



Valuation Ultimate Firm Terms of Use

Effective from 23 June 2023

Business Valuation Ultimate Pty Limited ACN 629 936 938

1. Background

Thank you for visiting our Firm Terms of Use (**Agreement**), we are Business Valuation Ultimate Pty Limited ACN 629 936 938 of 3/35 Macquarie Street, Belmont, NSW 2280 (**BVU, we, our, us** and other similar terms). We provide business valuation software which makes use of best-practice business valuation methods and processes in a consistent and detailed manner known as Valuation Ultimate (**Valuation Ultimate**).

This Agreement outlines the terms and conditions associated with your use of Valuation Ultimate. It is your obligation to ensure that you have read, understood and agree to the most recent terms available at <https://www.valuationultimate.com/> (**Website**).

2. Disclaimer – We do not provide financial or valuation advice

You acknowledge and agree that Valuation Ultimate is a valuation tool to be used by professionals and does not replace the need for professional advice.

Valuation Ultimate is not designed to make valuation decisions for you. It merely provides the user interface, various templates and suggestions with respect to best-practice business valuation methodologies. No valuation advice is provided by BVU or through your use of the software.

You acknowledge and agree that the availability of various valuation methods in Valuation Ultimate does not indicate that those methods are appropriate for your particular circumstances or the Valuation Job you undertake.

To the maximum extent permitted at law, we are not liable for the outcomes of the valuation decisions made, the results of the valuation report or your interpretation of it.

3. Agreement

3.1 Accepting this Agreement

By creating a Valuation Ultimate Account, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using Valuation Ultimate.

3.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 16.1. They aid to clarify the terms and conditions. Please feel free to email us at support@valuationultimate.com if you have any questions.

4. Term

This Agreement will commence when you create an Account for Valuation Ultimate and will continue until terminated in accordance with clause 14.

5. Licence

5.1 Licence

We grant you a non-transferrable, non-exclusive and revocable licence to access Valuation Ultimate, subject to the terms and conditions of this Agreement.

5.2 Our right to suspend

We reserve the right to limit or suspend your licence to access Valuation Ultimate if in our reasonable opinion, you or any of your Authorised Users are in breach of any of your obligations or

warranties in this Agreement. Suspending your account will not constitute a breach of this Agreement by us.

6. Payment

You can purchase Valuation Credits, which you agree to pay in accordance with the Payment Terms. You can use Valuation Credits to start a Valuation Job, extend a Valuation Job or enable other features of the software which may be offered from time to time. An invoice will be issued after Valuation Credits are purchased.

Unless expressed otherwise, Valuation Credits are quoted in Australian Dollars, but are also available in a selected number of other currencies. Unless expressed otherwise, Valuation Credits are inclusive of Australian GST (where applicable) in connection with this Agreement.

You are responsible for the payment of all domestic Sales Taxes, Value Added Taxes and Income Taxes (outside Australia) applicable to the procurement of Valuation Credits.

7. Requirements for use

7.1 Access

You acknowledge and agree Valuation Ultimate will only be accessible using the internet, by users with a valid Account and will not be available "locally" from your own servers or devices.

7.2 Support

Support for Valuation Ultimate is provided in accordance with the support arrangements as set out on our Website and may vary from time to time. No support is offered nor will be given in relation to issues regarding the valuation inputs, valuation assumptions or valuation outcomes of any specific business. Support is strictly limited to the normal operations of the user interface for the software.

7.3 Valuation Ultimate outages and system maintenance

If it is necessary to interrupt your use of Valuation Ultimate, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, Valuation Ultimate will be unavailable.

You acknowledge access to Valuation Ultimate may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to Valuation Ultimate which may change the interface and manner in which it functions.

You agree that we are not liable for any loss, foreseeable or not, arising from any interruption to access, planned or not, and any such interruptions will not constitute a breach by us of these terms.

7.4 Changes to the software affecting the structure, wording and calculations

The User acknowledges that the software may be updated at any time which may affect the structure, wording and calculations within the reports generated for all valuation jobs. For the avoidance of doubt, these changes may affect past, current and future jobs. Valuation Ultimate strongly recommends to the User that PDF versions of the reports are extracted from the software by the User when the job is completed and from time-to-time during the progress of the job if appropriate. Valuation Ultimate will endeavor to give notice to Users where a material change to the structure, wording or calculations of a job has been made.

8. Your use of Valuation Ultimate

8.1 Registering an Account

In order to use Valuation Ultimate, you are required to provide us with Personal Information and create an Account with us.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account, including details of your geographic location. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

We reserve the right to reject any new Account in our absolute discretion.

