

## **eBay User Agreement changes – what you need to know.**

### **What has changed?**

The changes to the eBay User Agreement, including referencing more relevant and commonly used policies, mean there is greater clarity of both parties' rights and obligations.

### **Why have we done this?**

The User Agreement is an important contract between eBay and its members and promotes safer trading on eBay therefore it is essential to ensure it is kept up to date and accurate.

### **How does this affect me?**

It is important you read the User Agreement carefully to remind yourself of eBay's rights and obligations as well as your own.

By continuing to use the site after 10 November 2007 you are accepting this latest User Agreement and agreeing to be bound by it. New members who register after 10 October 2007 will be bound by this User Agreement from their date of registration.

## User Agreement

### **THE FOLLOWING DESCRIBES THE TERMS ON WHICH EBAY OFFERS YOU ACCESS TO OUR SERVICES.**

Welcome to eBay International A.G.'s ("eBay's") User Agreement. This Agreement describes the terms and conditions that govern your use of our services at <http://www.ebay.com.au/> (the "Site") and our general principles of our international affiliates. If you have any questions, please refer to our User Agreement Frequently Asked Questions at <http://pages.ebay.com.au/help/policies/user-agreement-faqs.html>

You must read, agree with and accept all of the terms and conditions contained in this User Agreement and the Privacy Policy, which include those terms and conditions expressly set out below and those incorporated by reference, before you may become a member of eBay. We strongly recommend that, as you read this User Agreement, you also access and read the information contained in the other pages and websites referred to in this document, as they may contain further terms and conditions which apply to you as an eBay member. Please note: underlined words and phrases are click-through links to these pages and websites.

By accepting this User Agreement, you also agree to be bound by the User Agreements and posted terms and conditions on other eBay websites to the extent that you use those websites.

We may amend this Agreement at any time in our discretion by posting the amended terms on our Site. The fact that amendments have been made to the User Agreement will also be notified on our Announcements Board located at (<http://www2.ebay.com/aw/marketing-au.shtml>). Except as stated below, all amended terms shall automatically be effective 30 days after they are initially posted on our Site. If you do not agree with such changes, you must terminate your membership of eBay. This Agreement may not be otherwise amended except in writing signed by you and eBay. This agreement is effective on the earlier of your registration date or 23 December 2002 for new registering users, and is otherwise effective on 22 January, 2003 for all users registered prior to 23 December, 2002.

1. **Membership Eligibility.**

Our services are available only to, and may only be used by, individuals who can form legally binding contracts under applicable law. Without limiting the foregoing, our services are not available to persons under 18 years of age or to temporarily or indefinitely suspended eBay members. If you do not qualify, please do not use our services. Further, your eBay account (including feedback) and User ID may not be transferred or sold to another party.

2. **Fees and Services.**

Joining and bidding on items at eBay is free. When you list an item you have an opportunity to review and accept the fees that you will be charged for the use of our services. Our Fees and Credits Policy is available (at <http://pages.ebay.com.au/help/sell/fees.html>) and is incorporated into this User Agreement by reference. We may change our Fees and Credits Policy and the fees for our services from time to time. Our changes to the policy are effective after we provide you with at least fourteen (14) days' notice of the changes by posting the changes on the announcements board. However, we may choose to temporarily change our Fees and Credits Policy and the fees for our services for promotional events (for example, free listing days) and such changes are effective when we post the temporary promotional event on the announcements board. We may in our sole discretion change some or all of our services at any time. In the event we introduce a new service, the fees for that

service are effective at the launch of the service. Unless otherwise stated, all fees are quoted in Australian Dollars. You are responsible for paying all fees associated with using our service and our Site and all applicable taxes (including any goods and services or value added taxes, which will be added to amounts billed to you). Please Note: You cannot include eBay fees in the 'terms of sale' of your item or request another member to pay eBay these fees. However, you may wish to consider eBay fees when determining the minimum or fixed price of your item. For more information on charging fees to buyers, go to (<http://pages.ebay.com.au/help/policies/listing-ov.html>).

### 3. **eBay is not an Auctioneer.**

**3.1 Online Auctions.** Although we are commonly referred to as an online auction web site, it is important to realise that we are not a traditional "auctioneer". Instead, our Site acts as a venue to allow members to offer, sell, and buy just about anything, at anytime, from anywhere, in a variety of formats, including a fixed price format and an auction-style format commonly referred to as an "online auction". We are not involved in the actual transaction between buyers and sellers. As a result, we have no control over the quality, safety or legality of the items or content posted by users on the Site, the truth or accuracy of the listings, the ability of sellers to sell items or the ability of buyers to buy items. We cannot ensure and do not guarantee that a buyer or seller will actually complete a transaction or act lawfully in using our Site.

