

## **Terms of service**

### **USAGE OF SWIMGDS.COM WEBSITE & PLATFORM**

#### **Who we are and how to contact us**

The websites <https://www.swimgds.com> and <https://login.swimgds.com> (the **Site**) is provided by SWiM GDS Pty Ltd (**we** or **us**). We are registered in Australia under Australian Company Number 661 521 731 and have our business address at 22/604 City Road, South Melbourne, Victoria, Australia, 3205.

#### **By using the Site you accept these terms**

By using the Site, you confirm that you accept these terms of use (**Terms**) and that you agree to comply with them.

If you do not agree to these Terms, you must not use the Site.

We recommend that you print or save a copy of these Terms for future reference.

By accessing the Site, you may link, access, and use other online platforms provided by us and/or our affiliated companies and organizations, including but not limited to SWiM PAY Pty Ltd A.C.N. 638 920 902, SWiM PAY Limited (UK) Company Number 14107859, SWiM PAY (USA) Inc. Company Number 804963695, SWiM Rewards Pty Ltd A.C.N. 638 935 476, SWiM Rewards Limited (UK) Company Number 14512179, SWiM Rewards (USA) Inc. Company Number 805090545.

By using the Site, you consent to the sharing of information, including registration details and contact information, which is provided in connection with access to the Site, to such other affiliated companies and other platforms. The use of such other online platforms shall be subject to the terms and conditions, and privacy policies, which are published on such other platforms from time to time, and any other contracts or terms of service which may be required by the operators of such other platforms.

By creating a Buyer or Seller account, or by communicating with our team members about providing your services, you agree to our listing you in our members directories or including you in our networks.

All subscriptions to the Site include technical and customer support.

#### **There are other terms that may apply to you**

These Terms refer to the following additional terms, which also apply to your use of the Site:

Our Privacy Policy, which sets out the terms on which we process any personal data we collect from you, or that you provide to us. By using the Site, you consent to such processing and you warrant that all data provided by you is accurate.

Any other separate or specific membership agreement(s) that you enter into with us.

#### **We may make changes to these terms**

We amend these Terms from time to time. Every time you wish to use the Site, please check these Terms to ensure you understand the terms that apply at that time.

### **We may make changes to the Site**

We may update and change the Site from time to time to reflect changes to our products, users' needs and our business priorities.

### **We may suspend or withdraw the Site**

We do not guarantee that the Site, or any content on it, will always be available or be uninterrupted. We may suspend or withdraw or restrict the availability of all or any part of the Site for business and operational reasons. We will try to give you reasonable notice of any suspension or withdrawal, but we will not be liable for any failure to do so.

You are also responsible for ensuring that all persons who access the Site through your internet connection are authorised by you to do so, and are aware of these Terms of use and other applicable terms and conditions, and that they comply with them.

### **How you may use the Site**

We are the owner or the licensee of all intellectual property rights in the Site, and in the material published on it. The Site and the material published on it are protected by copyright laws and treaties around the world. All such rights are reserved.

You may print off copies, and may download extracts, of any page(s) from the Site for your personal use and you may draw the attention of others within your organisation to content posted on the Site.

You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.

Our status (and that of any identified contributors) as the authors of content on the Site must always be acknowledged.

You must not use any part of the content on the Site for commercial purposes without obtaining a license to do so from us or our licensors.

You must not use the Site to collect information about other users of the Site.

If you breach these Terms in any manner, your right to use the Site will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

You must be 18 years of age or over to use this Site and/or our SWiM GDS platform.

### **Do not rely exclusively on information on this Site**

The content on the Site is provided by Sellers – not by SWiM GDS. It is not intended to amount to advice on which you should exclusively rely, unless and until we issue a confirmed Booking Confirmation from the Seller (BCN – Booking Confirmation Number).

Although we make reasonable efforts to update the information on the Site, we make no representations, warranties or guarantees, whether express or implied, that the content on the Site is accurate, complete or up to date.

### **We are not responsible for websites we link to**

Where the Site contains links to other Sites and resources provided by third parties, these links are provided for your information only. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them.

We have no control over the contents of those Sites or resources and we accept no liability for content or loss caused as a result of using such third-party Sites.

