

TERMS AND CONDITIONS

Introduction

1. These are the Terms of Service that govern your use of the PropertyPricer platform at <https://propertypricer.com.au>, together with any other platform operated by Focus Property Valuations Pty Ltd t/as PropertyPricer (ABN 77 644 641 047) (“**PropertyPricer**”, “**we**”, “**our**”, “**us**”) (the “**Platform**”). By using the Platform, you agree to these Terms of Service and other PropertyPricer policies (including our privacy policy) that we publish or update from time to time.

Services

2. PropertyPricer grants individuals who have created an account and paid for a subscriber tier with PropertyPricer (“**Subscribers**”) a licence to use the Platform to access point-in-time, tailored price guides for properties (the “**Price Information**”), based on a) sales data as obtained by PropertyPricer through third party data providers, and b) the Subscriber’s answers to a questionnaire provided by PropertyPricer.
3. The licence granted in clause 2 is limited to the subscription period the Subscriber has signed up for in the Platform (the “**Subscription Period**”), as well as the geographical area and the number of properties selected and paid for by the Subscriber through the Platform (or if not specified, for 1 week and 1 property).

Scope of Use

4. Subscribers must only use the Platform and Price Information for:
 - a. the Subscriber’s personal use; or
 - b. if the Subscriber is a business, within the business branch nominated by the Subscriber (and provided that the business branch has no more than 10 individuals) and for internal business purposes.
5. Subscribers must not use the Platform and Price Information for:
 - a. reproduction, distribution, publishing, disclosure, resale, commercialisation, re-use, sub-licensing, hire, or other provision to third parties;
 - b. inclusion in publications or promotional material;
 - c. deriving revenue directly from the Price Information;
 - d. compiling or combination or filtering of any contact lists or marketing campaign; or

- e. Any other purposes not referred to in these Terms of Service, without our prior written consent in each case, which may be given, given subject to conditions, withheld, or revoked in our sole discretion at any time.
6. If you use the Price Information in any publication, you must ensure that:
 - a. the publication contains any notices required by PropertyPricer from time to time, and such notices are not removed or altered without the prior written consent of PropertyPricer in each case;
 - b. the publication attributes PropertyPricer, in a form approved by PropertyPricer, as the source of the Price Information;
 - c. the Price Information is not used in a way that is misleading or deceptive, or in a way that may damage the reputation or goodwill of PropertyPricer.
7. The Price Information is based on pricing information provided to us by third parties, your answers to our property questionnaire, and our confidential algorithm. Given the inherent uncertainty of the property market, PropertyPricer does not warrant that the Price Information is accurate, current, complete, or suitable for any purpose at the time of its supply or your use of the Price Information. You must use your independent skill, care and judgment in relation to the Price Information, and must carefully consider its relevance to your intended purpose and obtain any professional advice appropriate to your particular circumstances.

Accounts

8. You are required to create a user account to become a Subscriber and use the Platform. You must provide PropertyPricer with all information required by PropertyPricer to create an account, and you warrant that all such information is correct and complete.
9. You must take all necessary security measures to protect your password and prevent unauthorised access to your account, and you are solely responsible and liable for the activity that occurs on or in relation to your account, whether expressly authorised or otherwise. You must ensure that all activity on or in relation to your account complies with these Terms and Conditions, including the General Usage Rules defined below, and all applicable laws and regulations that may apply to your use of the Platform.
10. You must notify PropertyPricer immediately if you suspect a breach of security or unauthorized use of your account, username or password, and you may only register a single account in respect of yourself or your business. PropertyPricer may give you notices and formal communications through the Platform.

Payments

11. You must pay PropertyPricer the amounts set out on the Platform for your chosen subscription, together with any applicable taxes, duties, levies and transaction fees. PropertyPricer will charge your nominated payment account at the time of your subscription, and then in accordance with your subscription cycle. The Subscription Period will automatically renew unless you terminate your account with PropertyPricer.
12. Prices are in Australian dollars and include applicable taxes, including GST. Surcharges may apply depending on your selected payment method.
13. PropertyPricer can use third party payment providers to facilitate your payment. You must provide the third party payment provider with accurate, complete and valid payment information. You acknowledge that PropertyPricer does not own, operate or control such third party payment providers, and that you may be required to agree to such third-party payment providers' further terms and conditions.
14. PropertyPricer will issue invoices in accordance with your subscription cycle to your nominated email address.

