

Shutterstock 3D AI Services Preview Terms of Use

These Terms of Use (the "Terms") are a legal agreement between the entity you represent, or if no entity is identified you individually ("you") and Shutterstock, Inc. ("Shutterstock") for the use of the pre-release version of Shutterstock 3D AI Services, as updated from time to time.

By using the Shutterstock 3D AI Services, you are affirming that you have read and agree to these Terms.

These Terms can be accepted only by an adult of legal age of majority in the country in which the Shutterstock 3D AI Services is used.

If you are not old enough to enter into these Terms or if you don't accept all the terms and conditions below, do not use the Shutterstock 3D AI Services.

You agree to use the Shutterstock 3D AI Services only for purposes that are permitted by these Terms and are consistent with applicable laws and regulation and the rights of others.

1. Offering.

- 1.1 **Service.** Subject to use limits defined by Shutterstock, the Shutterstock 3D AI Services enables you to interact with generative AI models by providing text and/or image content ("User Content"), associate User Content with Shutterstock or third party AI models and other software or content available, run deep learning or inferencing software, and see the results of the interaction ("Generated Content"). The software and content made available by Shutterstock to you are licensed, not sold. No further goods or services will be delivered after the service concludes regardless of the content communicated during use of the Shutterstock 3D AI Services. Shutterstock 3D AI Services does not support content in all formats. As between you and Shutterstock and as permitted by law, you own all User Content and Generated Content (subject to Shutterstock's or its licensors' ownership of any underlying AI model or background intellectual property rights) subject to your compliance with these Terms.
- 1.2 **Grant.** Subject to these Terms, Shutterstock grants you a revocable, non-exclusive, non-transferable license to (a) access and use the Shutterstock 3D AI Services services, and (b) install and use software and content made available by Shutterstock to you to download for a period not to exceed sixty (60) days from the date of download, in each case for internal non-commercial or research purposes only, with no use of use of the Shutterstock 3D AI Services or Generated Content in production, publication, distribution, public performance or other public use.
- 1.3 **Pre-Release.** The Shutterstock 3D AI Services, including the software and content versions available are in pre-release and may not be fully functional, may contain errors or design flaws, and may have reduced or different security, privacy, availability, and reliability standards relative to commercial versions of Shutterstock services and content. You may use a pre-release Shutterstock 3D AI Services version at your own risk, understanding that these versions are not intended for use in production or business-critical systems. Shutterstock may choose not to make available a commercial version of any pre-release service. Shutterstock may also choose to abandon development and terminate the availability of a pre-release service at any time without liability.

2 User Content.

- 2.1 You agree that User Content (i) does not include any confidential information, (ii) does not include any controlled or sensitive data, including (but not limited to) protected health information, personal data, payment card industry information or sensitive human subject research, (iii) is not subject to any third-party patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, (iv) does not contain information or data that is processed or collected in violation of law, infringes any third party's copyrights or other intellectual property rights or any right of publicity or privacy; (v) may not contains any pornographic, defamatory, or otherwise unlawful or immoral content; (vi) shall not exploit minors; does not depict unlawful or violent acts; and (vii) does not depict animal cruelty or violence towards animals;

