



Welcome to our website and mobile app

# Website and Mobile Application Terms of Use

Version 1.0 | September 2020



## Use of the Site/App

This website and the accompanying mobile application (collectively, **Site/App**) are provided by ESC Operations Pty Ltd (ACN 635 424 538), trading as Upstreet (**Upstreet, we, us, our**). In respect of the provision of financial services under the Corporations Act 2001 (Cth), Upstreet is an authorised representative (Authorised Representative no. 001283677) of Cache Investment Management Pty Ltd (ACN 624 306 430 AFSL 514360), a subsidiary of Cache IM Holdings Pty Ltd (ACN 624 289 989) (collectively, the **Cache Group**).

Upstreet offers a rewards program for shoppers, the terms and conditions of which are set out on our website at [upstreet.co](https://upstreet.co) (**Upstreet Rewards Program**).

Use of the Site/App is subject to the following terms and conditions (collectively, **Terms**). These Terms should be read in conjunction with our Privacy Policy (see [here](#) and section 5 below).

Please read the Terms and the Privacy Policy carefully. By using the Site or downloading the App, you acknowledge that you have read and agree to be bound by the Terms and the Privacy Policy. If you continue to use the Site/App after we post any new or varied terms on the Site/App, the Terms incorporate those new or varied terms. You are responsible for keeping up to date of any changes by regularly reviewing these Terms.

These Terms constitute an agreement between Upstreet and you. However, you will not be entitled to participate in the Upstreet Rewards Program as you shop before you register as a User.

### 1. Your Account

#### Account creation

To participate in the Upstreet Rewards Program as you shop, you must have an account with us (your **Account**). To obtain an Account, you must enter information and follow the steps at the [Create an Account] link on the Site/App, including confirming that you have read and agreed to the terms and conditions of the Upstreet Rewards Program and the Product Disclosure Statement (described in section 2 below). By requesting an Account, you

warrant to us that you are a natural person who is over the age of 18 years or who has parental or guardian approval to use the Site/App.

If we accept your request and open your Account, you will be eligible to the Upstreet Rewards Program as you shop subject to these Terms.

You must ensure that the information entered when setting up your Account remains accurate and up-to-date.

#### Use of your Account

You acknowledge that we may provide access to your Account to any person using any PIN, password or other secure access measure we issue to you (**Access Tool**). You must therefore do everything necessary to protect these from disclosure to any other person.

Any action or request made by any user of your Account or Access Tool (**Instruction**) will be deemed to have been made by you and the Instruction will be carried out without further enquiry. You will be responsible for all Instructions and any consequential transactions using your Account or Access Tool whether authorised by you or not. Neither Upstreet nor Cache Group shall be liable for acting on an Instruction.

You must notify us immediately if you become aware that your Access Tool has been lost or stolen or if you have forgotten your Access Tool. A new Access Tool may be provided to you.

You may notify us at any time if you want your Account suspended or cancelled at any time.

### 2. Upstreet Rewards Program

With an Account, you may participate in the Upstreet Rewards Program in relation to offers with our partners as you shop with them. The details of the Upstreet Rewards Program are set out on our website at [upstreet.co](https://upstreet.co). In the event of any inconsistency between information on the Site/App and information contained on our website about the Upstreet Rewards Program, the information on our website will prevail.

## Use of the Site/App

Subject to the terms and conditions of the Upstreet Rewards Program, you may be able to be beneficially entitled to a fractional interest in securities and other financial products issued by our partners or their affiliates or by third parties. Title to these securities and other financial products are held by the trustee of the Upstreet Fund (ARSN 643 467 798) (**Upstreet Fund**). The Upstreet Fund is a managed investment scheme registered with the Australian Securities and Investments Commission and the responsible entity and trustee of the Upstreet Fund is Melbourne Securities Corporation Limited (ACN 160 326 545, AFSL 428289). If you are beneficially entitled to a fractional interest in securities and other financial products under the Upstreet Rewards Program, your entitlement to such financial products will be held by way of an interest in the Upstreet Fund.

Details about the Upstreet Fund are set out in the [Product Disclosure Statement](#) for the Upstreet Fund.

### 3. Important information

#### No advice

The Site/App has been prepared for general promotional purposes only and is not a recommendation to buy, or an offer or solicitation to sell, any financial product.