8.2 Account security

Maintaining the security of your Account is important to ensuring your Personal Information, and that data which we process on your behalf, remains safe. We work hard to keep Valuation Ultimate secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your business. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via Valuation Ultimate, whether such activities are authorised by you or not.

8.3 End Users

In order to operate a Firm Account, you must specify at least one Authorised User who may administer and procure Valuation Credits and start Valuation Jobs on behalf of your Firm.

You are solely responsible for granting and revoking access to End Users and are liable for the actions of those End User's who operate on your Firm Account.

8.4 Lawful use of Valuation Ultimate

You undertake not to upload, store or access any data on Valuation Ultimate if such access or storage would infringe a person's Intellectual Property right, breach any Privacy Law or breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory of Australia or a law in the jurisdiction in which you operate).

8.5 Conduct which is expressly prohibited

You may only acquire and make use of Valuation Ultimate for the sole purpose of meeting your internal business needs.

You must not:

- (a) use or include any part of Valuation Ultimate in any service bureau offered to third parties;
- (b) in any way tamper with, hinder or modify Valuation Ultimate;
- (c) knowingly transmit any viruses or other disabling features to or via Valuation Ultimate;
- (d) use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from Valuation Ultimate or our Website for any purpose;
- (e) intentionally disable or circumvent any protection or disabling mechanism of Valuation Ultimate;
- (f) use Valuation Ultimate in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of Valuation Ultimate;

- (g) use Valuation Ultimate in connection with a breach of any law in Australia or the jurisdiction in which you operate; or
- (h) attempt, facilitate or assist another person to do any of the above acts.

9. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website.

10. Intellectual Property

We warrant we own or have a licence to use the Intellectual Property in Valuation Ultimate.

If you provide us with content, including, without limitation, data, text, images, and any other materials (**User Content**). Your User Content stays yours. This Agreement does not transfer ownership of User Content to us.

When you provide User Content, you grant us a non-exclusive, worldwide, perpetual, royalty-free, sublicensable, transferable right and license to use, host, store, reproduce, modify, create derivative works of (such as those resulting from calculations, translations, adaptations or other changes we make so that User Content works better with Valuation Ultimate), communicate, publish, and distribute User Content for the purposes of allowing us to provide Valuation Ultimate to you and the End Users you grant access to.

You represent that you own all rights to your User Content or otherwise have (and will continue to have) all rights and permissions to legally use, share, display, transfer and license your User Content to the extent that it is used within Valuation Ultimate.

While we reserve the right to take down any User Content which is in breach of this Agreement, you acknowledge and agree we are not required to monitor User Content, nor are we responsible for it. You are solely responsible for keeping copies of User Content, and any Valuation Job you perform on it. You must not rely on us as a backup or storage facility.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of, all or part of Valuation Ultimate in any way;
- (b) use Valuation Ultimate in a manner which may infringe any other persons Intellectual Property;
- (c) incorporate all or part of Valuation Ultimate in any other webpage, site, application or other digital or non-digital format; or
- (d) except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in Valuation Ultimate.

11. Warranties

We aim to provide the best possible user experience, however, subject to the Non-excludable Conditions, we make no warranties or guarantees that Valuation Ultimate is fault free, regarding Valuation Ultimate's fitness for any particular purpose which we have not expressed, regarding your access to or the results of your access to, Valuation Ultimate including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

You warrant that you will seek independent valuation advice from an appropriately qualified professional if such advice is required.

12. Limitation of Liability

12.1 Implied Conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

12.2 Limitation of Liability

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) Valuation Ultimate being inaccessible for any reason;
- (b) incorrect or corrupt data, lost data, or any inputs or outputs of Valuation Ultimate;
- (c) valuation decisions you, or another user of Valuation Ultimate, makes in the production of Valuation Jobs;
- (d) computer virus, trojan and other malware in connection with Valuation Ultimate;
- (e) security vulnerabilities in Valuation Ultimate or any breach of security that results in unauthorised access to, or corruption of data;
- (f) negligence arising from another End User, our activities or that of our service providers;
- (g) any unauthorised activity in relation to Valuation Ultimate;
- (h) the occurrence of an Event of Force Majeure;
- (i) your breach of this Agreement, including your failure to obtain professional advice where required; or
- (j) any act or omission by you, your personnel, your associates, any related body corporate or another End User, in relation to this Agreement.

