

TERMS OF USE

DEPARTMENT OF HOME AFFAIRS – TRADE DATA API SERVICES TERMS OF USE

Date

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1. Introduction

Acceptance of API Services Terms of Use

1.1. By accessing, using and communicating information through the API Services:

- a. you; and
- b. any legal entity that:
 - i. employs or otherwise engages you (including, without limitation as an agent, customs broker, director or officer, partner, contractor, subcontractor, consultant, or employee, nominee, contractor or subcontractor of the above); or
 - ii. otherwise authorises you to use the Services on its behalf,

(collectively, **You** and **Your**) agree to these Terms of Use.

Home Affairs Access Manager Terms of Use

1.2. You are required to use the Home Affairs Access Manager to access the API Services and You agree to comply with the Home Affairs Access Manager Terms of Use at all times in connection with your use of the API Services.

1.3. Where there are any inconsistencies between these Terms of Use and the Home Affairs Access Manager Terms of Use, these Terms of Use prevail to the extent of the inconsistency.

Definitions

1.4. In these Terms of Use:

- a. the terms **You** and **Your** have the meaning given in clause 1.1.
- b. **API Services** means all trade data application programming interfaces that the Commonwealth makes available to you via the Domain Resources Map (as updated from time to time), and includes any associated technical resources or tools (including, without limitation, dashboards, test environments or documentation) provided to assist You in accessing or using the API Services.
- c. **Commonwealth** means the Commonwealth of Australia as represented by the Department of Home Affairs, and such other Commonwealth entities that have care and responsibility for administering, or assisting with administering, the API Services from time to time.

- d. **Commonwealth Material** means anything communicated by the Commonwealth via the API Services, and includes any such thing in which Intellectual Property Rights arise and any communications to You.
- e. **Comptroller-General of Customs** has the same meaning as in the Customs Act and includes their delegate under the Act or under the *Public Governance, Performance and Accountability Act 2013* (Cth);
- f. **Domain Resources Map** means the online resource made available by the Department of Home Affairs that lists and provides access to the Commonwealth's trade-related API services at <https://developer.homeaffairs.gov.au/public/>.
- g. **Home Affairs Access Manager** means the electronic platform administered by the Commonwealth at <https://am.homeaffairs.gov.au> which provides access to the API Services made available by the Commonwealth.
- h. **Home Affairs Access Manager Terms of Use** means the Home Affairs Access Manager terms of use available at <https://am.homeaffairs.gov.au/>, and as updated from time to time.
- i. **Intellectual Property Rights** include:
 - i. all copyright (including rights in relation to phonograms and broadcasts);
 - ii. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and
 - iii. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,but does not include:
 - iv. moral rights under Part IX of the *Copyrights Act 1968* (Cth); or
 - v. rights in relation to confidential information.
- j. **Personal Information** has the same meaning given in any applicable Privacy Laws.
- k. **Privacy Laws** means the *Privacy Act 1988* (Cth) and any other applicable legislation imposing an obligation in relation to the collection, use, disclosure, storage or transmission of personal information (including without limitation health information), including any regulations, rules, codes, principles or guidelines contained in or arising out of such legislation.
- l. **Secure Connection Standards** means digital information encryption standards such as TLS, SSL and HTTPS.
- m. **Terms of Use** mean these terms of use.
- n. **Third Party Software** means any software code or product:

- i. which utilises or contains; or
 - ii. which is used to access,
Commonwealth Material or the API Services.
- o. **User Material** means anything communicated by You to the Commonwealth through the API Services.

References to legislation

- 1.5. A reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision.

2. Scope of Terms of Use

Application of Terms of Use

- 2.1. These Terms of Use govern the relationship between You and the Commonwealth in relation to Your use of the API Services. By continuing to access the API Services, You accept the Terms of Use as they apply from time to time (including any updates).
- 2.2. If You do not agree to these Terms of Use, You must not access the API Services and must immediately cease using the API Services.

Changes to Terms of Use

- 2.3. The Commonwealth may, at its discretion and at any time, update these Terms of Use.

Consequences of breach of Terms of Use

- 2.4. Failure to comply with these Terms of Use during Your use of the API Services, at any time, may result in Your access to the API Services being suspended or terminated in accordance with clause 9 of these Terms of Use.

Communications standards

- 2.5. Under Section 126DA of the Customs Act, the Comptroller-General of Customs must determine and publish information technology requirements which have to be complied with by persons wishing to communicate with the Commonwealth electronically. These Terms of Use are in addition to these requirements and do not override or alter any requirements for communications under legislation, such as deadlines, form and content requirements, and the like.
- 2.6. The requirements published by the Comptroller-General of Customs can be found on the Commonwealth's website as available here [[Communicating electronically with Customs](#)].

3. API Services

General warranties

- 3.1. You represent and warrant that:
- a. all information You communicate to the Commonwealth in respect of the API Services is at all times true, accurate, current and correct to the best of Your knowledge;
 - b. where You are accessing the API Services on behalf of a legal entity described in clause 1.1.b, You:
 - i. only use the API Services within the scope of Your authority to represent the legal entity (**Relevant Authority**); and
 - ii. cease using the API Services where Your Relevant Authority is revoked.

- 3.2. On request from the Commonwealth, You must submit to the Commonwealth additional evidence of Your Relevant Authority.

API Service monitoring

- 3.3. You acknowledge and agree that the Commonwealth may monitor and collect information regarding Your use of the API Service, and, without limiting clause 10.5, impose restrictions on Your use of an API Service. This may include:
- a. collecting log information;
 - b. real-time monitoring actions;
 - c. imposing rate and time limits on Your ability to use the API Service; and
 - d. any other actions which the Commonwealth considers in its absolute discretion.

Security

- 3.4. You must ensure that the ICT systems that You use to access the API Services are of an appropriate standard to prevent cyber and security risk to the Commonwealth, including (but not limited to):
- a. securing Your account information and applying appropriate security protections to Your devices and associated systems which You use to access the API Services (including using security software, updating software and physically securing your devices when not in use); and
 - b. maintaining good cyber security practices including by educating individuals with access to your systems regarding cyber security and these Terms of Use.
- 3.5. You must:
- a. comply with any Secure Connection Standards as informed by the Commonwealth from time to time;

- b. not share Your ability to access the API Services with any other person, other than a person that is authorised to use the API Services on Your behalf;
- c. ensure that Your access to the API Services are secured from unauthorised access; and
- d. immediately notify the Commonwealth of:
 - i. any unauthorised use of Your ability to access the API Services or any other breach of security that You become aware of; and
 - ii. any unauthorised access to information that is provided by an API Service; and
- e. take all other actions that the Commonwealth reasonably deems necessary to maintain or enhance the security of the API Services.

Costs of using API Service to be borne by You

- 3.6. You will be responsible for all costs associated with Your use of the API Services.

Confidential Information

- 3.7. You acknowledge and agree that information which is provided by an API Service may be subject to confidentiality obligations under relevant laws (including criminal provisions) and Commonwealth policies.
- 3.8. You must only use or disclose information which is provided by an API Service:
 - a. for the purpose of fulfilling a legitimate business or operational function;
 - b. in accordance with any applicable laws, including but without limitation, section 233BABA(3) of the *Customs Act 1901*, the *Biosecurity Act 2015*, and associated delegated legislation; and
 - c. in accordance with any other specific conditions or access controls notified by the Commonwealth in connection with the API Service.
- 3.9. You must ensure any individual that has access to information which is provided by an API Service is:
 - a. authorised to receive the information for the purpose of fulfilling a legitimate business or operational function; and
 - b. made aware of, and agrees to comply with, these Terms of Use and the Home Affairs Access Manager Terms of Use as updated from time to time.

4. API Services record-keeping

Collection and use of records

- 4.1. Subject to clause 6, You acknowledge and agree:
 - a. that Your use of the API Services will be logged;

- b. that the Commonwealth may use and disclose information collected from the API Services or otherwise submitted in accordance with these Terms of Use (including, without limitation, information collected in accordance with clause 3.3):
 - i. for the Commonwealth's legitimate purposes;
 - ii. in response to a request from a Commonwealth Minister or by House or Committee of the Parliament of the Commonwealth of Australia; and
 - iii. where required by law.
- 4.2. Unless otherwise required by law or directed by the Commonwealth, You agree to:
- a. keep a record of all the information communicated between You and the Commonwealth regarding the API Services (including IP addresses and other end user identifying data) (**API Services Portal Communications**) for a period of one year;
 - b. make such API Services Portal Communications available to the Commonwealth upon request; and
 - c. keep the API Services Portal Communications confidential.

5. Lawful and appropriate use of the API Services

General use obligations

- 5.1. You agree that You must:
- a. only use the API Services:
 - i. for Your own lawful purposes, including for:
 - A. internal business operations;
 - B. integration of data and information into Your supply chain or border managements systems; and
 - C. development and testing of system connections with Commonwealth services;
 - ii. in accordance with these Terms of Use as amended from time to time, the Home Affairs Access Manager Terms of Use and any other conditions notified by the Commonwealth; and
 - iii. in a manner that does not infringe the Intellectual Property Rights of, or restrict or inhibit the use of the API Services by, any person;
 - b. ensure that any data, including trade or cargo information, provided to the Department via the API Services is accurate, complete and current;
 - c. not attempt to circumvent access restrictions or rate limits on the API Services;