The Site/App is intended to provide general information and must not be construed as general or specific investment or professional advice. No direct or implicit recommendations are given in the information on the Site/App.

The Site/App has been prepared without taking into account the personal objectives, financial situation or needs of any particular person. We recommend you obtain financial advice specific to your situation before making an investment decision.

#### Product Disclosure Statement

The Product Disclosure Statement (**PDS**) for the Upstreet Fund for any financial product referenced on the Site/App forms the complete

and definitive source of information in relation to an interest in the Upstreet Fund. In the event of any inconsistency between information on the Site/App and information contained in the PDS, the PDS will prevail. You agree that the PDS and any other information relating to related financial products and financial services may be sent to you by email.

#### Incorporated terms

When you are registered as a User, these Terms will be deemed to incorporate the terms and conditions of the Upstreet Rewards Program and the PDS.

### 4. Liability

#### Exclusion of implied warranties

We make only the warranties expressly set out in these Terms and, to the maximum extent permitted by law, we exclude all warranties, conditions and guarantees that otherwise would be implied in these Terms (including warranties of satisfactory quality, merchantability and fitness for purpose).

#### Limitation of our liability (if any) to you

To the maximum extent permitted by law, the total liability of Upstreet and Cache Group to you (if any) for loss or damage arising out of or in connection with the Site/App, the breach of these Terms or breach of the Privacy Policy, negligence or on any other basis, is limited to at our election, to:

- in the case of services supplied or offered by us, the re-supply of the services or payment of the cost of having the services supplied again; and
- in the case of goods supplied or offered by us, the repair or replacement of the goods, supply of equivalent goods, or payment of the cost of doing this.

Under the Australian Consumer Law (ACL), consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for purpose of goods and services (known as 'Consumer Guarantees'). The above limitation of liability also applies if we

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breach any Consumer Guarantee, unless the services and goods we supply or offer are acquired for personal use or it would not be fair and reasonable for the limitation of liability to apply in the circumstances.

### Excluded losses

To the maximum extent permitted by law, neither Upstreet nor the Cache Group is liable on any basis for:

- any indirect, special or consequential loss;
- any loss of revenue, profits, opportunity or goodwill;
- any loss or damage you incur because the Site/App is unavailable or any functionality of the Site/App is restricted or impaired; or
- any loss or damage you incur because you are unable to access or use the Site/App or your Account after we suspend or remove your access to the Site in accordance with our rights in these Terms.

## 5. Information handling

You agree to provide true, accurate, current and complete information about yourself and your accounts maintained by third parties and you agree to not misrepresent your identity or your account information held with third parties.

Any personal information collected by us (in connection with the Site/App or otherwise) will be dealt with in accordance with our [Privacy Policy](#).

You agree that we may collect and use technical data and related information, including but not limited to technical information about:

- your smartphone and other hardware devices; and
- your systems and other application software to facilitate the provision of software and other updates to the Site/App.

## 6. Third Party Links and materials

The Site/App may contain links to other websites or applications (**Third Party Links**). You agree that:

- Third Party Links are provided for convenience only and may not remain current or be maintained;
- we are not responsible for the content or privacy practices associated with Third Party Links and have no control over those Third Party Links;
- Third Party Links are not an endorsement, approval or recommendation by us of the owners or operators of the Third Party Links, or of any information, graphics, materials, products or services referred to or contained on those Third Party Links;
- it is your responsibility to check the terms and conditions on any Third Party Links, as any such terms and conditions have not been contemplated in these Terms; and
- you indemnify us against any loss or damage which we suffer as a result from your use of Third Party Links in a way which breaches the terms and conditions which govern their use.

You acknowledge that any third party materials appearing on the Site/App (including blog posts or articles provided by others) are not necessarily controlled or monitored by us and that the views expressed are not necessarily ours.

## 7. Copyright and intellectual property notices

### Copyright and trademark notices

Unless expressed to the contrary, all copyright, trademarks and other intellectual property rights contained in the Site/App and the materials appearing on it are owned or licensed by us and may not be reproduced, stored, adapted, uploaded to a third party system or used without our prior written permission.



## Use of the Site/App

The Site/App may also contain trademarks of our affiliates or third parties (including advertisers, sponsors and customers). The use or misuse of these trademarks, except as expressly authorised, is prohibited. The use by us of a trademark on the Site/App is not intended to indicate any association with, or endorsement by, the owner of that trade mark.