General Usage Rules

15. You must not:
 - a. act inappropriately or offensively while using the Platform;
 - b. use the Platform to post or communicate material that is objectionable, offensive, defamatory, unlawful, misleading or deceptive, or harmful;
 - c. use the Platform and its contents other than as expressly permitted by these Terms of Service;
 - d. reproduce any content uploaded to the Platform by others in any form or by any means other than in accordance with these Terms of Service;
 - e. use the Platform to impersonate or misrepresent your affiliation with another company, person or entity;
 - f. if you are or represent a competitor of PropertyPricer, use or reproduce the Platform for commercial or research purposes;
 - g. use the Platform to plan or engage in any illegal, fraudulent, or manipulative activity;
 - h. alter or modify any part of the Platform or its contents;
 - i. disable, tamper with or circumvent any measures or security technology included in the Platform;
 - j. use the Platform with the aim of interrupting, destroying or limiting the functionality of any computer hardware, software, telecommunication or

- equipment associated with the Platform, including any software viruses or any other computer code, files or programs; or
- k. use any scraper, robot, spider, or other automated means to access the Platform; or decompile, disassemble, reverse engineer, attempt to derive the source code of, modify, or create derivative works of any content, information or materials accessible through the Platform or the Platform itself.

Warranties

16. You warrant that all information and material you provide through the Platform, and your acts or omissions in relation to or arising from the Platform, will not: (i) infringe any other person's or other legal entity's proprietary rights (including, without limitation, any intellectual property rights) or rights of publicity and privacy, or causes PropertyPricer to infringe the rights of any third party; (ii) violate any law, statute, ordinance or regulation; or (iii) contain any viruses, Trojan horses, worms or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Platform or any activities being conducted on the Platform. You may not take any action, which imposes an unreasonable or disproportionately large load on our infrastructure. You may not disclose or share your password with any third parties or use your password for any unauthorised purpose.

Indemnity

17. You indemnify, defend and hold PropertyPricer harmless for all liability, claims, damages, costs and expenses, including legal fees (on a lawyer/client basis), arising out of or in connection with a breach by you of any your obligations, representations and warranties provided in this Agreement. This indemnity survives the termination of these Terms of Service for any reason.

Limitation of Liability

18. You acknowledge you are using the Platform and relying on material on the Platform at your own risk. We provide the Platform "as is" and, other than the consumer guarantees under the Australian Consumer Law, to the extent

permitted by law we make no other warranties or representations, express or implied, in relation to the Platform or the services supplied through the Platform, including the Price Information. In particular, we do not warrant that:

- a. the Platform will provide Price Information for all residential properties in Australia at any point in time, or that the formula for the Price Information is in accordance with any particular methodology; or
 - b. that the Platform will be accurate, reliable, provide merchantable information, will be uninterrupted, virus-free, or is non-infringing.
19. If any of the exclusions or limitations set out in this clause are declared illegal or void or if you claim that there has been a breach of a term, condition, warranty, statement or assurance which cannot be excluded by this agreement, to the extent permitted by law, our entire liability and your exclusive remedy is limited, at our discretion, to the re-supply of the services; or the payment of the cost of having the services re-supplied.
20. In no event will PropertyPricer (including its directors, officers, agents, employees or contractors) be liable for any direct loss or indirect or consequential loss (even if we are aware of the possibility of such loss or if such loss was otherwise foreseeable), (including, but not limited to, loss of profits, production, data, opportunity or goodwill; or business interruption) however caused and on any theory of liability, including without limitation, contract or tort (including negligence or otherwise) arising during and/or as a result of the performance or non-performance of these Terms of Service by PropertyPricer, to the extent permitted by law.
21. Where the Platform contains links to third-party sites, PropertyPricer provides such links for convenience and does not endorse the content of any such sites. PropertyPricer does not have control over, and excludes all liability in respect of, any such third-party site.

Our IP Rights and confidentiality

22. You agree that you have no rights in or to the whole or any part of PropertyPricer's trade marks (including the name "PropertyPricer") or the PropertyPricer logo, nor to any of the Platform's design, artwork, literary, sound or audio visual components or processes. To the extent that you have any such rights, you assign them to us (and agree to execute all documents necessary to perfect that assignment). You will not, except as otherwise permitted by these Terms of Service or in writing by us, disclose, make use of or otherwise infringe our intellectual property rights. This promise shall survive the expiration or termination of these Terms of Service.