**3.2 Safe Trading.** Because user authentication on the Internet is difficult, eBay cannot and does not confirm each user's purported identity. Thus, we have established a user-initiated feedback system to help you evaluate the user you are dealing with. We also encourage you to communicate directly with potential trading partners through the tools available on our Site. You may also wish to consider using a third party escrow service or services that provide additional user verification. See our Buying and Selling Tools page (at <http://pages.ebay.com.au/services/buyandsell/index.html>).

**3.3 Release.** Because we are not involved in the actual transaction between buyers and sellers, in the event that you have a dispute with one or more users, you release eBay (and our officers, directors, agents, affiliates, parents, subsidiaries and employees) from claims, demands and damages (actual, special, direct, indirect and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

**3.4 Information Control.** We send you communications and notices regarding your transactions and your account on our Site. Our communications do not represent any endorsement, guarantee or legitimisation of your transactions. You are responsible for completing all transactions you participate in (including monitoring the status and complying with all relevant legal obligations). We do not control, endorse or approve the items, information or content provided by other users which is made available through our system. You may find other users' information to be offensive, harmful, inaccurate, or deceptive. Please use caution, common sense, and practice safe trading when using our Site. Please note that there are also risks of dealing with underage persons or people acting under false pretense. Additionally, there may also be risks with international trading and dealing with foreign nationals.

### 4. **Bidding and Buying.**

You are obligated to complete the transaction with the seller if you purchase an item through one of our fixed price formats or are the highest bidder as described below, unless the transaction is prohibited by law or this User Agreement. If you are the highest bidder at the end of an auction (meeting the applicable minimum bid or reserve requirements) and your bid is accepted by the seller, you are obligated to complete the transaction with the seller, unless the item is listed in a category under the Non-Binding Bid Policy (at <http://pages.ebay.com.au/help/policies/non->

[payment.html](#)) or the transaction is prohibited by law or by this Agreement. By bidding on an item you agree to be bound by the conditions of sale included in the item's description so long as those conditions of sale are not in violation of this Agreement or unlawful. Bids are not retractable except in exceptional circumstances such as when the seller materially changes the item's description after you bid, a clear typographical error is made, or you cannot authenticate the seller's identity. If you choose to bid on items similar to those described on our mature audience page (located at <http://pages.ebay.com.au/help/policies/mature-audiences.html>), you are certifying that you have the legal right to purchase such items (suitable only for persons aged 18 years or over in Australia).

5. **Listing and Selling.**

**5.1 Listing Description.** You must be legally able to sell the item(s) you list for sale on our Site. You must describe your item and all terms of sale on the listing page of our Site. Your listings may only include text descriptions, graphics, pictures and other content relevant to the sale of that item. All listed items must be listed in an appropriate category. All Dutch auction items must be identical. At any one time you may not promote identical items in more than ten (10) online auction listings (whether Dutch or Regular auction-style) on our Site.

**5.2 Binding Bids.** Except for items to which the Non-Binding Bid Policy (located at: <http://pages.ebay.com.au/help/policies/non-payment.html>) applies, if you receive at least one bid at or above your stated minimum price (or in the case of reserve auctions, at or above the reserve price), you are obligated to complete the transaction with the highest bidder upon the item's completion, unless there is an exceptional circumstance, such as:

1. the buyer fails to meet the terms of your listing (such as payment method); or
2. you cannot authenticate the buyer's identity.

**5.3 Fraud.** Without limiting any other remedies available to eBay at law, in equity or under this Agreement, eBay may, in its sole discretion, suspend or terminate your account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise in our sole discretion) have engaged in fraudulent activity in connection with our Site.

**5.4 VeRO Program.** eBay's Verified Rights Owner (VeRO) Program works to ensure that listed items do not infringe upon the copyright, trademark or other rights of third parties. VeRO Program participants and other rights owners can report infringing items, and have such items removed. VeRO Program participants and other rights owners may have limited access to some of your personal information as described in our Privacy Policy (at <http://pages.ebay.com.au/help/policies/privacy-policy.html>). For more information on the VeRO Program, see (<http://pages.ebay.com.au/help/community/vero-program.html>).

**5.5 Manipulation.** Neither you, nor any other bidders or sellers may manipulate the price of any item, nor may you interfere with other users' items listed for sale. For further information please refer to (<http://pages.ebay.com.au/help/confidence/programs-investigations.html>)

6. **Your Information.**

**6.1 Definition.** "Your Information" is defined as any information you provide to us or other users in the registration, bidding or listing process, in any public message area (including the Café or the feedback area) or through any email feature. Your Information includes the descriptions of items you list for sale or display on our Site as well as any content you post on other web pages within our Site. You are solely responsible for Your Information, and we act as a passive conduit for your online distribution and publication of Your Information.