### **Our responsibility for loss or damage suffered by you**

We exclude our liability to you where it is lawful. Different limitations and exclusions of liability may apply to liability arising as a result of the supply of any additional services to you.

We exclude all implied conditions, warranties, representations or other terms that may apply to the Site or any content on it.

We will not be liable to you for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:

- use of, or inability to use the Site;
- loss of profits, sales, business, or revenue;
- business interruption;
- loss of anticipated savings;
- loss of business opportunity, goodwill or reputation; or
- any indirect or consequential loss or damage.

### **We are not responsible for viruses and you must not introduce them**

We do not guarantee that the Site will be secure or free from bugs or viruses.

You are responsible for configuring your information technology, computer programs and platform to access the Site. You should use your own virus protection software.

You must not misuse the Site by knowingly introducing viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Site, the server on which the Site is stored or any server, computer or database connected to the Site. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Site will cease immediately.

### **Third-party software**

Customer agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by SWiM GDS. Unless otherwise notified by SWiM GDS, Customer agrees to use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by Customer and to follow logon procedures for services that support such protocols. Customer acknowledges

that SWiM GDS is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across computer networks not owned or operated by SWiM GDS or telecommunications facilities, including, but not limited to, the Internet.

### **Rules about linking to the Site**

You may link to our home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.

You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.

You must not establish a link to the Site in any website that is not owned by you.

The Site must not be framed on any other Site, nor may you create a link to any part of the Site other than the home page.

We reserve the right to withdraw linking permission without notice.

### **Which country's laws apply to any disputes?**

These Terms, their subject matter, formation and termination, are governed by the laws applicable in Victoria, Australia. We may take action against you for breach of these Terms in any court of competent jurisdiction.

### **Queries**

If you have any questions about the application of these Terms, please contact us

### **Prices for shipping services on the website**

All freight rates on the SWiM GDS.com website are sourced from various providers and subject to approval and verification by our support team. This information is given based on E&OE principle, and in no case is SWiM GDS liable for any errors & omissions (computer, system, human etc.). If not otherwise stated, all rates for freight transportation are displayed including VAT and all other taxes (subject to change of such taxes). Every rate is subject to the transport (container and vessel) availability, space on the vessel which shall be confirmed by the carrier at the time of making an actual booking.

Sometimes cheaper rates available on our website for specific shipments may carry special restrictions and conditions, for example in respect to the gross weight of the container or cancellation booking. Please check the rate and rate details thoroughly for any such conditions prior to making your booking.

Due to market volatility in specific regions of the world, please bear in mind that shipping space and equipment can be restricted and rate validity may be subject to ETD. Peak season GRI (General Rate Increase) or EIS/CIC (Equipment Imbalance Surcharge) and other unpredicted surcharges non announced by carriers will be included in tariffs if such an increase takes place. Also, carriers often apply an overweight surcharge on heavy 20'ST containers (>18t), which may not be reflected in the standard rates displayed and will be confirmed at the time of booking confirmation.

### **Booking cancellation or amendment request**

A booking may be cancelled or an amendment request may be made by either Buyer or Seller at any time, however cancellations and/or amendments may carry a commercial penalty to a party cancelling the booking or making the amendment request, or carry commercial compensation to the party who did not cancel or request amendment to any booking.

In either event, the SWiM GDS booking fee will not be refundable.

For full details as to Booking Cancellations and Amendment Requests and any subsequent commercial penalty or compensation payable, please refer to the SWiM GDS Trading Rules.

### **Shipping liability**

SWiM GDS is not responsible for sea transit and/or sea transit time, if it appears to be different from the declared. Customer indemnifies SWiM GDS against all claims, liability, losses, damages, costs, delays, costs and / or expenses incurred by SWiM GDS, its subcontractors, employees, agents, or the owner of the cargo during transportation as a result of any obstacles, delays, suspension, customs actions, inspections, terminal charges, termination, intervention transport of goods or losses of any kind, howsoever caused.

### **Recognizing and reporting spam, inappropriate, and abusive content**

At SWiM GDS, we don't tolerate inappropriate activities or behaviour such as spam, harassment, scams, and misinformation. We have professional community policies which outline activities that are acceptable on the platform, and what is unacceptable and may be stopped.

