

Duties Online additional terms of use

1 Compliance with terms

1.1 Terms are contractually binding

By registering an account to use the Duties Online system on our website, you agree that, on acceptance of your registration, you enter into a legally binding contract with the Commissioner under which you are entitled to access and use Duties Online, including using Duties Online to complete and submit Digital Duties Forms, in accordance with:

- a) the [terms of use for online systems](#) set out on our website, of which these additional terms supplement and form part (**General Terms**), and
 - b) these additional terms of use,
- (together, the **Terms**).

1.2 Terms binding under *Taxation Administration Act 1997*

- 1.2.1 In addition, a notification that your registration to use Duties Online has been accepted is a notice that you have been granted an approval to use Duties Online as a taxpayer, or as an agent of behalf of one or more Taxpayers, under section 39 of the *Taxation Administration Act 1997 (TAA)*, on the conditions of the Terms.
- 1.2.2 This means that the conditions set out in the Terms are binding on you by virtue of section 43 of the TAA, to the extent that they are conditions on the approval for a special tax return arrangement. All of the Terms are conditions for the purposes of sections 41 and 43 of the TAA. Breach of a condition is an offence under section 43.

1.3 Responsibility for Users

- 1.3.1 Although we grant access to Duties Online, and enter into the Terms with companies, firms and other organisations, you are responsible for ensuring that Duties Online is only accessed and used on your behalf by properly authorised individual Users. Under the Terms, any conduct of Users who use Duties Online under your registration is considered to be your conduct.
- 1.3.2 If you use Duties Online to fraudulently seek to reduce a Duty assessment or otherwise contravene the Terms, or if any of your Users do so, you may be liable to us for breach of this contract. We may also exercise our rights under the Terms, including suspending or cancelling your access to Duties Online. In addition, you, the User or both may be guilty of a criminal offence and liable to penalty under the TAA.

2 Definitions

2.1 Definitions in General Terms

As these additional terms of use supplement and form part of the General Terms, terms defined in the General Terms have the same meanings in these additional terms, except to the extent that they are separately defined in these additional terms (in which event that definition takes precedence in these additional terms).

2.2 Additional definitions

In these additional terms of use, the following definitions apply:

API means the application programming interface materials and related documentation provided by us that enable a software developer with requisite skills to create software interfaces which interface or interact with Duties Online.

Certification means, in relation to a Duties Online transaction, that you represent to us that:

- a) the Data that has been entered into Duties Online (whether the Data was entered by you, or was entered by another person but is viewable by you) correctly reflects the information provided by the Taxpayer, a tax agent of the Taxpayer (other than you or any User) or us,
- b) that Data is otherwise complete and correct, and
- c) the Duties Online Transaction is ready for financial settlement to occur via the ELN,

and **Certified** has a corresponding meaning.

Certifier means a person who is identified as a 'certifier' in your application to register an account to use Duties Online or, once you have an account, in your Duties Online account, in accordance with section 3.1.

Commissioner means the person who has the functions of the Commissioner of State Revenue pursuant to the TAA.

Control means, in relation to you:

- a) the legal, financial or equitable ownership, directly or indirectly, of 50% or more of your share capital (or other ownership interest, if you are not a company limited by shares);
- b) control or influence of, or having the capacity to control or influence, the composition of your board or other decision-making body, or of decision making (directly or indirectly) in relation to your financial and operating policies, whether or not the control or influence is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in you (including an interest in your shares or stock or otherwise); or
- c) effective control of you.

Data means any data captured and generated by Duties Online, which includes full details of each Duties Online Transaction, including personal details of the transacting parties.

Digital Duties Form means the electronic form required to be completed in respect of a Dutiable Transaction, as made available for completion through Duties Online.

Duties Online Transaction means a transaction that is lodged by you or via an ELN for the assessment and payment of Duty using Duties Online.

Dutiable Transaction means any transaction on which Duty is payable under Chapter 2 of the Duties Act where:

- a) the contract or arrangement giving effect to the transaction was entered into on or after 1 July 2017, or
- b) if there was no such contract or arrangement, the transaction occurred on or after 1 July 2017.