23. You grant to PropertyPricer an irrevocable, perpetual, non-exclusive, royalty-free, world-wide licence to use, copy, modify, creative derivative works based on, display, distribute, exploit and commercialise any of your communications (or ideas and concepts contained in such communications) with PropertyPricer.
24. You acknowledge that the prices provided on the PropertyPricer Platform are based on a confidential and proprietary formula.

General Terms

25. All matters arising from or relating to this Agreement and all the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance and enforcement shall be governed by the laws of New South Wales, Australia without regard to conflicts of law principles. The parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.
26. You cannot assign all or any part of these Terms of Service without our prior written consent. We may assign our rights and/or obligation under these Terms of Service at any time without notice to you.
27. The failure of PropertyPricer to exercise or enforce any right or provision of these terms of use does not constitute a waiver of such right or provision, which will still be available to PropertyPricer.
28. You can contact PropertyPricer with questions, complaints, or claims with respect to the Platform with the following contact details:
 - a. **Name:** Focus Property Valuations Pty Ltd t/as PropertyPricer
 - b. **Address:** [insert]
 - c. **Contact email:** [insert]
 - d. **Contact number:** [insert]

Breaches of these Terms of Service and termination

1. If PropertyPricer considers that you have or may have breached these Terms of Service, or that your account has been compromised, PropertyPricer can in its sole discretion (without limiting any other rights it may have in these Terms of Service) any or all of the following:
 - a. terminate your licence to use Price Information and require you to return and delete all Price Information in your control, custody or possession;
 - b. terminate your account with PropertyPricer and these Terms of Service; and/or

- c. require you to immediately pay PropertyPricer for any costs or expenses it has incurred in relation to your breach or potential breach, including in investigating your breach or potential breach.
2. You agree that monetary damages may not be a sufficient remedy for your breach or threatened breach of these Terms of Service, and you agree that PropertyPricer can seek equitable relief, including injunctions and specific performance for any breach or threatened breach by you of these Terms of Service.

Privacy

29. You agree to the terms of the PropertyPricer Privacy Policy, as updated from time to time.

Relationship with Apple and Other App Distributors

3. Clauses 4 to 13 of these Terms of Service apply if you have downloaded the Platform on an Apple, Inc. (“**Apple**”) device.
4. These Terms of Service (or end-user licence agreement, or “**EULA**”) are concluded between you and PropertyPricer only, and not with Apple or any other platform or store on which we may distribute the Platform (an “**App Distributor**”). As between PropertyPricer and Apple, PropertyPricer is solely responsible for the Platform and the content thereof. In particular, you and PropertyPricer acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Platform.
5. As between PropertyPricer and Apple, PropertyPricer is solely responsible for providing any maintenance and support services with respect to the Platform in accordance with these Terms of Service, or as required under applicable law.
6. PropertyPricer and you acknowledge and agree that Apple, and Apple’s subsidiaries, are third party beneficiaries of the EULA, and that, upon your acceptance of these Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce the EULA against you as a third party beneficiary thereof.
7. As between PropertyPricer and Apple, PropertyPricer is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Platform to conform to any applicable warranty, an end user may notify Apple, and Apple will refund the purchase price for the Platform to that User. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with

- respect to the Platform, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be PropertyPricer's responsibility (as between PropertyPricer and Apple).
8. In the event of any third party claim that the Platform or the User's possession and use of that the Platform infringes that third party's intellectual property rights, then as between PropertyPricer and Apple, PropertyPricer will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
 9. PropertyPricer, not Apple, is responsible for addressing any claims of user or any third party relating to the Platform or the end user's possession and/or use of the Platform, including, but not limited to: (i) product liability claims; (ii) any claim that the Platform fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation, including in connection with the use of the HealthKit and HomeKit frameworks, if any.
 10. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
 11. You must comply with applicable third party terms of agreement when using the Platform.
 12. In the event of any inconsistency between these Terms of Service and the Apple *Instructions for Minimum Terms of Developer's End-User License Agreement* (the "**Apple Minimum Terms**") or the Apple Media Services Terms of Service, the Apple Minimum Terms or the Apple Media Services Terms of Service will prevail.
 13. PropertyPricer grants you a limited, non-exclusive, non-transferable, limited licence to use the Platform for your personal, non-commercial and non-promotional use. If you have installed the Platform on an Apple device, you can use the Platform in accordance with this licence on any Apple-branded products that you own or control, and as permitted by the usage set forth in the Apple Media Services Terms of Service, except that the Platform may be accessed and used by other accounts associated with the purchaser via Family Sharing or volume purchasing.

Last updated 7 April 2021