12.3 Limits to liability associated with goods and services

To the maximum extent possible under the law, we limit our liability for any breach to: in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and in the case of services: the resupply of the services or the payment of the cost of having the services resupplied.

12.4 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of Valuation Ultimate, including any costs arising from your breach of this Agreement, your failure to seek professional advice with respect to a valuation, the valuation decisions you make, your infringement of any third party Intellectual Property rights associated with this Agreement, any harm to, claim or action by a third party (including to that third party's personal property) which arise directly or indirectly from your use of Valuation Ultimate or your breach of any law including, Privacy Law.

13. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 0 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 0. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 0 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

14. Termination

14.1 Termination by you

You may terminate this Agreement at any time by cancelling your subscription via the facility in your Account.

14.2 Termination by us

We may terminate this Agreement:

- (a) by providing you with notice in writing, including via the email address specified in your Account. Termination will take effect 3 Months from the date of that notice;
- (b) immediately if you no longer have an Authorised User associated with your Account;
- (c) with 14 days notice if an End User associated with your account commits a breach of the End User Terms of Use and you do not revoke access of that End User and, where that End User is the sole Authorised User on your Account, replace that Authorised User.

14.3 Termination for cause

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

14.4 Actions upon termination

Upon termination

- (a) you must immediately stop using Valuation Ultimate;
- (b) we reserve the right to permanently erase any data associated with your Account;
- (c) you will no longer have access to your Account; and
- (d) your End Users will no longer have access to your Valuation Jobs.

15. General

Assignment - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent.

Entire Agreement - This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

Governing law - The laws of New South Wales govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Notices - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and
- (b) which you send, must be either delivered or posted by prepaid post to the address set out at clause 1 or sent by email to our email address set out at clause 3.2.

Relationship - Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties.

Severability - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

Variations to this Agreement - We may vary this agreement by giving 3 months written notice to you. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 14.1.

16. Definitions and interpretation

16.1 Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account or **Valuation Ultimate Account** means the username and access credentials used when you access Valuation Ultimate.

Agreement means these terms and conditions and any document incorporated into them by reference.

Authorised Users means an End User who has been granted authority to access Valuation Ultimate on behalf of your Firm.

Cancellation Notice means a notice sent by either party, in accordance with clause 14, requesting the termination of this Agreement.

End Users mean a natural person who obtains a Valuation Ultimate Account. End users can from time to time be one, both or none of the following: Firm Users and Stakeholders.

End User Terms of Use means the terms of use entered into by an End User at the time they create their Valuation Ultimate Account.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Firm means a business user which holds a Valuation Ultimate Account. A Firm may be a legal entity of any type (including an individual) and may be a professional business valuer, business agent, business consultant or any person or business interested in the value of their own or another business.

Firm User means an End User who is authorised to edit, administer or start Valuation Jobs on behalf of a Firm.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Job or Valuation Job means a single ordinary engagement for a Firm's individual client or a single activity for a business manager of a Firm to value their own business at a point in time. At its absolute discretion, Valuation Ultimate may impose limits on the number of entities that can be valued within a single Valuation Job. If limits are imposed you will be notified when Valuation Credits are purchased. Valuation Jobs are active for a period of 3 months from their inception and after that time will be inactive. Inactive Valuation Jobs are still accessible by Firm Users but all inputs are set to a read-only basis. A Valuation Job can be extended for an additional 3 months by using Valuation Credits for the prevailing cost of a Valuation Job at the time the extension is executed.

Job Fee means the number of Valuation Credits required to start or extend a Valuation Job, as set out on our Website and updated from time to time.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Payment Terms mean the requirement to make payment at the time you procure the Valuation Job, unless otherwise agreed in writing between the parties.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Privacy Law means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website as amended by us from time to time.

Valuation Credits are the credits allocated to a Firm upon their successful payment for Valuation Credits in accordance with the Payment Terms. Valuation Credits are used to start a Valuation Job and to enable other features. The number of credits required to start a valuation job or to enable other features are as set out on our Website and updated from time to time. Valuation Credits are not refundable once purchased.

You or your means the person or entity using Valuation Ultimate.

Us, we or our means Business Valuation Ultimate Pty Limited ACN 629 936 938.

Website means the website located at <https://www.valuationultimate.com> and any of its subdomains.

16.2 Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
- (b) any reference to a trustee includes any substituted or additional trustee;
- (c) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (d) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (e) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (f) headings are for convenience and will not affect interpretation;
- (g) words in the singular will be taken to include the plural and also the opposite;
- (h) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body;
- (i) a reference to a party's conduct includes omissions as well as acts; and
- (j) if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute.