

EPEX LIMITED – WEBSITE TERMS OF USE

Effective 1 July 2020
Date last updated: 1 July 2020

TERMS AND CONDITIONS

1. User's Acknowledgment and Acceptance of Terms

- 1.1 Epex Ltd ("Us" or "We") provides the Epex website, user platform and various related services (collectively, the "site") to you, the user, subject to your compliance with all of the terms and notices contained or referenced in this website (the "Terms of Use"), and any other written agreement between Us and you. All such terms and notices are incorporated by reference into these Terms of Use. In these Terms of Use, "Content" means any information, data, communications, software, photo, video, graphic, and other material and services that can be accessed, used or viewed by users of our site. This includes message boards, chat, and other original content.
- 1.2 BY USING THIS SITE, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF USE. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF USE, PLEASE EXIT THE SITE NOW. YOUR REMEDY FOR DISSATISFACTION WITH THIS SITE, OR ANY PRODUCTS, SERVICES, CONTENT, OR OTHER INFORMATION AVAILABLE ON OR THROUGH THIS SITE, IS TO STOP USING THE SITE AND/OR THOSE PARTICULAR PRODUCTS OR SERVICES. YOUR AGREEMENT WITH US REGARDING COMPLIANCE WITH THESE TERMS OF USE BECOMES EFFECTIVE IMMEDIATELY UPON COMMENCEMENT OF YOUR USE OF THIS SITE.
- 1.3 These Terms of Use are effective as of 1 July 2020. We expressly reserve the right to change these Terms of Use from time to time without notice to you. You acknowledge and agree that it is your responsibility to review this site and these Terms of Use from time to time and to familiarise yourself with any modifications. Your continued use of this site after such modifications will constitute acknowledgement of the modified Terms of Use and agreement to abide and be bound by the modified Terms of Use.
- 1.4 As used in these Terms of Use, references to our "Affiliates" includes our owners, subsidiaries, affiliated companies, officers, directors, suppliers, partners, sponsors, and advertisers, and includes (without limitation) all parties involved in creating, producing, and/or delivering this site and/or its Content.

2. Description of Services

- 2.1 We make various services available on this site including, but not limited to, providing a forum to list real estate for sale and enabling sale and purchase of real estate. We reserve the sole right to either modify or discontinue the site, including any of the site features, at any time with or without notice to you. We will not be liable to you or any third party should We exercise such right. Any new features that augment or enhance the then-current services on this site shall also be subject to these Terms of Use.

2.2 Even though sellers and buyers of real estate use our site and we refer to some potential transactions using our site as an auction, we and our Affiliates are neither a real estate agent nor an auctioneer.

2.3 Epex provides a platform to enable the transaction of property. All transactions and other contact between you and other users is entirely at your risk.

3. Our Fees

3.1 Our current fees are set out on the site. By using our services you agree to pay our fees as set out on the site. Our fees are not refundable.

3.2 We may change our fees, and notification of this and the time when the new fees come into effect will usually be announced through our site.

3.3 Our fees include GST or applicable service taxes unless otherwise stated. You will be provided with a tax invoice for amounts paid.

4. Registration Data and Privacy

4.1 In order to access some of the services on this site, you will be required to use an account and password that can be obtained by completing the applicable online registration form, which requests certain information and data ("Registration Data"), and to maintain and update your Registration Data as required. By registering, you agree that all information provided in the Registration Data is true and accurate and that you will maintain and update this information as required in order to keep it current, complete, and accurate.

4.2 The information we obtain through your use of this site and uses we might make of the information, including your Registration Data, is subject to our [Privacy Policy](#), which is specifically incorporated by reference into these Terms of Use.

5. Conduct on Site

5.1 Your use of the site is subject to all applicable laws and regulations, and you are solely responsible for your communications through the site. By using our site, posting information in or otherwise using any communications service, chat room, message board, newsgroup, software library, or other interactive service that may be available to you on or through this site, you agree that you will not upload, share, post, or otherwise distribute or facilitate distribution of any Content, including text, communications, software, images, sounds, data, or other information, that:

- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene or otherwise violates our rules or policies (which may be updated or amended from time to time);
- victimises, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- infringes on any trade mark, trade secret, copyright, patent, right of publicity, or other proprietary right;
- constitutes unauthorised or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling;

- contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party; or
 - impersonates any person or entity, including any of our employees or representatives.
- 5.2 You may not use a robot, spider, scraper or other unauthorised automated means to access the site or information featured on it for any purpose. You also may not manually scrape, harvest or otherwise extract data from the site without our express permission.
- 5.3 We neither endorse nor assume any liability for the contents of any material uploaded or submitted by third party users of the site including, without limitation, Content. We generally do not pre-screen, monitor, or edit the Content posted by users of communications services, chat rooms, message boards, newsgroups, software libraries, or other interactive services that may be available on or through this site. However, we and our agents have the right at their sole discretion to remove any Content that, in our judgment, does not comply with these Terms of Use and any other rules of user conduct for our site, or is otherwise harmful, objectionable, or inaccurate. We are not responsible for any failure or delay in removing such Content. You consent to such removal and waive any claim against Us arising out of such removal of Content.
- 5.4 In addition, you may not use your account to breach the security of another account or attempt to gain unauthorised access to another network or server. Not all areas of the site may be available to you or other authorised users of the site. You shall not interfere with anyone else's use and enjoyment of the site or other similar services. Users who violate systems or network security may incur criminal or civil liability.
- 5.5 You agree that we may at any time, and at our sole discretion, terminate your membership, account, or other affiliation with our site without prior notice to you for violating any of the Terms of Use. In addition, you acknowledge that we will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in investigating suspected criminal violations.

6. Third Party Sites, Information and Interactions

- 6.1 This site may link you to other sites on the Internet or otherwise include references to information, documents, software, materials and/or services provided by other parties. These other sites and parties are not under our control, and you acknowledge that we are not responsible for the accuracy, copyright compliance, privacy compliance, legality, decency, or any other aspect of the content of such sites, nor are we responsible for errors or omissions in any references to other parties or their products and services. The inclusion of such a link or reference is provided merely as a convenience and does not imply endorsement of, or association with, the site or party by Us, or any warranty of any kind, either express or implied.

7. Intellectual Property Information

- 7.1 This website and its Content is copyright ©2020 Epex Ltd. All rights reserved. EPEX is a registered trade mark of Epex Ltd in New Zealand.
- 7.2 Epex Ltd is also the owner of unregistered rights in the EPEX trade mark and the goodwill related to the trade mark. Nothing in these Terms of Use grants you any right to use any trade mark, service mark, logo, and/or the name of Epex Ltd or its Affiliates.
- 7.3 You may only use Our site for its specific purpose. Unless expressly authorised by Us or otherwise agreed in writing, you agree not to reproduce, duplicate, copy or use for any commercial purposes any portion of this site or Content.
- 7.4 Neither we nor our Affiliates warrant or represent that your use of Content displayed on, or obtained through, this site will not infringe the rights of third parties.

8. Use of Materials

- 8.1 Subject to our [Privacy Policy](#), any communication or material that you transmit to this site or to us, whether by electronic mail, posting or other means, for any reason, will be treated as non-confidential and non-proprietary and free from any confidentiality restrictions that might otherwise be imposed upon Epex whether through a written or electronic agreement with Epex or otherwise. You grant Us and our agents and Affiliates a non-exclusive, paid-up, perpetual, and worldwide right to copy, distribute, display, perform, publish, translate, adapt, modify, and otherwise use such material for any purpose regardless of the form or medium (now known or not currently known) in which it is used.
- 8.2 Notwithstanding the foregoing, by providing Epex with feedback, suggestions or information about your preferences (Feedback), you grant to Epex a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual licence to use any Feedback and/or to incorporate such Feedback into the Epex Site or any service or product developed by Epex.

9. Disclaimer of Warranties

- 9.1 ALL CONTENT ON THIS SITE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT (A) THE CONTENT WILL MEET YOUR REQUIREMENTS, (B) THE CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE CONTENT WILL BE EFFECTIVE, ACCURATE OR RELIABLE, OR (D) THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION PURCHASED OR OBTAINED BY YOU FROM OR THROUGH THE SITE, FROM US OR FROM OUR AFFILIATES WILL MEET YOUR EXPECTATIONS OR BE FREE FROM MISTAKES, ERRORS OR DEFECTS.
- 9.2 THIS SITE COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS. WE MAY MAKE CHANGES TO THE CONTENT, INCLUDING THE PRICES AND DESCRIPTIONS OF ANY PRODUCTS LISTED, AT ANY TIME WITHOUT NOTICE. THE CONTENT MAY BE OUT OF DATE, AND WE MAKE NO COMMITMENT TO UPDATE SUCH CONTENT.

- 9.3 THE USE OF THE SERVICES OR THE DOWNLOADING OR OTHER ACQUISITION OF ANY CONTENT THROUGH THIS SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH ACTIVITIES.
- 9.4 WE MAKE NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED THROUGH, OR IN CONNECTION WITH THIS SITE, AND YOU UNDERSTAND AND AGREE THAT SUCH TRANSACTIONS ARE CONDUCTED ENTIRELY AT YOUR OWN RISK. ANY WARRANTY THAT IS PROVIDED IN CONNECTION WITH ANY PROPERTY, PRODUCTS, SERVICES, CONTENT, MATERIALS, OR INFORMATION AVAILABLE ON OR THROUGH THIS SITE FROM A THIRD PARTY IS PROVIDED SOLELY BY SUCH THIRD PARTY, AND NOT BY US OR ANY OF OUR AFFILIATES.
- 9.5 Content available through this site often represents the opinions and judgments of an information provider, site user, or other person or entity not connected with us. We do not endorse, nor are we responsible for the accuracy or reliability of, any opinion, advice, or statement made by anyone other than an authorised Epex Ltd spokesperson speaking in his/her official capacity.
- 9.6 You understand and agree that temporary interruptions of the services available through this site may occur as normal events. You further understand and agree that we have no control over third party networks you may access in the course of the use of this site, and therefore, delays and disruption of other network transmissions are completely beyond our control.
- 9.7 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