- 2.2 When you provide, make available or create User Content and Generated Content to or through the Shutterstock 3D AI Services, you grant Shutterstock, its affiliates and service providers a worldwide license with respect to User Content and Generated Content, to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes), display and transmit such User Content during your session on the Shutterstock 3D AI Services solely to provide you with the service described in Section 1.1. Shutterstock does not store or use your User Content or Generated Content beyond the end of each session.
- 2.3 You acknowledge that Shutterstock does not manage or control User Content or Generated Content that you provide, make available or create through the Shutterstock 3D AI Services.
- 2.4 In connection with providing, making available or creating User Content through Shutterstock 3D AI Services, you represent and warrant that neither your actions nor your posting, submission, creation or otherwise transmission of User Content, Generated Content, or other content will: (i) violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to legal liability; (ii) be fraudulent, false, misleading or deceptive, including impersonation or attempted impersonation of others; (iii) be defamatory, obscene, pornographic, vulgar or offensive; (iv) promote discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (v) be violent or threatening or promote violence or actions that are threatening to any other person; (vi) contain any malware, viruses, drop dead device, worm, trojan horse, trap, back door or other software routine that is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, or which is intended to provide unauthorized access or to produce unauthorized modifications; (xii) use any robot, spider, data scrapping or extraction tool or other similar mechanism with respect to Shutterstock 3D AI Services ; (viii) interfere with or disrupt the security, integrity or performance of Shutterstock 3D AI Services or of any User Content, attempt to probe, scan or test the vulnerability of Shutterstock 3D AI Services or any User Content, or collect or store any personally identifiable information from Shutterstock 3D AI Services from other users of Shutterstock 3D AI Services; (ix) use or display Shutterstock's trademarks in connection with any defamatory, obscene, pornographic, vulgar, offensive or violent content as determined by Shutterstock; or (x) otherwise infringe Shutterstock's rights in its trademarks. You are responsible for the consequences of User Content or Generated Content that do not conform to these limitations.
- 2.5 You acknowledge and agree that Shutterstock may, but is not obligated to, monitor, scan or review communications or User Content or Generated Content transmitted through the Shutterstock 3D AI Services and that Shutterstock shall not be responsible for the content of any such communications or transmissions.
- 2.6 When using the Shutterstock 3D AI Services Shutterstock may give you the ability to rate and report information regarding Generated Content. Such information will be deemed "Feedback" as defined in Section 7 below.

3 Privacy: Collection and Use of Information.

- 3.1 The Shutterstock Privacy Policy located at <https://www.shutterstock.com/privacy> explains Shutterstock's policy for collecting and using data ("Shutterstock Privacy Policy").
- 3.2 If you use the Shutterstock 3D AI Services for more than a certain number of sessions to be determined by Shutterstock, or if you choose to download certain of the AI models made available for download on the Shutterstock 3D AI Services, Shutterstock will require certain personal information such as name and email address. Shutterstock does not store or use your User Content or Generated Content beyond the end of each session. Any Feedback you give as defined in Section 7 below will be aggregated.

4 Restrictions.

- 4.1 You may not use the Shutterstock 3D AI Services for any purpose other than as described in section 1 above.

- 4.2 You may not use the Shutterstock 3D AI Services or Generated Content for any commercial use, such as in production, publication, distribution, public performance or other public use. The Shutterstock 3D AI Services may only be used for internal non-commercial purposes.
- 4.3 Except as indicated in the Section 1.2 (Grant) above, you may not copy, sell, rent, sublicense, transfer or distribute or make available to others any portion of the Shutterstock 3D AI Services or Generated Content.
- 4.4 You will not upload any personal information relating to an identifiable individual, financial, health or governmental information, or any other information which may be subject to data privacy or data security laws, rules, or regulations. Shutterstock does not represent, and specifically disclaims, that Shutterstock servers are appropriate for processing of any data including personal data and data constituting credit card information subject to Payment Card Industry Data Security Standard or Protected Health Information under Health Insurance Portability and Accountability Act of 1996. Pub. L. 104-191. Stat. 1936, or equivalent laws in other jurisdictions.
- 4.5 You may not reverse engineer, decompile, disassemble, modify, create derivative works or remove copyright or other proprietary notices from any portion of the Shutterstock 3D AI Services.
- 4.6 You may not misuse, disrupt or exploit the Shutterstock 3D AI Services or Shutterstock servers for any unauthorized use, or try to access areas not intended for users.
- 4.7 You must refrain from unsolicited automated bulk communication activities, including unsolicited mass mailings or other form of "spam". Generated messages must not spoof or falsify e-mail addresses, routing information or seek to impersonate any person, entity, or otherwise mislead as to the origin of the content.
- 4.8 You may not distribute malware or facilitate the distribution and propagation of malware.
- 4.9 You may not bypass, disable, or circumvent any technical aspect of the Shutterstock 3D AI Services, including, but not limited to, encryption, security, digital rights management, authorization or authentication mechanism.
- 4.10 You may not violate the security, confidentiality, integrity and availability of the Shutterstock 3D AI Services, or violate the security, confidentiality, integrity and availability of any user, network or system.
- 4.11 You may not perform security testing of Shutterstock 3D AI Services (including probe, scan or vulnerability test) except if expressly authorized in advance in writing by Shutterstock.
- 4.12 You may not use Shutterstock 3D AI Services to create or distribute to others any defamatory, obscene, pornographic, vulgar, offensive or violent content.
- 4.13 You may not use Shutterstock 3D AI Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- 4.14 You may not use (or allow others to use) Shutterstock 3D AI Services including Generated Content to develop or improve products or services that compete with Shutterstock 3D AI Services.
- 5 **Trustworthy AI.** Shutterstock encourages safe and responsible use of the Shutterstock 3D AI Services. Shutterstock, therefore, expects that you will:
 - 5.1 Ensure the content you create and distribute meets all applicable legal and regulatory requirements and standards of the relevant industry or use case.
 - 5.2 Ensure you have taken reasonable measures to address unwanted algorithmic bias and inform users of any ethical considerations and limitations related to the content.