- d. not access, or attempt to gain access to, any Commonwealth Material not intended to be supplied by or through the API Services;
- e. not use or misuse the API Services in any way which may disrupt or impair the functionality, security or integrity of the API Services, Home Affairs Access Manager or other systems used for the Home Affairs Access Manager;
- f. not allow the transmission of, or input via any part of the API Services of, any:
 - i. harmful code or malware;
 - ii. unlawful, defamatory, obscene, offensive or scandalous, false, misleading or deceptive, User Material, or any User Material that constitutes or encourages conduct that would contravene any law or which may harass or cause distress or inconvenience to any person; or
 - iii. User Material in violation of any Intellectual Property Rights or any other applicable law, or User Material that You do not have the right to use or transmit or input into any part of the API Services; and
- g. confirm acceptance of any pop-up or click-wrap presented to You in the API Services;
- h. only use API integration support tools and associated source code for the purpose of developing and testing integrations with identity, authorisation and API Services.

Compliance with law

- 5.2. You remain solely responsible and liable for complying with all applicable laws in connection with Your use of the API Services.
- 5.3. You acknowledge that:
 - a. Your access to, and use of the API Services is subject to applicable Commonwealth legislation, including the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) and Privacy Laws;
 - b. provision of false or misleading information to the Commonwealth is a serious offence under Division 137 of the *Criminal Code Act 1995* (Cth); and
 - c. penalties may apply for misuse of information obtained from the API Services or disclosure of information contrary to law.

6. Collection and disclosure of Personal Information

Privacy Act and Australian Privacy Principles

- 6.1. The Commonwealth is bound by the *Privacy Act 1988* (Cth) and the Australian Privacy Principles.

- 6.2. The Commonwealth collects, uses and discloses Personal Information in administering the API Services as part of its operation of the system. We refer You to:
- a. the privacy notice for the Services at <https://immi.homeaffairs.gov.au/form-listing/forms/1442i.pdf>;
 - b. the privacy notice for the Home Affairs Access Manager at <https://www.abf.gov.au/help-and-support-subsite/files/home-affairs-access-manager-privacy-notice.pdf>; and
 - c. our website privacy policy at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>.

Consent to collection of personal information

- 6.3. By using the API Services:
- a. You agree and consent to the Commonwealth collecting, using and disclosing your Personal Information in accordance with the privacy notices and privacy policy described in clause 6.2 and these Terms of Use; and
 - b. if You use the API Services to communicate Personal Information belonging to another individual to the Commonwealth, You agree to notify that individual and obtain consent for the Commonwealth to collect, use and disclose that Personal Information as described above.

7. Intellectual Property Rights

User licence to Commonwealth Material

- 7.1. All Intellectual Property Rights in the API Services, and any associated materials made available by the Commonwealth (including technical documentation, integration support tools, and source code), are owned by the Commonwealth or its licensors, unless otherwise stated.
- 7.2. Except as expressly provided in these Terms of Use, nothing in these Terms grants You any right, title, or interest in or to any Intellectual Property Rights in the API Services or related Commonwealth Material.
- 7.3. Subject to clause 7.4, the Commonwealth grants to You a worldwide, revocable, royalty free, non-exclusive licence (not including the right of sub-licence) to use, reproduce, adapt, distribute, communicate and exploit the Commonwealth Material made available via the API Services for the purposes outlined in clauses 5.1a, or as otherwise permitted under these Terms of Use.
- 7.4. You must not:
- a. reverse engineer, decompile, or disassemble any part of the API Services or related software, except where permitted by law;
 - b. remove or alter any copyright, trademark, or other proprietary notices from any Commonwealth Material; or

- c. use any Commonwealth trademarks without express written permission from the Commonwealth.
- 7.5. If the Commonwealth makes any software available to You (such as tools to help with integration):
- a. the Commonwealth or its licensors will retain ownership of all Intellectual Property Rights in that software and
 - b. You must use the software, and ensure that anyone acting on Your behalf uses the software, in compliance with any licence terms, instructions or restrictions provided with the software or published or notified by the Department from time to time.

Commonwealth Licence to User Material

- 7.6. You grant the Commonwealth a worldwide, irrevocable, royalty-free, non-exclusive licence (including the right to sub-licence to its service providers or partners) to use, copy, adapt, distribute, and share any User Material for Commonwealth purposes. You warrant that You have the necessary rights to grant this licence.

8. Indemnification and liability

Indemnity to the Commonwealth

- 8.1. You indemnify the Commonwealth for any loss or damage incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth, arising in connection with:
- a. your use of the API Services;
 - b. if you develop Third Party Software, any other party's use of that Third Party Software;
 - c. a breach by You of these Terms of Use; or
 - d. an act or omission involving fault on Your part in connection with these Terms of Use.

Liability to be reduced if Commonwealth contributes to loss or damage

- 8.2. Your liability to indemnify the Commonwealth under these Terms of Use will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant loss or damage.

