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# Terms for Sellers

These Terms for Sellers (“Terms”) apply to all Sellers at Higher Swing Pty Ltd [ABN 51655954233] (“we, us, our”) website at [www.higherswing.com.au](http://www.higherswing.com.au). These Terms together with any other terms and conditions and policies we publish or link to on our website and services form an Agreement with us (“Agreement”). If you register as a business entity, you personally guarantee that you have the authority to enter this Agreement on behalf of the business.

## ACCOUNTS AND LISTINGS

Once you become a Seller (by invitation only) you will be able to post listings for your Services (“Your Listing”). Our website is aimed at promoting wellbeing for school aged children through a range of experiences. Your Listing may include images and descriptions of your Services. We offer a monthly and annual subscription which may incur a Subscription Fee. We also charge a commission on all sales of your Services.

You must maintain the confidentiality of your password and login for your account on the portal. You are solely responsible for all use of your login and password. Your account is non-transferable, and you must immediately notify us at [support@higherswing.com.au](mailto:support@higherswing.com.au) of any unauthorised use of your login or in event you misplace or forget your password. You are solely responsible for any activity on your account.

It is your responsibility to obtain any permits or licenses that are required to sell your Services, and it is your responsibility to comply with all relevant laws and regulations. When providing the Services, you warrant that all relevant people in your organisation, who directly work with children, hold a Working with Children Check. You agree to provide current, complete, and accurate information to us, and promptly inform us of any updates to your information.

## NO GUARANTEES

We do not guarantee that by becoming a Seller and posting Your Listing you will have any increase in sales, revenue, or that you will have any purchasers for your Services. We also cannot guarantee you will have exclusivity in that there may be other service Sellers offering similar services on our website. While we will market your Services, you are solely responsible for providing your Services, and sales.

Except as required by law we do not warrant the quality of our website or warrant that they will meet your expectations.

## RIGHTS IN YOUR LISTING

When you post Your Listing on our Website, we do not make any claim to it. We also do not make any claim to your actual Services. For example, we do not make claim to the rights in any copy or

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images of yours. You are solely responsible for Your Listing and your Services. You warrant that your Listing and your Services do not infringe or violate any third-party rights, including any Intellectual Property Rights. If your Listing or your Services are alleged to infringe a third-party's rights, we will take immediate action, and may remove Your Listing or terminate your Subscription at our sole discretion. You must not post any links to any other online retailers or ecommerce sites in Your Listing, other than your own registered domain.

By posting Your Listing you grant us a licence to use it. This license is so that we can function as a marketplace, grow our marketplace, and help you promote your Services. You also permit us not to credit or attribute Your Listing to you. The reason we need this licence is so that we can do things such as show your images to Buyers, resize, or enhance images, edit any copy that may have a mistake in it or it be outdated, feature your Service on our blogs or podcasts, or social media ads or similar reasons.

The following is the legal version of that licence:

You grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, transferable licence to all Copyright in Your Listing, including, but not limited to, the right to broadcast on any third-party platforms. This is a licence to use, display, edit, modify, reproduce, distribute, store, and prepare derivative works of Your Listing. Further, you waive all Moral Rights you have in Your Listing.

## **YOUR OBLIGATIONS WHEN PROVIDING SERVICES**

You warrant that any Services you list, you are suitably qualified and experienced to perform. You must honour all bookings made through our platform and be transparent with any additional costs that may be incurred in relation to the Services. You warrant that you hold sufficient insurance for your Services in adequate amounts, e.g., minimum public liability in the sum of \$5m. We may request to see a certificate of currency of insurance at any time.

It is your responsibility to obtain any permits or licenses that are required to sell your Services, and it is your responsibility to comply with all relevant laws and regulations. When providing the Services, you warrant that you, and all relevant people in your organisation hold a Working with Children Check. You also warrant that you have express permission from all parents and guardians where you post any pictures or videos of children.

## **AUSTRALIAN CONSUMER LAW**

Our website come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel this Agreement with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

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You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel this Agreement and obtain a refund for the unused portion.

## **YOUR LISTING RULES**

You must conduct yourself appropriately when using our website, including being respectful and courteous to all other Sellers and Buyers. Your listing must be accurate, correct and up to date. You are solely responsible for any inaccuracies or errors in your listing. We may monitor your listing and your services to ensure that they are suitable and in line with Higher Swing's vision and values and that they are professional and properly proof-read. If you post or do any of the following, we may, at our sole discretion remove your listing or terminate your subscription:

- any inappropriate or offensive content including but not limited to, any insults or profanity, conduct that is religiously, racially, or sexually offensive, obscene, or threatening or abusive, or that impersonates, stalks or harasses another user,
- any illegal content including, but not limited to, anything defamatory, or derogatory towards an organisation,
- any false or misleading content,
- any copying, modifying or distributing of any other supplier's content without their consent,
- any content that offers for sale any counterfeit items or items that infringe any rights including the Intellectual Property Rights of third parties,
- any content that includes identifying information of children, except where you have the express written permission of the parents or guardians (i.e., photo permission),
- any content that includes identifying information of schools, systems, or teachers or other organisational or personal information.