- 5.3 Ensure that in developing your content, you adopt adequate measures to mitigate the risk of harming more vulnerable groups, especially minors and groups that have been historically disadvantaged or are at risk of exclusion.
- 5.4 Refrain from generating or disseminating personal identifiable or sensitive information in violation of applicable privacy laws or that can be used to harm an individual.
- 5.5 Refrain from intentionally misleading or deceiving others through disinformation or the unauthorized impersonation of others.
- 5.6 Communicate information to stakeholders about the capabilities and limitations of your content, including transparency about the fact that they are dealing with an AI system and that any content you create was AI-generated.
- 5.7 Adopt principles of AI ethics and trustworthiness that guide the development of your content.
- 5.8 Report any AI trust or ethics concerns to Shutterstock by email to gdpr@shutterstock.com.
- 6 **Ownership.** The Shutterstock 3D AI Services and its contents (excluding User Content and Generated Content subject to Shutterstock's ownership of any underlying model or background intellectual property rights), including related intellectual property rights, is and will remain the sole and exclusive property of Shutterstock or its licensors. Except as expressly granted, Shutterstock and its licensors reserve all rights.
- 7 **Feedback.** You may, but are not obligated to, provide comments, information, ideas, concepts, reviews, or techniques or any other material contained in any communication you may send to Shutterstock or its affiliates regarding or in connection with your use of the Shutterstock 3D AI Services ("Feedback"), to Shutterstock or a Shutterstock affiliate. Feedback, even if designated as confidential by you, will not create any confidentiality obligation for Shutterstock or its affiliates. If you provide Feedback, you hereby grant Shutterstock, its affiliates and its designees a non-exclusive, perpetual, irrevocable, sublicensable, worldwide, royalty-free, fully paid-up, and transferable license, under your intellectual property rights, to publicly perform, publicly display, reproduce, use, make, have made, sell, offer for sale, distribute (through multiple tiers of distribution), import, create derivative works of, and otherwise commercialize and exploit the Feedback for any purpose at Shutterstock's discretion. You agree that you will not give Feedback (i) that you have reason to believe is subject to any restriction that impairs the exercise of the grant stated in this section, such as third-party intellectual property rights; or (ii) subject to license terms which seek to require any product incorporating or developed using such Feedback, or other intellectual property of Shutterstock or its affiliates, to be licensed to or otherwise shared with any third party. You represent and warrant that you have sufficient rights in any Feedback that you provide to grant the rights described above.
- 8 **Updates.** Shutterstock may at any time change, discontinue, or deprecate any part, or all, of the Shutterstock 3D AI Services, or change or remove features or functionality of the Shutterstock 3D AI Services, and your continued use of the Shutterstock 3D AI Services is deemed acceptance of such changes. Additionally, the Shutterstock 3D AI Services may be temporarily unavailable, inaccessible or slow when Shutterstock is performing maintenance or upgrades or at other times including for reasons not within Shutterstock's reasonable control.
- 9 **Components Governed by Other Licenses.** The Shutterstock 3D AI Services may come bundled with, or otherwise include or be distributed with, components with separate legal notices or terms as may be described in proprietary notices accompanying the Shutterstock 3D AI Services software or as described in documentation. The components are subject to the applicable OSS Licenses or other license terms, including any proprietary notices, disclaimers, requirements and extended use rights; except that these Terms will prevail regarding the use of third-party open source software, unless a third-party OSS License requires its license terms to prevail. Without limiting the foregoing, you are responsible for your compliance with third party AI model licenses. "OSS License" means any software, data or documentation subject to any license identified as an open source license by the Open Source Initiative (<http://opensource.org>), Free Software Foundation (<http://www.fsf.org>) or other

similar open source organization or listed by the Software Package Data Exchange (SPDX) Workgroup under the Linux Foundation (<http://www.spdx.org>).