9. Termination of access

Commonwealth's right to terminate access

- 9.1. Without limiting clause 10.4, if You:

- a. breach any of these Terms of Use or other conditions imposed by the Commonwealth regarding Your use of the API Services;
- b. engage in misleading, deceptive, fraudulent, immoral or illegal conduct; or
- c. engage in excessive or otherwise suspicious use of the API Services, as determined by the Commonwealth in its absolute discretion,

the Commonwealth may, without limiting its rights, terminate Your access to any or all API Services, or suspend for any period of time Your access to any API Services.

10. Disclaimer

Use of API Services and Commonwealth Material is at Your risk

- 10.1. You agree that Your use of the API Services, any Commonwealth Material and any Third Party Software is entirely at Your own risk, and You have made Your own assessment of the risk of use of the API Services, any Commonwealth Materials and any Third Party Software.
- 10.2. The API Services are hosted by the Commonwealth and have been designed to meet relevant Australian Government requirements. However, You acknowledge that the Commonwealth does not give any representation or warranty that the API Services or any underlying environment or platform is secure or meets a particular security standard.

You must make inquiries of third party information

- 10.3. Where the API Services link to third party information, You are responsible for making your own enquiries and decisions about the accuracy, reliability, currency and completeness of information contained in such information. The Commonwealth accepts no legal liability arising from or connected to Your use of or reliance on any third party information.

API Services and Commonwealth Materials are provided 'as is'

- 10.4. The API Services are provided 'as is' and 'as available'. The Commonwealth gives no warranty in connection with the API Service, Commonwealth Materials, and Third Party Software, and does not guarantee that the use of the API Services, Commonwealth Materials or Third Party Software will be:
 - a. uninterrupted, error free or available indefinitely;
 - b. that any defects in the API Service and any Commonwealth Material that You access via the API Services will be corrected; or
 - c. that the API Services are free of harmful code.

Commonwealth may change API Services at any time without notice

- 10.5. To support continuity, the Commonwealth may provide advance notice of significant changes to, and planned non-availability of, the API Services to You

where applicable. Notwithstanding this, the Commonwealth may, at its absolute discretion:

- a. make changes to the API Services (including by removing access to any Commonwealth Materials held in the API Services or removing or discontinuing any aspect of the API Service);
- b. conduct maintenance on the API Services; and
- c. temporarily or permanently deny, suspend or restrict access to, or cease to provide, the API Services (either to all users or to specific users only),

at any time and without notice.

- 10.6. Where connection to a system or website outside Commonwealth control compromises the objectives or functions of the API Services, the Commonwealth may sever links to that website or system.

Exclusion of liability

- 10.7. To the maximum extent permitted by law, the Commonwealth excludes all liability and responsibility to You (or any other person) for any loss (including loss of information, data, profits and savings) or damage resulting, directly or indirectly, in connection with Your (or any other person's) use of or reliance on, the Home Affairs Access Manager, the API Services, Commonwealth Materials or Third Party Software.

11. General

Assignment

- 11.1. You cannot assign Your obligations or rights under these Terms of Use without the prior written consent of the Commonwealth, which may be withheld in the Commonwealth's absolute discretion or given on conditions.

Severability

- 11.2. If any of these Terms of Use are held to be invalid, unenforceable or illegal for any reason, they will be severed from this agreement and the remaining Terms of Use will continue in full force.

No agency

- 11.3. You are not by virtue of these Terms of Use an officer, employee, partner or agent of the Commonwealth, nor do You have any power or authority to bind or represent the Commonwealth. You agree to not misrepresent Your relationship with the Commonwealth.

No waiver

- 11.4. If either party waives any breach of these Terms of Use, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

Governing law

- 11.5. These Terms of Use are governed by the laws of the Australian Capital Territory, Australia, and You agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Disputes

- 11.6. Subject to clause 11.7, and without prejudice to clause 10.7, disputes arising in connection with these Terms of Use will be dealt with as follows:
- a. A party claiming that there is a dispute will discuss the matter with the other party.
 - b. If the dispute is unresolved, the party claiming the dispute will send to the other party a notice setting out the nature of the dispute, the party receiving the notice will respond within 7 days.
 - c. If the dispute remains unresolved, within 7 days each party will nominate a representative who does not have any prior involvement in the dispute, and the representatives will seek to resolve the dispute by direct negotiation.
 - d. In the event that the representatives are unable to resolve the dispute, the parties to the dispute may proceed to litigation.
- 11.7. The following will not be subject to the dispute resolution process in clause 11.6:
- a. The Commonwealth exercising its rights under:
 - i. clause 2.3;
 - ii. clause 9.1; or
 - iii. clause 10.5.
 - b. A party seeking urgent interlocutory relief.