing**

Personal data gathered by Profitate Pty Ltd are processed for the following purposes:

- (i) Access and use of the Platform, understood as the consultation of the accessible information of the Platform;
- (ii) Sale of services;
- (iii) Order management (e.g., payment, billing);
- (iv) Statistical and market analysis, and marketing information;
- (v) Where required by law or in connection with legal proceeding or disputes;
- (vi) Manage requests for the exercise of the rights listed in Article 7.4 below;
- (vii) Any other use allowing the improvement of the Website and/or any other services provided by Profitate Pty Ltd.

### **7.1.3 Your rights**

The User has the right to access, rectify, delete, object and portability of their personal data. He/she also has the right to define guidelines on the fate of personal data after his/her death.

In addition, the User may oppose, limit or withdraw her/his consent.

To exercise any of those rights, the User shall use the account management access provided to him/her or contact Profitate Pty Ltd on [dev@profitate.com.au](mailto:dev@profitate.com.au), mentioning her/his name, surname and e-mail address.

### **7.1.4 Conservation of data**

The personal data of the User are kept for a period of three (3) years from their collection.

Audience measurement statistics shall not be kept for more than thirteen (13) months.

At the end of this period, the closure of a User's personal account triggers the deletion of all personal data allowing identification of the relevant User, with the exception of the data needed to be able for Profitate Pty Ltd to fulfill its legal obligations (e.g., billing data).

Certain data may be archived beyond the time limits provided for (i) in the event of contentious proceedings in order to establish the reality of the facts in dispute; and/or (ii) for the purposes of investigating, establishing and prosecuting criminal offenses for the sole purpose of making such data available to the judicial authority as necessary.



### **7.1.5 Recipients of personal data**

Profitate Pty Ltd may temporarily and securely transfer certain personal data of the User to third parties when necessary:

- (i) the execution of the order placed by the User via the Platform (e.g. payment service provider);
- (ii) in response to an injunction from the legal authorities.

The User's personal information, and in particular email address, is not rented, sold, exchanged or shared with any other service providers if the User has not expressly accepted to receive promotional offers from other companies likely to be of interest to the User.

When Profitate Pty Ltd uses the User information as described in this policy, this may involve sending your information outside the European Economic Area (EEA). When Profitate Pty Ltd does this, Profitate Pty Ltd makes sure that appropriate steps are taken to protect the User's personal information and your rights.

All personal information that the User provides to Profitate Pty Ltd is strictly confidential.

### **7.1.6 Cookies**

This Platform uses cookies so that Users do not need to enter their usernames and passwords at each visit and in order to facilitate exchanges.

Profitate Pty Ltd also uses cookies to analyze Internet traffic, giving it a better understanding of the behavior of its users. These tools collect information and generate statistics on Platform use without the third party that provides said cookie (e.g., Google) necessarily identifying individual users personally.

### **7.1.7 Statistical use of anonymous data**

For business purposes Profitate Pty Ltd collects, handles and stocks statistical data on Platform use and on Developers' activities.

This information may be transmitted to third parties, is anonymous and does not reveal in any way whatsoever your identity, even indirectly.

## **7.2 Collection of personal data by Profitate Pty Ltd as a Data Processor**

Profitate Pty Ltd processes personal data of the User's customers ("Customer Data") on behalf of the User to provide its services.

### **7.2.1 User's Undertakings**

The User undertakes, for the performance of these Terms and Conditions, to:

- (i) Integrate into the Customer Data only the information that is strictly necessary for the proper performance of its services by Profitate Pty Ltd;

- (ii) Document in writing any instructions concerning the processing of Customer Data by Profitate Pty Ltd;
- (iii) Supervise Customer Data processing.

Profitate Pty Ltd cannot be held liable for a User's breach of applicable law, unless the law expressly provides otherwise.

It is up to the User to obtain the consent of the data subjects and to supply all relevant information to the individuals affected by the processing operation at the time the Customer Data is collected.

### **7.2.2 Profitate Pty Ltd's Undertakings**

Profitate Pty Ltd undertakes to ensure that those persons authorized to process the personal data on its behalf:

- (i) Undertake to respect the confidentiality or are subject to an appropriate legal duty of non-disclosure;
- (ii) Receive the necessary training in terms of personal data protection.

## **Article 8 – Intellectual property**

### **8.1 Intellectual property rights related to the Platform**

The Platform is the exclusive property of Profitate Pty Ltd, in particular as regards the APIs developed by Profitate Pty Ltd.

All content that has not been put online by the User, and in particular, all data, functionality, text, names, designations, images, photographs, graphics, trademarks, sounds, is the exclusive property of Profitate Pty Ltd or its licensees. These Terms and Conditions shall not be construed as transferring any one of Profitate Pty Ltd's rights. Not one of these elements may be downloaded, copied, modified, deleted, distributed, transmitted, broadcast, sold, hired, granted or used in any way whatsoever, without the prior written express agreement of Profitate Pty Ltd or its licensees.

### **3. Linked Websites and Services**

The Site may contain links to and integrations with third party websites and services, and you agree that Profitate Pty Ltd provides links to and integrations with such websites and services solely as a convenience and has no responsibility for the content or availability of such websites or services, and that Profitate Pty Ltd does not endorse such websites or services (or any products or other services associated therewith). Access to any other internet site linked to the

Site is at your own risk, and Profitate Pty Ltd is not responsible for the accuracy or reliability of any information, data, opinions, advice or statements made on these sites. Your use of such websites and services will be subject to the terms applicable to each such website and service. You may not post a link that directs users to any content or information that would constitute a violation of these Terms of Use or the Acceptable Use Policy.

## **Article 9 – Limitation of Liability and Warranty**

### **LIMITATION OF LIABILITY**

(a) Warranty Disclaimer: THE SITE AND SITE CONTENT ARE PROVIDED STRICTLY ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND Profitate Pty Ltd MAKES NO WARRANTY THAT THE SITE OR SITE CONTENT ARE COMPLETE, SUITABLE FOR YOUR PURPOSE, RELIABLE, USEFUL OR ACCURATE, AND ON BEHALF OF ITSELF AND ITS LICENSORS, Profitate Pty Ltd HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED, STATUTORY OR OTHER WARRANTIES WITH RESPECT TO THE SITE, SITE CONTENT AND SERVICE, OR THE AVAILABILITY OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. THE ENTIRE RISK AS TO RESULTS OBTAINED THROUGH USE OF THE SITE AND/OR THE SITE CONTENT RESTS WITH YOU. Profitate Pty Ltd AND ITS SUPPLIERS OR LICENSORS WILL NOT BE LIABLE OR RESPONSIBLE IN ANY WAY FOR ANY LOSSES OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF OR RELIANCE ON ANY CONTENT CONTAINED ON THE SITE. Profitate Pty Ltd MAKES NO REPRESENTATION OR WARRANTY THAT THE SITE WILL BE UNINTERRUPTED, OR THAT THE SITE AND/OR THE SITE CONTENT WILL BE ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.

(b) Limitation of Liability: TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT Profitate Pty Ltd SHALL NOT BE LIABLE TO YOU FOR ANY (A) INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR STATUTORY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OR PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF GOODWILL OR FOR ANY COST OF COVER OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), EVEN IF Profitate Pty Ltd HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL THEORY UNDER WHICH DAMAGES ARE SOUGHT, WHETHER IN BREACH OF CONTRACT OR IN TORT, INCLUDING NEGLIGENCE.

## **Article 10 – Termination**

The User may terminate his/her subscription by sending an e-mail to dev@profitate.com.au. The termination of the subscription shall be effective upon the expiry of the ongoing subscription period.

Would s/he wish so, the User may request that Profitate Pty Ltd deletes its account.

Profitate Pty Ltd reserves the right to (i) suspend access to the Platform or to certain functionalities of the Platform, or to (ii) terminate the account of the User by right, without notice, with no further formalities and no indemnity being due, by electronic mail or by regular mail, in the following cases:

- (i)The User has been using the Platform in a way that is contrary to public order and decency;
- (ii)The User has breached the intellectual property rights of Profitate Pty Ltd and/or a third party;
- (iii)Loss, misappropriation, unauthorized or fraudulent use of a username and password or use of highly suspected fraudulent payment(s) by the User;
- (iv)Conception, use or provision via the Platform of any content that is unlawful or in breach of these Terms and Conditions;
- (v)If an account is terminated the User may no longer use the Platform from his/her account, which will be closed.

Profitate Pty Ltd reserves the possibility to interrupt, at any time, temporarily or permanently, access to the Platform. In case of a definitive interruption, the User will be informed by any means that should be deemed appropriate by Profitate Pty Ltd.

Profitate Pty Ltd shall under no circumstances be held liable to the User, a Developer or to any third party for the termination and/or suspension of the User's account under the conditions set out in this article.

### **11.3 Modification of these Terms and Conditions**

Profitate Pty Ltd reserves the right, at our sole discretion, to make changes or modifications to these Terms and Conditions at any time and for any reason.

Profitate Pty Ltd will notify you of any changes by updating the last updated date on these Terms of Conditions.

The User will be able to access them through her/his personal account and on the Platform.

Any User who does not specifically accept the new Terms and Conditions may terminate his/her account in application of these Terms and Conditions Article 11.3 stipulations.

### **11.4 Force Majeure**

Neither Party shall be held liable if the performance of its obligations should be delayed, restricted or made impossible by virtue of a case of force majeure

If a case of Force Majeure should occur, the performance of the obligations of each Party shall be suspended. If the Force Majeure should last for more than one (1) month this Agreement may be terminated at the request of the most diligent of the Parties, with neither Party being held liable. Each of the Parties shall bear their own costs that may be incurred as a result of the Force Majeure.

### **11.5 Waiver**

If one or other Party fails to exercise any one of its rights under the terms of this Agreement whatsoever, this shall not be deemed to be a waiver of that right, such waiver only to be deemed to have been given when expressly declared by the Party in question.

### **11.6 Convention of Proof**

Computerized records shall be kept in the systems of Profitate Pty Ltd under reasonable security conditions and shall be deemed to be proof of exchanges, actions, orders and payments that have arisen on the Platform or via email.

### **11.7 Relationship between the Parties**

Unless expressly stated otherwise, the Parties shall remain independent contractors and no provision of these Terms and Conditions shall be construed as creating between the Parties any partnership, company, nor any relationship of agent or commercial agent.

### **11.8 Partial Invalidity**

If one or more of the provisions of these Terms and Conditions should be held to be invalid by a competent court, the remaining provisions shall retain their scope and effect.

The provision that has been held to be invalid shall be replaced by another provision, the scope and meaning of which shall be as close as possible to the scope and meaning of the invalidated provision, in compliance with the applicable legislation and the mutual intent of the Parties.

## **Article 12 – Applicable law – Competent jurisdiction**

These Terms and Conditions are governed by Australian law.

Any dispute related to the conclusion, the interpretation, the enforcement and/or the termination of these Terms and Conditions is submitted to the exclusive competence of the Australian courts, notwithstanding plurality of defendants.