- 10 **Indemnity.** By using the Shutterstock 3D AI Services you agree to defend, indemnify and hold harmless Shutterstock and its affiliates and their respective officers, directors, employees and agents from and against any claims, disputes, demands, liabilities, damages, losses, costs and expenses arising out of or in any way connected with: (a) your use of the Shutterstock 3D AI Services in breach of these Terms, or (b) your User Content.

11 **Termination.**

- 11.1 If you want to terminate these Terms, you may do so by stopping your use of the Shutterstock 3D AI Services.

- 11.2 Your right to use the Shutterstock 3D AI Services terminates automatically without notice from Shutterstock (a) if you fail to comply with these Terms, (b) if you engage in illegal or improper use of the Shutterstock 3D AI Services or User Content, or (c) if you commence or participate in any legal proceeding against Shutterstock with respect to the Shutterstock 3D AI Services and its contents. Additionally, Shutterstock may at any time terminate the availability or your use of the Shutterstock 3D AI Services.

- 11.3 After termination, all provisions of these Terms which by their nature should survive termination will survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

- 12 **No Warranties.** THE SHUTTERSTOCK AI PLAYGROUND IS PROVIDED BY SHUTTERSTOCK "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, Shutterstock AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE.

- 13 **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL SHUTTERSTOCK BE LIABLE FOR (I) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR (II) DAMAGES FOR THE (A) COST OF PROCURING SUBSTITUTE GOODS, OR (B) LOST PROFITS, REVENUE, USE, DATA OR GOODWILL ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE USE OR THE PERFORMANCE OF THE SHUTTERSTOCK AI PLAYGROUND WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND EVEN IF SHUTTERSTOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A PARTY'S REMEDIES FAIL THEIR ESSENTIAL PURPOSE. IN NO EVENT WILL SHUTTERSTOCK'S TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THESE TERMS EXCEED US\$10.00. THE NATURE OF THE LIABILITY OR THE NUMBER OF CLAIMS OR SUITS SHALL NOT ENLARGE OR EXTEND THIS LIMIT. These exclusions and limitations of liability form an essential basis of the bargain between the parties, and, absent any of these exclusions or limitations of liability, the provisions of these Terms, including, without limitation, the economic terms, would be substantially different.

14 **Governing Law; Dispute Resolution**

- 14.1 **Governing Law.** These Terms and all disputes that may arise from it or out of use of the Shutterstock 3D AI Services in interstate commerce shall be governed by the Federal Arbitration Act, in addition to the internal substantive laws of the State of Delaware and the United States, without regard to or application of its conflict of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed. You agree to these Terms in the English language unless Shutterstock provided you these Terms in another language.

- 14.2 Any controversy or claim arising out of or relating to these Terms, or the breach thereof, shall be settled by binding individual (not class) arbitration administered under the Commercial Arbitration Rules of the American Arbitration Association or of the International Centre for Dispute Resolution in effect on the date of the commencement of arbitration, rather than in court, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets. The place of arbitration shall be the state and county of New York. The language of the arbitration shall be English. There shall be one arbitrator to be mutually agreed by the parties. Each party shall bear its own costs in the arbitration. Both parties agree that any claims seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack) are exceptions to the Arbitration Agreement and will be brought in a judicial proceeding in a court of competent jurisdiction. This arbitration provision will survive termination of these Terms.
- 14.3 YOU AND SHUTTERSTOCK AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. Unless both you and Shutterstock agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding. The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. You and Shutterstock acknowledge and agree that we are each waiving the right to a trial by jury as to all arbitrable disputes under these Terms. If a court decides that applicable law precludes enforcement of any of the limitations in this section as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.
- 14.4 Right to Opt-Out. YOU MAY OPT-OUT OF THE FOREGOING ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION OF THESE TERMS BY NOTIFYING SHUTTERSTOCK IN WRITING WITHIN 30 DAYS OF COMMENCEMENT OF USE OF THE SHUTTERSTOCK 3D AI PLAYGROUND. SUCH WRITTEN NOTIFICATION SHALL BE SENT TO 350 FIFTH AV, 20th FL, NEW YORK, NY 10118, Attention: Legal Department AND SHALL INCLUDE (1) YOUR NAME, (2) YOUR ADDRESS, (3) THE REFERENCE TO SHUTTERSTOCK 3D AI PLAYGROUND AS THE SERVICE THE NOTICE RELATES TO, AND (4) A CLEAR STATEMENT INDICATING THAT YOU DO NOT WISH TO RESOLVE DISPUTES THROUGH ARBITRATION AND DEMONSTRATING COMPLIANCE WITH THE 30-DAY TIME LIMIT TO OPT-OUT.