**6.2 Restrictions.** Your Information (including but not limited to any items listed) must not:

1. be false, inaccurate or misleading;
2. be fraudulent or involve the sale of counterfeit or stolen items;

3. infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy;
4. violate any applicable law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, criminal law, antidiscrimination or trade practices/fair trading laws);
5. be defamatory, trade libelous, unlawfully threatening or unlawfully harassing;
6. be obscene or contain child pornography or, if otherwise adult in nature or harmful to persons under the age of 18 years, shall be distributed only to people legally permitted to receive such content (for further information refer to <http://pages.ebay.com.au/help/policies/mature-audiences.html>);
7. contain any content that may be considered to be prohibited or potentially prohibited content for the purposes of the Broadcasting Services Act 1992 (Cth) (for more information about this legislation, please refer to the Internet Industry Association's Codes of Practice located at <http://www.ii.net.au> or <http://www.aba.gov.au>);
8. contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, modify, delete, detrimentally interfere with, surreptitiously intercept, access without authority or expropriate any system, data or personal information;
9. create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers; and
10. **link directly or indirectly to or include descriptions of goods or services that:**
  1. are prohibited under this Agreement;
  2. are identical to other items you have up for auction but are priced lower than your item's reserve or minimum bid amount;
  3. are concurrently listed for sale on a web site other than eBay's (this does not prevent linking to or advertising an eBay item from another web site); or
  4. you do not have a right to link to or include

Furthermore, you may not list any item on our Site (or complete any transaction that was initiated using our service) that, by paying to us the listing fee or the final value fee, could cause us to violate any applicable law, statute, ordinance or regulation, or that violates our current Prohibited, Questionable and Infringing Items list (located at <http://pages.ebay.com.au/help/policies/items-ov.html>).

**6.3 License.** Solely to enable eBay to use the information you supply us with, so that we are not violating any rights you might have in that information, you agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in Your Information, in any media now known or not currently known, with respect to Your Information. eBay will only use Your Information in accordance with our Privacy Policy (at <http://pages.ebay.com.au/help/policies/privacy-policy.html>).

#### 7. **Access and Interference.**

Our Site contains robot exclusion headers and you agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or the content contained herein without our prior expressed written permission. You agree that you will not use any device, software or routine to bypass our robot exclusion headers, or to interfere or attempt to interfere with the proper working of our Site or any transaction being conducted through our Site. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Much of the information on our Site is updated on a real time basis and is proprietary or is licensed to eBay by

our users or third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for Your Information) from our Site without the prior express written permission of eBay or the appropriate third party authorised to grant such permission.

8. **Feedback.**

You may not take any actions that may undermine the integrity of the feedback system. If you earn a net feedback rating of -4 (minus four), your membership will be suspended, and you will be unable to list or bid.

**8.1 Export.** You acknowledge that your feedback consists of comments left by other users and a composite feedback number compiled by eBay, and that the composite number without the comments does not convey your full user profile. Because feedback ratings are not designed for any purpose other than for facilitating trading between eBay users, you agree that you shall not market or export your eBay feedback rating in any venue other than an eBay operated website.

**8.2 Import.** We do not provide the technical ability to allow you to import feedback from other websites to eBay because a composite number, without the corresponding feedback does not reflect your true online reputation within our community.

9. **Breach.**

**Without limiting other remedies available to eBay at law, in equity or under this Agreement, we may, in our sole discretion, immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your membership and refuse to provide our services to you if:**

1. you breach this Agreement, the Privacy Policy or the terms and policies those documents incorporate by reference;
2. we are unable to verify or authenticate any information you provide to us; or
3. we believe that your actions may cause legal liability for you, our users or us.

10. **Privacy.**

eBay has a Privacy Policy which applies to all members and is incorporated into this User Agreement by reference. Our current Privacy Policy is available (at <http://pages.ebay.com.au/help/policies/privacy-policy.html>) You must read and accept our Privacy Policy upon registration in order to use our Site, and you will continue to be bound by its provisions (and any amendments we make to the Privacy Policy) while you are a member of eBay. We also use third parties to verify and certify our privacy practices. To find out more about our Internet Standards Certification, please refer to <http://pages.ebay.com.au/archive/help/community/certification.html>

11. **No Warranty.**

**11.1 WE AND OUR SUPPLIERS PROVIDE OUR WEB SITE AND SERVICES ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. TO THE EXTENT PERMITTED BY LAW, WE AND OUR SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.** Furthermore we do not guarantee continuous, uninterrupted or secure access to our services, and operation of our Site may be interfered with by numerous factors outside our control.