### **Scope of our service**

Through the website we (SWiM GDS.com and its affiliate (distribution) partners) provide an online platform through which all types of containers (20'ST, 40'ST, 40'HQ, 20'RF, ...), can advertise shipping rates for bookings, and through which visitors to the website can make such bookings.

When making a booking through SWiM GDS.com, you enter into a direct (legally binding) contractual relationship with both SWiM GDS and the shipping service provider with whom you book. At the time of booking and prior to your receiving a BCN (Booking Confirmation Note), you will be required to read and accept the shipping line terms and conditions, these terms and conditions and the SWiM GDS Trading Rules.

From the point at which you make your booking, we act both as an intermediary between you and the carriers, transmitting the details of your booking to the relevant shipping service provider and sending you a confirmation email for and on behalf of the shipping service provider and as a final adjudicator of any disputes in relation to commercial compensation due to any party from the result of a booking cancellation (by any party), a no-show cargo booking (where shipper fails to present cargo for shipment), a rolled cargo booking or a failure by the shipping line to uplift the cargo on the designated vessel and voyage.

When rendering our services, the information that we disclose is based on the information provided to us by shipping service providers. As such, the shipping service providers are given access to an extranet through which they are fully responsible for updating all rates, availability and other information which is displayed on our website.

Although we will use reasonable skill and care in performing our services we will not verify if, and cannot guarantee that, all information is accurate, complete or correct, nor can we be held responsible for any errors.

Each shipping service provider remains responsible at all times for the accuracy, completeness and correctness of the (rate descriptive) information (including the rates and availability) displayed on our website. Our website does not constitute and should not be regarded as a recommendation or endorsement of the quality, service level or qualification of any service made available.

You are not allowed to re-sell, deep-link, use, copy, monitor (e.g. spider, scrape), display, download or reproduce any content or information, software, products or services available on our website.

### **Refund policy**

The SWiM GDS Booking Fee and other Products or services purchased on SWiM GDS will in most cases be non-refundable.

There are however circumstances where refunds or commercial compensation will be deemed payable between the Seller and Buyer and these circumstances are adjudicated by SWiM GDS, with the decisions being accepted by you as final and unchallengeable. Full details of this refund process are set out in the SWiM GDS Trading Rules.

Feel free to ask questions about our products or services before you buy.

### **Charges and claims**

All requests to negate charges are investigated by our technical department and legal department. If you make a fraudulent claim of unauthorized card usage, we will report this to the relevant authorities. This report may result in cancellation of your services, put negative information on your credit report, and create possible criminal charges that may be filed against you.

### **GDPR regulation**

SWiM GDS acts in accordance to the GDPR Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) published at [eur-lex.europa.eu](http://eur-lex.europa.eu)

### **For European Union (EU) Users**

If You are a European Union consumer, you will benefit from any mandatory provisions of the law of the country in which you are resident in.

## **United States Legal Compliance**

You represent and warrant that (i) You are not located in a country that is subject to the United States government embargo, or that has been designated by the United States government as a "terrorist supporting" country, and (ii) You are not listed on any United States government list of prohibited or restricted parties.

## **Marketing policies & specific "Opt-In" agreement**

When having the account on this website, you agree to receive automated system emails, marketing campaigns and other notifications from us, unless you unsubscribe from the specific emailing list or delete your account. You also give consent that we can contact you for support and other questions related to the usage of the Site or business activities with us. You may Opt Out at any time by requesting that we cancel your SWiM GDS account.

## **Severability and Waiver**

### **Severability**

If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

### **Waiver**

Except as provided herein, the failure to exercise a right or to require performance of an obligation under these Terms shall not affect a party's ability to exercise such right or require such performance at any time thereafter nor shall the waiver of a breach constitute a waiver of any subsequent breach.

## **Translation Interpretation**

These Terms and Conditions may have been translated if We have made them available to You on our Service. You agree that the original English text shall prevail in the case of a dispute.

## **Changes to These Terms and Conditions**

We reserve the right, at Our sole discretion, to modify or replace these Terms at any time. If a revision is material, We will make reasonable efforts to provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at Our sole discretion.

By continuing to access or use Our Service after those revisions become effective, You agree to be bound by the revised terms. If You do not agree to the new terms, in whole or in part, please stop using the website and the Service.