Duties Act means the *Duties Act 2000* (Vic).

Duty means duty payable under the Duties Act and any applicable interest or penalty tax payable under the TAA.

ELN means an 'Electronic Lodgement Network' within the meaning of the Electronic Conveyancing National Law set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW), as it applies in Victoria pursuant to the *Electronic Conveyancing (Adoption of National Law) Act 2013* (Vic), that is operated or approved by the Registrar of Land Titles for the purpose of enabling the lodging of documents in electronic form for the purposes of the land titles legislation.

Finalisation means, in relation to a Duties Online Transaction, that:

- a) (if the Duties Online Transaction is being undertaken using an ELN) the Duties Online Transaction has been locked on the ELN for financial settlement and the ELN has triggered Duties Online to make a final assessment of the duty payable, or
- b) (if the Duties Online Transaction is not being undertaken using an ELN) you have committed to pay the Duty on that Duties Online Transaction,

and **Finalised** has a corresponding meaning.

Personal Information has the meaning given to it in the *Privacy and Data Protection Act 2014* (Vic).

SRO means the State Revenue Office.

TAA means the *Taxation Administration Act 1997* (Vic).

Taxpayer means a person who has been assessed as liable to pay an amount of Duty, who has paid an amount as Duty or who is liable or may be liable to pay Duty.

User means a natural person who accesses or uses Duties Online under your registration.

you means the company, partnership or other person who has registered an account on Duties Online.

3 Certifiers and authorised users

3.1 Certifiers

3.1.1 In your application to use Duties Online, you specified one or more individuals as 'Certifiers', who are to oversee your Users' use of Duties Online. By using Duties Online, you represent and warrant that each of those individuals is:

- a) (where you are a company) one of your directors,
- b) (where you are a partnership) one of your partners, or
- c) (where you are a sole proprietor) you as the sole proprietor.

3.1.2 You must ensure that at least one individual who satisfies the requirements set out in section 3.1.1 is specified as a 'certifier' in your Duties Online account at all times while you have an account.

3.2 Authorisation of Users

3.2.1 You must only allow an individual to access and use Duties Online under your registration if that individual:

- a) falls into one of the following categories:
 - i. (where you are a body corporate) one of your employees or officers,
 - ii. (where you are a partnership) one of your partners or employees, and
 - iii. another individual who requires access to Duties Online for the purpose of you undertaking Duties Online Transactions, and
- b) is a fit and proper person to access and use Duties Online, including that no charges of an offence involving fraud or dishonesty have been laid against them (and you must make all proper inquiries to satisfy yourself of this fact prior to granting access to any individual).

3.2.2 You must allocate appropriate levels of access (including administrator access) to Users, including ensuring that a Certifier oversees the granting of access (including the level of access granted) to each User.

3.3 Responsibility for Users

3.3.1 You must ensure that all of your Users access and use Duties Online in accordance with the Terms.

3.3.2 You are liable for all acts and omissions of your Users in connection with Duties Online as if those acts and omissions were your acts or omissions (whether or not you knew about or authorised those acts and omissions).

3.4 Revocation of Users' access

You must ensure that authority to access Duties Online is revoked for any User who:

- a) takes leave for an extended period,
- b) no longer falls into one of the categories in section 3.2.1a), or
- c) no longer satisfies the fit and proper person requirement in section 3.2.1b) (including if any charges of an offence involving fraud or dishonesty are laid against them).

4 Additional fit and proper person requirements

- 4.1 By using Duties Online, you represent and warrant that, in your application to use Duties Online, you provided all information about any charges of an offence involving fraud or dishonesty that have been laid against you, any person who Controls you, any Certifier, or any proposed User specified in your application.
- 4.2 You must give us notice within 30 days if:
- a) any charges of an offence involving fraud or dishonesty are laid against you, any Certifier, any User or any person or company who has Control of you, or
 - b) any person who is not a fit and proper person to access and use Duties Online (including a person who has had charges of an offence involving fraud or dishonesty laid against them) takes Control of you (for example, through a sale of shares, change in partnership or change in trustee, depending on your entity structure).

5 Access to Duties Online

Each User will be issued with a username and password to access Duties Online, which you must ensure is kept secure and otherwise treated in accordance with the Terms (including the provisions in the General Terms relating to access mechanisms).

6 Using Duties Online for transactions

6.1 Transaction types and information

- 6.1.1 You must only process transactions through Duties Online that:
- a) are of a type that can be processed by Duties Online and that satisfy the relevant criteria, as specified on the SRO website, and
 - b) are not of a type that we have notified you cannot be processed by you through Duties Online.
- 6.1.2 You must only use Duties Online, including for the processing of transactions, in accordance with the Terms, information contained on our website and any other instructions we provided to you in Duties Online, or via Duties Online subscriber emails. If you have insufficient information to process a Duties Online transaction in accordance with these requirements, then you must not complete the relevant step in the transaction until you obtain that information.
- 6.1.3 If you are not able to process a transaction through Duties Online, you must refer the transaction to us for assessing.

6.2 Authorisation by Taxpayer

As set out in the General Terms, you must only undertake functions in relation to a Duties Online Transaction through Duties Online if you have been authorised by the Taxpayer or the Taxpayer's agent to undertake those functions.

7 Duty determination

7.1 How Duties Online determines duty

- 7.1.1 Duties Online assesses Duty, and determines whether a Duty exemption or concession applies, using the Data entered by you and other users of Duties Online (including Data entered or populated into a Digital Duties Form, and Data entered into the ELN and populated into Duties Online where the Dutiable Transaction is being undertaken via the ELN).
- 7.1.2 In order for Duties Online to assess Duty, a Duties Online Transaction that is being undertaken via an ELN must be Certified and must subsequently be Finalised, as each of those terms is defined in these terms.

7.2 Requirements for Certification and Finalisation

- 7.2.1 You must not Certify or Finalise a Duties Online Transaction unless you are satisfied that all of the information entered into Duties Online in relation to that Duties Online Transaction is complete, correct and not misleading. You must take reasonable steps to satisfy yourself of this before you Certify or Finalise the Duties Online Transaction. This responsibility extends to all of the information in Duties Online that is viewable by you, regardless of whether it was entered by you or someone else, and regardless of whether it was entered directly into any part of Duties Online (including the Digital Duties Form) or entered into an ELN and populated into Duties Online.
- 7.2.2 You also must not Certify or Finalise a Duties Online Transaction unless the Digital Duties Form has been completed and submitted to us in accordance with section 8.
- 7.2.3 You also must not Finalise a Duties Online Transaction where any Duty is to be paid via Duties Online and you do not satisfy the payment requirement in section 9.2.3 or section 9.2.6 (as applicable).

8 Digital Duties Form requirements

- 8.1 You must:
 - a) ensure that a Digital Duties Form has been completed and submitted to us in respect of each Dutiable Transaction processed through Duties Online;
 - b) ensure that all of the information entered into the Digital Duties Form that is viewable by you is correct; and
 - c) if you submit a Digital Duties Form to us via Duties Online, certify that all of the information in the Digital Duties Form is complete and correct and ensure that each other party to the relevant Dutiable Transaction (or a person entitled to act on their behalf) has agreed that the information is complete and correct prior to submission.
- 8.2 You must not submit a Digital Duties Form to us (including via Duties Online) unless you have complied with the applicable verification of identity requirements (as published on our website).

- 8.3 You must only access a Digital Duties Form in respect of a Dutiable Transaction for which you have been engaged by the relevant Taxpayer, and only for the purpose of acting on behalf of that Taxpayer.

9 Duty Payment

9.1 Payment of Duty via ELN

You are not required to initiate payment of Duty via Duties Online in accordance with sections 9.2.1 to 9.2.7 if, as part of financial settlement of a Duties Online Transaction occurring via an ELN, the amount of Duty is paid to satisfy the relevant Taxpayer's liability to pay Duty on the same calendar day as financial settlement of the Duties Online Transaction.

9.2 Payment of Duty via Duties Online

- 9.2.1 Subsequent to Duty determination, Duties Online will facilitate the payment of Duty by you, via an electronic or non-electronic payment method, to satisfy the relevant Taxpayer's liability to pay Duty.
- 9.2.2 You must initiate payment to us of Duty in respect of a Dutiable Transaction on the same calendar day as that Dutiable Transaction is Finalised (as described in these terms).

Electronic payment (EFT/BPAY)

- 9.2.3 You must not Finalise a Duties Online Transaction where any Duty is to be paid electronically through EFT or BPAY unless your account holds a sufficient amount, in cleared funds, received from the Taxpayer or their agent to cover the amount of Duty assessed.
- 9.2.4 You must pay any bank fees or charges incurred due to you having insufficient funds required to pay Duty.

Payment by cheque

- 9.2.5 Cheques made payable to the SRO must not be banked into your own bank account. Such cheques must be given to us by post or courier to us (at the address specified in section 14 or any replacement address notified by us on our website from time to time).
- 9.2.6 You must not Finalise a Duties Online Transaction where any Duty is to be paid by cheque unless you hold the funds or a cheque received from the Taxpayer or their agent sufficient to cover the amount of Duty assessed and will be able to initiate payment of the Duty within the timeframe required under section 9.2.2.
- 9.2.7 Cheques must be submitted to us with a cheque remittance slip such that we will receive them within three calendar days after the Duties Online Transaction has been Finalised (unless we specify a different timeframe by notice to you from time to time). It is your responsibility to ensure payment is received by us within the allowed timeframe.

9.3 Non-payments

If cleared funds are not received within our required timeframes (including as set out above), particularly if such non-payment issues are serious or persistent:

- a) we may suspend or cancel your access to Duties Online as permitted under the Terms (without limiting the grounds on which we may exercise these rights), and/or
- b) you may be subject to penalties for failure to comply with payment obligations under the Terms pursuant to section 43 of the TAA.

10 Use of API

10.1 Application of this section

10.1.1 Sections 10.2 to 10.5 only apply if:

- a) you have been approved by us in writing to use the API;
- b) we provide you with access to the API.

10.1.2 If you have not been approved by us in writing to use the API, you must not access or use the API.

10.2 Licence of API

We grant you a non-exclusive licence to:

- a) access and use the API to interface your software with Duties Online, and
- b) submit data from your software to Duties Online via that interface in accordance with the Terms and the API documentation.

10.3 Application of Terms to API

10.3.1 To the extent applicable, all of the Terms apply to:

- a) Duties Online whether you access and use it directly or via the API, and
- b) the API in the same manner as the terms apply to Duties Online, including as set out in the remainder of this section 10.3.

10.3.2 You must only use the API consistently with the Terms, including on the basis that the restrictions in the General Terms on your use of Duties Online also apply to the API.

10.3.3 Any indemnity given by you under the General Terms applies to the use of the API in the same manner as it applies to the use of Duties Online.

10.3.4 We may:

- a) suspend your use of the API, limit your ability to use the API or terminate your use of the API for the same reasons as we may suspend, limit or terminate your access to Duties Online,
- b) monitor and review your activities using the API an Online System to ensure you comply with the Terms, and

- c) rely on the limitations of liability in the General Terms in relation to the use of the API in the same manner as those limitations apply to the use of Duties Online.

10.3.5 The API is made available to you on an 'as is' and 'as available' basis.

10.3.6 We do not represent or warrant that your use of the API will be secure, uninterrupted, error-free or timely.

10.4 Authorisation of Users to use API

10.4.1 If you have been approved by us to use the API, you must (as part of allocating access under section 3.2) allocate one or more Users to submit data to Duties Online using the API.

10.4.2 You must ensure that all of your Users who are allocated to use the API under section 10.4.1 only use the API in accordance with the Terms.

10.5 Security

If we issue you with an application programming interface key in order to use the API, you must keep that key secure and otherwise treat it in the same way as any other access mechanism used to access Duties Online (including in accordance with the provisions in the General Terms relating to access mechanisms).

11 Your privacy obligations

11.1 Submission of Personal Information to us

You must take reasonable steps to ensure that any individual whose Personal Information you submit to us (including any Taxpayer or any other party to a Dutiable Transaction):

- a) is or has been made aware of how we may use that Personal Information (including as contemplated by section 13), and
- b) has provided any consents necessary for us to use and disclose that Personal Information as contemplated by section 13 without infringing any rights of the individual or contravening the TAA or the *Privacy and Data Protection Act 2014* (Vic).

11.2 Centrelink consent

10.2.1 Before conducting a Duties Online pensioner eligibility query, you are required to obtain the written consent of the Taxpayer in the form of a signed Pensioner Concession Application form.

10.2.2 You must retain the Pensioner Concession Application form in accordance with section 12.

10.2.3 You must not use the result of any Centrelink query for any purpose other than obtaining a Duty determination in accordance with the Terms.

12 Record keeping requirements

12.1 Requirement to keep records

12.1.1 You must keep, or cause to be kept, all records to evidence that all of the information entered or populated into Duties Online in relation to a Dutiable Transaction was correctly sourced from information provided by the Taxpayer or their agent, which must include copies of:

- a) any supporting SRO forms (including the Digital Duties Form) and statutory declarations, and
- b) any other documents from which information entered or populated into Duties Online was sourced (for example, contracts, instructions from the Taxpayer or their agent, valuations, wills and copies of grants of probate, and proof of purchase financial documents) (**Records**).

12.1.2 You must maintain the Records for not less than five years after the Duties Online Transaction has been Finalised. Records can be kept electronically, provided the Record is able to be readily produced to us if we require its production, and the information in the Record is clear, legible and in English or in a form that can be readily converted or translated into English.

12.2 Provision of and access to records

12.2.1 You must provide to us:

- a) copies of all Records in relation to a Duties Online Transaction with a value over \$3 million, within 30 days after the Duties Online Transaction has been Finalised, and
- b) copies of any Records within the time specified in any notice we give.

12.2.2 You must permit us to access your premises to view any Records.

12.3 False or misleading information in records

You must not make a Record that comprises or contains, or include in a Record, any information that is false or misleading.

13 Privacy

13.1 The Personal Information that we collect through Duties Online includes information entered directly into Duties Online, via a Digital Duties Form, and entered into an ELN and populated into Duties Online.

13.2 We will use such Personal Information as set out in the General Terms and our Information Privacy Policy as referred to in the General Terms, including:

- a) to report to the Federal Commissioner of Taxation (as appointed pursuant to the *Taxation Administration Act 1953* (Cth)) on certain Dutiable Transactions; and
- b) by publishing in a publicly available electronic register details of your identity including your:
 - i. legal entity name,
 - ii. trading name, and
 - iii. ABN.

14 Notices

14.1 Giving of notices by you by email

Any notice or communication given by you in relation to your use of Duties Online or the conduct of Dutiable Transactions may, in addition to the means set out in the General Terms, be given to us by email at dutiesonline@sro.vic.gov.au.

14.2 Giving of notices by us

You agree that we may serve notices and other communications to you in relation to your use of Duties Online or the conduct of Dutiable Transactions by either of the following means (in addition to the means specified in the General Terms):

- a) leaving it at, or posting it to, any address you specified in your application for approval to use Duties Online or any updated address you specify in your Duties Online account settings, or
- b) sending it to the email address you specified in your application for approval to use Duties Online or any updated email address you specify in your Duties Online account settings.

This means that each of these means of service are available means of service for the purposes of section 125(1)(d) of the TAA (to the extent applicable).

15 Variation of these terms

- 15.1 We may change these terms from time to time. Despite our general rights to vary these terms under the General Terms, if we reasonably consider that a change to these terms is likely to have a significant detrimental impact on you, we will make such changes to these terms no sooner than 10 days after we have notified you of those changes on the home page of Duties Online.
- 15.2 Your continued use of Duties Online following such notification will represent an agreement by you to be bound by and abide by the terms as amended. If you do not accept a change made by us to these terms, you must immediately cease using Duties Online and close your user account.
- 15.3 If we reasonably consider that a change to these terms is likely to benefit you or have a neutral or minor detrimental impact on you, we may change these terms immediately by publishing the amended terms in Duties Online or on our website, as set out in the General Terms.
- 15.4 This section 15 does not affect any obligation that we may have under the TAA to give you notice of any change to these terms.