You must also always comply with the Australian Consumer Law in relation to Your Listing, including, but not limited to, ensuring Your Listing is not misleading or deceptive.

If you consider that someone is breaching the content posting rules, please notify us at [support@higherswing.com.au](mailto:support@higherswing.com.au) immediately so that we can address the issue immediately. Where you breach these content rules, we may delete Your Listing and terminate your Subscription at our discretion.

## **SUBSCRIPTION FEE**

Where payable, the Subscription Fee is automatically deducted from your nominated payment method unless you or we cancel your subscription in accordance with the cancellation or termination provisions below. You authorise us to:

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- deduct the Subscription Fee and all other accrued and owing fees from your debit or credit card; and
- deduct any applicable currency conversion fees or financial service Seller fees where relevant.

You must ensure that sufficient funds are available in your nominated account to meet any withdrawals made by us on their scheduled due dates. Where payment is defaulted or not made, you authorise us to debit any outstanding funds from your nominated account without the need for notifying you.

We may waive the Subscription Fee, but that is at our complete discretion.

## **PROMOTIONS**

We may offer promotions from time to time and will ask if you would like to participate. We will notify you of any terms and conditions that apply to the promotions.

## **COMMISSION AND TRANSACTION FEES**

We will facilitate the introduction between you and Buyers as well as transactions of any purchase between the parties. The Commission will be withdrawn when a Buyer makes a transaction through the Website.

You must have set up a Stripe account to collect your sales proceeds. When a Service sells, the Commission is calculated on the total price of the transaction and is deducted from the sale. Stripe also charges a Transaction Fee.

Stripe will automatically deduct the Commission and their Transaction Fee from any sales. We may discount or offer free listings and reduce or waive our Commission requirement from time to time.

## **GST/ TAXES**

You are responsible for paying any applicable taxes for any sales you make, and ensuring your prices reflect that if necessary (e.g., whether including or excluding of GST).

## **YOUR OBLIGATIONS AFTER A BUYER PURCHASE**

After a Buyer makes a purchase we will send you an order notification email with various details, including the Buyer's name, contact number, and email, and the Service purchased.

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You must comply with the Australian Consumer Law in respect of any refunds, exchanges, and any additional guarantees or promises you to have made to the Buyer. The Australian Consumer Law requires that you offer various guarantees in relation to your Services. For major failures with the Service, the Buyers are entitled to cancel the contract and to a refund for the unused portion, or to compensation for its reduced value. They are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Buyer is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel the contract and obtain a refund for the unused portion.

You must also comply with our Return Policy as set out below. We will not accept any cancellations for any order already paid for. It will be at your discretion, and we will not refund you the Commission.

## **REFUNDS OF COMMISSION AND TRANSACTION FEES**

To the extent permitted by law, any refunds of Commissions and Transaction Fees paid to us are at our absolute discretion. We do not provide refunds where you failed to provide us with adequate or accurate information, or where you fail to get results.

## **CANCELLATION OF YOUR SUBSCRIPTION**

If you need to cancel your registration, please email us at [support@higherswing.com.au](mailto:support@higherswing.com.au) so your profile can be achieved. This helps us maintain only those accounts that are active.

## **MARKETING**

You permit us to use any photos, videos, and testimonials you post for our marketing and information purposes, or publications exhibitions and professional awards. Where you provide us with photos and/or videos of any children or participants, you acknowledge and agree that you hold express permission from them for us to publish those photos or videos. When you make any social media posts, please ensure you tag us. Any other publication of information about us is subject to our prior written consent.

## **TERMINATION**

We may refuse to provide our website or portal to you or anyone, for any reason, at any time. In particular, if you breach this Agreement, we may immediately terminate your subscription and account and remove Your Listing. We may also warn others to use caution when dealing with you. We are not responsible to you for any changes, or if we suspend or stop our website. You can terminate your subscription at any time by deleting your account. Any outstanding fees or amounts will be paid to you upon termination of your subscription after the deduction of the

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Transaction Fees and any Commission. If you wish for any of Your Listing to be removed, you will need to notify us. You will need to honour any transaction that is entered into by a Buyer because of Your Listing.