**11.2** To the extent that eBay and all affiliates and related entities of eBay are able to limit the remedies available under this Agreement, and subject to Clause 12 of this Agreement, eBay and all affiliates and related entities of eBay expressly limit their liability for breach of a non-excludable condition or warranty implied by virtue of any legislation to the following remedies (the choice of which is to be at eBay's sole discretion):

**a. in the case of goods, any one or more of the following:**

1. the replacement of the goods or the supply of equivalent goods;

2. the repair of the goods;
3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
4. the payment of the cost of having the goods repaired; and

**b. in the case of services:**

5. the supply of the services again; or
6. the payment of the cost of having the services supplied again.

**11.3** If you are a New Zealand resident and the New Zealand **Consumer Guarantees Act 1993** applies to you, you agree that the provisions of the **Consumer Guarantees Act 1993** will not apply to the supply of the eBay services or these terms.

**12. 12. Liability Limit.**

**12.1** IN NO EVENT SHALL WE, OUR AFFILIATES AND RELATED ENTITIES OR OUR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH OUR SITE, OUR SERVICES OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE). YOU AGREE TO ACCEPT SOLE RESPONSIBILITY FOR THE LEGALITY OF YOUR ACTIONS UNDER THE LAWS WHICH APPLY TO YOU. YOU AGREE THAT EBAY AND ALL AFFILIATES AND RELATED ENTITIES OF EBAY HAVE NO RESPONSIBILITY FOR THE LEGALITY OF OUR MEMBERS' ACTIONS.

**TO THE EXTENT PERMITTED BY LAW, OUR LIABILITY, AND THE LIABILITY OF OUR SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE GREATER OF:**

1. THE AMOUNT OF FEES YOU PAY TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY; AND
2. AUD\$100.

**12.2** Notwithstanding the above provisions, nothing in this Agreement is intended to limit or exclude any liability on the part of eBay and its affiliates and related entities where and to the extent that applicable law prohibits such exclusion or limitation.

**13. Indemnity.**

You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, officers, directors, agents, and employees, harmless from and against any claims, demands, proceedings, losses and damages (actual, special and consequential) of every kind and nature, known and unknown, including reasonable solicitors' fees, made by any third party due to or arising out of your breach of this Agreement or the terms and policies it incorporates by reference, or your violation of any law or the rights of a third party.

**14. Legal Compliance.**

You shall comply with all applicable domestic (including common law) and international laws, statutes, ordinances and regulations regarding your use of our service and your bidding on, listing, purchase, solicitation of offers to purchase, and sale of items. Specifically, you must ensure that your activities, items you list, and Your Information you post on our Site do not violate the **Broadcasting Services Act 1992 (Cth)**, the **Trade Practices Act 1974 (Cth)** and other relevant state-based fair trading legislation. For more information about this legislation and other legislation which may apply to you, please refer to <http://www.austlii.edu.au> Notwithstanding the successful conclusion of a transaction on our Site, you must ensure strict compliance with any particular formalities which, if not complied with, will either render a transaction void or unlawful (eg. the sale of interests in real property ordinarily requires a written document to be created). YOU ALONE, AND NOT EBAY, ARE RESPONSIBLE FOR CONFIRMING THAT YOUR ACTIVITIES ARE LAWFUL. YOU MUST ENSURE THAT YOU COMPLY WITH ALL APPLICABLE LAWS. YOU MUST ALSO ENSURE THAT YOU COMPLY WITH ALL CLAUSES OF THIS USER AGREEMENT AND THE

PRIVACY POLICY, AND ALL OTHER TERMS AND POLICIES INCORPORATED BY REFERENCE IN THOSE DOCUMENTS.

15. **No Agency.**

You and eBay are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

16. **Notices.**

Except as explicitly stated otherwise, any notices shall be given by registered ordinary post (or if posted to or from a place outside Australia, by registered airmail) or by facsimile transmission to eBay International A.G., c/- Dibbs Abbott Stillman, Lawyers, Level 8, Angel Place, 123 Pitt Street, Sydney NSW 2000 Australia, Attention: C Kintis, Facsimile: +61 2 8233 9555, DX 101 Sydney (in the case of eBay) or to the email address you provide to eBay during the registration process (in your case). Alternatively, we may give you notice by certified airmail, postage prepaid and return receipt requested, to the address provided to eBay during the registration process, or as updated by you as relevant. Any notice shall be deemed given (a) if sent by email, 24 hours after email is sent, unless the sending party is notified that the email address is invalid, (b) if sent by pre-paid post, three Business Days after the date of posting, and on the seventh Business Day if sent to or posted from outside Australia, and (c) if sent by facsimile transmission, on the Business Day the transmission is sent (as long as the sender has a confirmation report specifying the facsimile number listed above, the number of pages sent and the date of the transmission). For purposes of this section, "Business Day" means a day on which banks are open for general business in Sydney, New South Wales, other than a Saturday, Sunday or public holiday.