10. Limitation of Liability

- 10.1 IN NO EVENT SHALL WE OR OUR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THIS SITE OR OF ANY WEB SITE REFERENCED OR LINKED TO FROM THIS SITE.
- 10.2 SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

11. Indemnification

- 11.1 Upon a request by us, you agree to defend, indemnify, and hold Us and our Affiliates harmless from all liabilities, claims, and expenses, including attorney(s) fees, that arise from your use or misuse of this site. We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

12. Security and Password

- 12.1 Where you register for elements of this site, you are solely responsible for maintaining the confidentiality of your password and account and for any and all statements made and acts or omissions that occur through the use of your password and account. Therefore, you must take steps to ensure that others do not gain access to your password and account. Our personnel will never ask you for your password. You may not transfer your account, and we reserve the right to immediately terminate your account if you do attempt to transfer your account.

13. Email, Messaging, Blogging, and Chat Services

- 13.1 We may make email, messaging, blogging, or chat services (collectively, “Communications”) available to users of our site, either directly or through a third-party provider. If we make available separate supplemental agreements characterising the relationship between you and Us for those purposes, except where expressly noted or contradictory, they include these Terms of Use.
- 13.2 We will not inspect or disclose the contents of private Communications except with the consent of the sender or the recipient, or in the narrowly-defined situations provided under applicable privacy or data protection laws, or as otherwise required by law or by court or governmental order. Further information is available in our [Privacy Policy](#).
- 13.3 We may employ automated monitoring devices or techniques to protect our users from mass unsolicited communications (also known as “spam”) and/or other types of electronic communications that we deem inconsistent with our business purposes. However, such devices or techniques are not perfect, and we will not be responsible for any legitimate communication that is blocked, or for any unsolicited communication that is not blocked.
- 13.4 Mailboxes may have a limited storage capacity. If you exceed the maximum permitted storage space, we may employ automated devices that delete or block email messages that exceed the limit. We will not be responsible or have any liability for such deleted or blocked messages.

14. Termination of Use

- 14.1 You agree that we may, in our sole discretion, terminate or suspend your access to all or part of the site with or without notice and for any reason, including, without limitation, breach of these Terms of Use. Any suspected fraudulent, abusive or illegal activity may be grounds for terminating your relationship and may be referred to appropriate law enforcement authorities.
- 14.2 Upon termination or suspension, regardless of the reasons, your right to use the services available on this site immediately ceases, and you acknowledge and agree that we may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or this site. We shall not be liable to you or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by Us in connection with such termination or suspension.

15. Governing Law

- 15.1 The laws of New Zealand apply to all matters relating to the use of this site and the purchase of services available through this site, and each of us agrees and submits to the exclusive jurisdiction and venue of the New Zealand courts.

16. Notices

- 16.1 All notices to a party shall be in writing and shall be made via email or conventional mail. Notices to Us must be sent to the attention of Customer Support through [Contact Us](#). If you are registered, notices to you may be sent to the address supplied by you as part of your Registration Data. In addition, we may broadcast notices or messages through the site to inform you of changes to the site or other matters of importance, and such broadcasts shall constitute notice to you at the time of sending.

17. Entire Agreement

- 17.1 These terms and conditions constitute the entire agreement and understanding concerning their subject matter and supersede all prior agreements and understandings. These Terms of Use may not be altered, supplemented, or amended by you through the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for services which are subject to additional or altered terms and conditions shall be of no effect unless otherwise agreed to in a written agreement signed by you and Us.

18. Miscellaneous

- 18.1 In any action to enforce these Terms of Use, the prevailing party will be entitled to costs and attorney's fees. Any cause of action brought by you against Us or our Affiliates must be instituted within one year after the cause of action arises or be deemed forever waived and barred.
- 18.2 You may not assign your rights and obligations under these Terms of Use to any party, and any purported attempt to do so will be null and void. We may assign our rights and obligations under these Terms of Use.
- 18.3 In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of anything available through our site arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to, labour disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are set out above.
- 18.4 If any part of these Terms of Use is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.
- 18.5 Any failure by Us to enforce or exercise any provision of these Terms of Use or related rights shall not constitute a waiver of that right or provision.

19. **Contact Information**

- 19.1 Except as explicitly noted on this site, the services available through this site are offered by Epex Ltd of Auckland, New Zealand. If you notice that any user is violating these Terms of Use, please contact Us through [Contact Us](#).