### We own or control, and reserve, all rights

Unless otherwise indicated, all rights (including copyright) in the content and compilation of the web pages and on-line images (including text, graphics, logos, button icons, video images, audio clips and software) comprising the Site/App are owned or controlled, and are reserved, by us.

## 8. User conduct

### Lawful and authorised use only

You must only use the Site/App for lawful purposes and for the purposes explicitly outlined and authorised in the Site/App and in these Terms.

You are authorised to:

- download and view content;
- register your interest in receiving further information from us in relation to products or services we may offer to you (or invite offers from you) in the future; and
- use the software included in the Site/App for your own personal, non-commercial use, provided that you keep intact all copyright and other proprietary notices.

You must not exploit any of our Site/App materials for commercial purposes without our prior written permission. You are not authorised to copy, broadcast, reproduce, republish, store (in any medium), transmit, distribute, sell, lease, license, show or play in public, adapt or change in any way the content of, or create a derivative work from, the Site/App unless we have provided prior written consent and you have also received the permission of any other relevant rights owner. You must not

copy, decompile, reverse engineer, disassemble or attempt to derive the source code of the Site/App.

This prohibition does not extend to materials on the Site/App which are expressed to be freely available for re-use or replication, subject to any conditions we specify.

Any contributions made by you to the Site/App must:

- be accurate (where they state facts);
- be genuinely held (where they state opinions);
- not be misleading or deceptive; and
- comply with applicable law in any country from which they are made.

### General prohibitions

You must not use or contribute to the Site/App, or any tools or applications offered through the Site/App, in a manner that:

- violates or infringes the rights of others (including their intellectual property, privacy and publicity rights);
- is unlawful, fraudulent (or has any unlawful or fraudulent effect), threatening, discriminatory, sexually explicit, abusive, defamatory, invasive of privacy, vulgar, obscene, profane or which may harass or cause distress or inconvenience to, or incite hatred of, any person;
- encourages conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any law;
- impersonates any person or misrepresents your identity or affiliation with any person (including us);
- transmits or procures the sending of any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (including spam);
- restricts or inhibits any other user from using or enjoying the Site/App;

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- affects the functionality or operation of the Site/App or its servers or the functionality or operation of any users' computer systems (for example, by transmitting a computer virus or other harmful component, whether or not knowingly); or
- breaches any standards, content requirements or codes of any relevant authority, including authorities which require us to take remedial action under any applicable industry code.

We may suspend or disable your Account or your access to the Site/App if you have materially failed to comply with any of these terms and conditions. We may also remove and delete any content you put on the Site/App.

### Co-operation with authorities

We reserve the right to co-operate fully with any law enforcement authority in any jurisdiction in respect of a lawful direction or request to disclose the identity or other information about anyone posting materials which the authority claims violates any applicable law.

### Your responsibilities under laws affecting you

You are responsible for ensuring that your use of the Site/App is lawful, does not infringe any third party's rights and does not breach any standards, content requirements or codes promulgated by any relevant authority (including relevant internet industry codes of practice).

## 9. Contacting us

If you have any feedback, questions or concerns in relation to these terms of use, please contact our customer support team at:

[support@upstreet.co](mailto:support@upstreet.co)

Unit 9, 49 – 51 Roscoe Street  
Bondi Beach NSW 2026

## 10. Miscellaneous

### Applicable law

The Site/App (excluding any linked third party websites) is controlled by us from Australia. These Terms are governed by the laws of New South Wales, Australia.

Any disputes must be determined by the courts having jurisdiction in New South Wales, Australia, in accordance with laws in force in New South Wales. You irrevocably and unconditionally submit to this jurisdiction.

### Unenforceable terms

If any of provisions in these Terms are found by a court to be invalid or unenforceable, the invalidity or unenforceability will not affect the remaining provisions.

### No offers where illegality arises

Nothing on the Site/App constitutes an offer to provide goods or services in any jurisdiction if to do so would contravene the laws of that jurisdiction.

### Site/app or content may be unlawful outside Australia

We do not warrant that the content of the Site/App complies with the laws of any other country. If you access the Site/App from outside of Australia, you do so at your own risk and you accept responsibility for ensuring or confirming compliance with all laws that apply to you because of that access or any consequent transactions or dealings with us.

**Thank you for using Upstreet!**