17. **Arbitration.**

Any controversy or claim arising out of or in connection with this Agreement may at our discretion be settled by binding arbitration by reference to a commercial disputes centre. You agree to be bound by the ruling arbitrator. The costs of the dispute are borne by the originator.

18. **Additional Terms.** The following documents are incorporated into this User Agreement by reference, and you agree to be bound by the terms and policies outlined in these documents. Any changes to the policies set out below will be notified on our Announcements Board located at <http://www2.ebay.com/aw/marketing-au.shtml>

**18.1** Our Privacy Policy is available at <http://pages.ebay.com.au/help/policies/privacy-policy.html>. We may change our Privacy Policy from time to time and our changes are effective after we provide you with at least thirty (30) days' notice of the changes by posting the changes on the Announcement Board and sending email to users who select such notification.

**18.2** Our Outage Policy is available at <http://pages.ebay.com.au/help/policies/everyone-outage.html>. We may change our Outage Policy from time to time and our changes are effective after we provide you with notice of the changes by posting the changes on the Announcement Board.

**18.3** Our Board Usage Policy is available at <http://pages.ebay.com.au/help/policies/everyone-boards.html>. We may change the Board Usage Policy from time to time and our changes are effective after we provide you with notice of the changes by posting the changes on the Announcement Board.

**18.4** Our Non-Binding Bid Policy is available at <http://pages.ebay.com.au/help/policies/non-binding-bid.html>. We may change the Non-Binding Bid Policy from time to time and our changes are effective after we provide you with notice of the changes by posting the changes on the Announcement Board.

**18.5** Our Listing Policy is available at <http://pages.ebay.com.au/help/policies/listing-ov.html>. We may change the Listing Policy from time to time and our changes are effective after we provide you with notice of the changes by posting the changes on the



Announcement Board.

**18.6** Our SafeHarbour Policy is available at <http://pages.ebay.com.au/help/confidence/programs-investigations.html>. We may change the SafeHarbour Policy from time to time and our changes are effective after we provide you with notice of the changes by posting the changes on the Announcement Board.

**18.8** Our Non-Paying Bidder Policy is available at <http://pages.ebay.com.au/help/policies/non-payment.html>. We may change the Non-Paying Bidder Policy from time to time and our changes are effective after we provide you with notice of the changes by posting the changes on the Announcement Board.

**19. General.**

This Agreement shall be governed in all respects by the laws of the State of New South Wales, Australia. All members of this Site irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia. The provisions of this Agreement are severable, and if any provision of this Agreement is held to be invalid or unenforceable, such provision may be removed and the remaining provisions shall be enforced. You agree that this Agreement and all incorporated agreements may be automatically assigned by eBay, in our sole discretion, to a third party in the event of a merger or acquisition. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. You agree that this Agreement may not be construed adversely against us solely because we prepared it. This Agreement and the terms and conditions incorporated herein set forth the entire understanding and agreement between us with respect to the subject matter hereof. Sections 2 (Fees and Services) with respect to fees owed for our services, 3.3 (Release), 6.3 (License), 7 (Access and Interference), 12 (Liability Limit), 13 (Indemnity) and 17 (Arbitration) shall survive any termination or expiration of this Agreement.

**20. Disclosures** The services hereunder are offered by eBay International A.G, located at Bubenberplatz 5, 3011, Bern, Switzerland. Fees for our services are described at (<http://pages.ebay.com.au/help/sell/fees.html>)

Commercially available parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist you in limiting access to material that is harmful to persons under the age of 18 years. If you are interested in learning more about these protections, information is available at <http://www.worldvillage.com/wv/school/html/control.htm> or other analogous sites providing information on such protections. The preceding link is provided for information purposes only, and is not intended as an endorsement of WorldVillage.com's Internet site, services, or policies. eBay is not affiliated with WorldVillage.com. Disputes between you and eBay regarding our services may be reported to [Customer Support](#). We encourage you to try and resolve disputes with other users directly with them, and to use a certified mediation or arbitration entity or report disputes to your local police or law enforcement agency as appropriate.