## **LIABILITY AND INDEMNITY**

Your use of, or inability to use our website at your sole risk. To the maximum extent permitted by law, we are not liable for any Loss or Damage arising from our website or Your Listing including, but not limited to, any errors or omissions in any Your Listing, any price changes or discontinued Website and services, any termination of your subscription, any removal of Your Listing and any interruptions, any changes. We are also not liable for any Loss or Damage arising as a result of the Buyers you interact with.

To the extent which we are entitled to do so, our liability under the Australian Consumer Law will be limited, at our option to: -

- the supply of equivalent Website service e.g., another opportunity to list your Services; or
- the payment of the cost of the relevant Commission.

In any case, our liability to you will not exceed the sum of \$100.

You agree to indemnify us, and to keep us indemnified from any Claim arising out of or in connection with Your Listing, your breach of this Agreement, including but not limited to the content rules, where you provide incorrect information, any unauthorised use of your account, any lack of results from Your Listing, any further meetings or communications with any Buyer, any Service provided to a Buyer, and any direct or indirect consequences of you accessing using or transacting on the Website.

## **FORCE MAJEURE**

Where there is a Force Majeure Event, we will not be considered in breach of this Agreement, to the extent that our obligations are unable to be performed by such an event. We will not incur any liability to you for any Loss or Damage of any nature incurred or suffered in connection with any Force Majeure Event.

## **IF THERE IS A DISPUTE**

In the event of any dispute that cannot be resolved, both parties agree to obtain an independent professional arbitrator/dispute resolution specialist to make a determination on the dispute and each party agrees to pay their own costs.

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## OTHER

This Agreement is to be construed in accordance with the relative state or territory laws within Australia, and you and we submit to the jurisdiction of the courts of that relevant state or territory. This is the entire agreement between you and us, and supersedes any prior agreements, proposals, and communications whether oral or written, between you and us. These Terms do not create any agency, seller ship, joint venture, employment or franchisee relationship between you and us. In the event of an inconsistency between these Terms and other terms and conditions on our website, these Terms prevail. No other term is to be included in this Agreement except where it is required to be included by law. The failure by us to exercise any right or enforce any provision in these Terms does not waive the future operation of that right or provision. If a provision in this Agreement is not enforceable, such provision shall be severed from this agreement to the extent permitted by law, and the remaining provisions will remain in full force and effect. All obligations and liabilities in this Agreement intended to survive termination of this Agreement do survive.

## DEFINITIONS

“Agreement” means these Terms for Sellers and any other terms and conditions, and policies published or linked to our website.

“Australian Consumer Law” means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Buyer” means any customer or purchaser of a Seller’s Services.

“Claim” means any claim, under statute, tort, contract or negligence, any demand, award, or costs.

“Commission” means the commission we charge you for a successful sale of your Service resulting from a Listing and is 10% for Subscribers.

“Copyright” means the copyright as defined under the Copyright Act 1968 (Cth).

“Force Majeure” means any weather event, any pandemic, any “Act of God”, strikes, government action or any other event beyond the reasonable control of the parties.

“Intellectual Property Rights” means all copyright, trademarks, design rights, patents, trade secrets and confidential information whether registered or unregistered.

“Loss or Damage” means any direct, indirect, incidental, punitive, special, or consequential loss or damages of any kind, including but not limited to, any loss of profits, loss of goodwill, loss of business reputation, revenue, savings, loss of data, loss of enjoyment, virus to systems, personal injury, death, negligence, trespass, property damage and legal costs.

“Moral Rights” means all moral rights as defined under the Copyright Act 1968 (Cth).

“Seller/ You” means any person or business listing their Services on our website and includes all your Representatives.

“Representatives” means any of your employees. Volunteers, contractors, or any other personnel.

“Services” means any Service including any workshops or programs offered by Sellers.

“Subscription Fee” means any fee we charge you for a subscription and giving you the right to list Services on our website.

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“Transaction Fee” means the fees charged by Stripe for each successful sale of your Service resulting from a Listing.

“We, us, or our” means Higher Swing Pty Ltd [ABN 51655954233] and includes any of our directors, officers, employees, agents, Sellers, contractors and where relevant any parent companies or subsidiaries.

“Website” means [www.higherswing.com.au](http://www.higherswing.com.au), and everything available on this website including, but not limited to, our marketplace where Sellers sell and Buyers purchase Services, and all listing services.

“Your Listing” means all the content in your listing and any further posts made on our website and any information provided to us and could include any images, logos, photos, graphics, designs and Service and service descriptions in relation to your Services.