15 General.

- 15.1 Shutterstock may assign, delegate or transfer its rights or obligations under these Terms by any means or operation of law. You agree that you will not transfer or assign these Terms or your rights and obligations by any means or operation of law without Shutterstock's permission. Any attempted assignment not approved by Shutterstock in a signed writing will be void and of no effect.
- 15.2 Shutterstock may subcontract obligations under these Terms but will remain liable to you for any subcontracted obligations.
- 15.3 If Shutterstock needs to contact you about the Shutterstock 3D AI Services, User Content or Generated Content, you consent to receive the notices by email or through the Shutterstock 3D AI Services and agree that electronic notice will satisfy any legal communication requirements. Please direct your legal notices or other correspondence to Shutterstock, Inc., 350 Fifth Av., Fl. 20, New York, NY, United States of America, Attention: Legal Department, with an emailed copy to counsel@shutterstock.com.
- 15.4 If you are a copyright owner or an agent thereof and believe that any User Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by contacting Shutterstock's Designated Agent at infringementclaims@shutterstock.com in accordance with 17 U.S.C 512(c)(3). Written notifications may also be sent to Shutterstock, Inc., Attn: Shutterstock Designated Agent, Empire State Building, 350 Fifth Avenue, Fl. 20, New York, NY

10118. Additional information about Shutterstock's copyright notice and procedures are available at <https://www.shutterstock.com/terms/dmca-notice>. You acknowledge that if you fail to comply with all of the DMCA requirements, your DMCA notice may not be valid.

- 15.5 You agree to comply with all applicable export, import, trade and economic sanctions laws and regulations, including U.S. Export Administration Regulations and Office of Foreign Assets Control regulations. You confirm that you will not export or re-export any products or technology, directly or indirectly, without first obtaining any required license or other approval from appropriate authorities, (i) to any countries that are subject to any U.S. or local export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Syria, the Region of Crimea, Donetsk People's Republic Region and Luhansk People's Republic Region); (ii) to any end user who it knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, missiles, rocket systems, unmanned air vehicles, or any weapons of mass destruction; (iii) to any end-user who has been prohibited from participating in the U.S. or local export transactions by any governing authority; or (iv) to any known military or military-intelligence end-user or for any known military or military-intelligence end-use in accordance with U.S. trade compliance laws and regulations.
- 15.6 Regarding the subject matter of these Terms, the parties agree that (i) these Terms constitute the entire and exclusive agreement between the parties and supersedes all prior and contemporaneous communications and (ii) any additional or different terms or conditions, whether contained in purchase orders, order acknowledgments, invoices or otherwise, will not be binding and are null and void.
- 15.7 If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of these Terms, which will remain in full force and effect.
- 15.8 Shutterstock may make changes to these Terms from time to time. Shutterstock will publish the new Terms at the Shutterstock 3D AI Services website. The updated Terms will be effective when published. Please review the Shutterstock 3D AI Services Terms of Use on a regular basis. You understand and agree that your express acceptance of the updated Terms of Use or your use of the Shutterstock 3D AI Services after the date of publication shall constitute your agreement to the update Shutterstock 3D AI Services Terms of Use. If you do not agree with the updated Terms, you must terminate your use of the Shutterstock 3D AI Services.