

DIGITAL WINDOW LIMITED
AFFILIATE WINDOW SERVICE MEMBERSHIP
TERMS AND CONDITIONS

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY.

By submitting an application, you are agreeing to be bound by the terms and conditions below and our Code of Conduct, which can be found on page 10. These terms and conditions and our Code of Conduct together form the "**Agreement**".

The Agreement is a legally enforceable contract between Digital Window Limited ("**DWL**", "**we**" "**our**" or "**us**") and "**you**", the company or person named in application. If you do not want to be bound by the Agreement, you must not submit an application.

1. JOINING THE NETWORK

1.1 We operate an affiliate marketing network (the "**Network**"), which enables website publishers like you ("**Affiliates**") to promote online retailers ("**Merchants**") and their products in return for a commission.

1.2 Once you submit your application, we will consider it and let you know if it has been accepted or rejected. Only we can decide whether an application will be accepted and we can reject your application for any reason.

1.3 Our websites depend on the use of internet cookies and other technology for tracking website users and recording information ("**Cookies**"). Cookies will be placed on any devices you use to access our websites. More information about how and why we use Cookies can be found in our Cookie Factsheet, [found here](#).

1.4 Cookies are vital to enable our websites to operate properly. If you do not consent to the placement and use of Cookies, you must not submit an application. By submitting an application, you are giving your consent to our use of Cookies as set out in our Cookie Policy. If you want to withdraw your consent, you must immediately notify us and stop using our websites.

1.5 When submitting your application, you will need to pay a £5 admin charge. If your application is accepted, we will refund the admin charge when we first pay you any commissions. If your application is rejected, we will keep the admin charge.

1.6 If your application is accepted, you will become an Affiliate. If your application is rejected, the Agreement will terminate immediately.

2. PARTICIPATION IN THE NETWORK

2.1 As an Affiliate, you can participate in the Network and promote Merchants and their products by logging into our intranet for Affiliates and Merchants (the "**Intranet**"). We will provide you with more information about the Intranet and how to use it if your application is accepted.

3. As an Affiliate, you will be given access to hyperlinks to the websites of Merchants ("**Merchant Links**"). You will also be given access to the promotional materials and trade marks of Merchants (together with the Merchant Links,

the "**Materials**"). As long as you comply with the terms of this Agreement, and any terms of a particular Merchant, you can place the Materials wherever you like on your website.

4. **TRANSACTIONS**

4.1 A "**Transaction**" is made when a visitor to your website ("**Visitor**") clicks on a Merchant Link and is directed to the Merchant's website where he or she buys something.

4.2 If a Visitor clicks on a Merchant Link and does not buy anything from the Merchant, but then subsequently returns to the Merchant's website directly and buys something, this may still count as a Transaction. This will depend on whether:

- (a) another Affiliate has more recently directed that Visitor to that Merchant's website; and
- (b) how much time has passed since you directed that Visitor to that Merchant's website.

4.3 In some cases, a Transaction will also be made when a Visitor clicks on a Merchant Link and is directed to the Merchant's website where he or she takes some other action, like filling in a form.

4.4 You will earn commission for any Transactions which are validated by the Merchant. This means the Merchant has told us that, for example, the Transaction was not generated illegitimately and the item purchased has not been returned. It is up to the Merchant to decide whether or not a Transaction is valid. If you do not agree with a Merchant's criteria for validation, you should deal with other Merchants instead.

4.5 If you are paid any commissions for Transactions which are not valid, or should not be valid, or which have been paid by accident, you must return those commissions to us as soon as you become aware that they should not have been paid.

5. **INTELLECTUAL PROPERTY RIGHTS**

5.1 As an Affiliate, you will need permission to use Materials. As part of this Agreement, we give you permission to use the Materials in the form of a sublicense. This sub-licence is subject to the following conditions:

- (a) you will not claim or receive any right to use the Materials other than the permissions set out in this Agreement and you will never own any of the Materials;
- (b) unless we give you our prior written consent, you cannot sub-license, sell or transfer the Materials to anyone else. Without our consent, you must not let anyone else use the Materials at all; and

- (c) you can only use the Materials on your website in your capacity as an Affiliate in accordance with the terms of this Agreement.

5.2 The above sub-licence is not any kind of assignment of ownership to you of any of the Materials.

6. AFFILIATE OBLIGATIONS

6.1 You must always comply with our Code of Conduct. Our Code of Conduct will be updated from time to time, and only we can decide which changes will be made. If we update the Code of Conduct we may let you know by posting information on the Intranet, but it is your responsibility to check our Intranet for any changes to the Code of Conduct.

6.2 You must notify us if your website is no longer active or if your website becomes owned by anyone else.

6.3 You must notify us immediately if you become aware, or suspect, any abuses or potential abuses of the Network.

7. MERCHANT TERMS

Occasionally, a Merchant may apply particular terms and conditions to how it deals with Affiliates. You must comply with the particular terms of any Merchant you deal with. If you do not wish to comply with those terms, you should deal with different Merchants instead.

8. COOKIES

8.1 You must comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) (the "**Regulations**"). The Regulations are designed to protect the public from the invasion of privacy and contain rules on how you can use Cookies. If you would like to learn more about the Regulations, you should visit the website of the Information Commissioner's Office.

8.2 Complying with the Regulations will involve informing users of your website about how your website uses Cookies. Users of your website will also need to give you their consent to your website's use of Cookies. This includes Cookies you use or place on our behalf. It is up to you to decide how exactly to comply with the Regulations.

8.3 When you provide information about Cookies to users of your website, you must also tell them that:

- (a) you place Cookies on our behalf and provide information about those Cookies; and
- (b) by clicking on a Merchant Link, they will be directed to the Merchant's website via our internet domains and that these domains use Cookies.

When you get the consent of the users of your website to Cookies, you must also get the consent of that user to the Cookies set out above. Information on the Cookies that you place on our behalf can be found in our [Cookie Factsheet](#)

9. DATA PROTECTION

9.1 Capitalised phrases used in this paragraph 9 have the meanings attributed to them in the Data Protection Act 1998 (the "**DPA**").

9.2 You must comply with the DPA. If you act as our Data Processor, you will:

- (a) only Process Personal Data in accordance with our explicit instructions;
- (b) take appropriate technical and organisational measures against:

- (i) the unauthorised or unlawful processing of Personal Data; and
- (ii) the accidental loss or damage to Personal Data;

as necessary to ensure our compliance with the seventh data protection principle of the DPA; and

(c) notify us immediately if:

- (i) you suspect any Personal Data Processed under the Agreement has been lost, destroyed or corrupted, or if you suspect any Personal Data has been Processed in breach of the DPA;
- (ii) you become aware of any complaint (or possible complaint) about the Processing of Personal Data under the Agreement;
- (iii) a Data Subject requests disclosure of his or her Personal Data; or
- (iv) not transfer the Personal Data outside the European Economic Area without our prior written consent.

10. COMMISSIONS AND PAYMENT

10.1 Merchants will use the Intranet to set out how much commission is paid for each validated Transaction. Merchants are free to decide how much commission they will pay for each validated Transaction.

10.2 If you are due to be paid commissions, we will issue you with a statement setting out all of the commissions you have earned. Each statement covers a period of 2 weeks, and will be issued 2 weeks after the end of the period it covers. This means, for example, that a statement covering the first half of a month will be issued to you at the end of that month. The statements we provide are definitive when it comes to determining what commissions have been earned.

10.3 We will try to pay any commissions to you within 30 days of our receipt of any payments owed to us in respect of those commissions by the relevant Merchant. We may pay commissions earlier, but whether or not we do so is entirely up to us (even if we have previously paid commissions early in respect of a particular Merchant).

10.4 Commissions will be paid to you in the currency in which the respective Transaction was tracked.

10.5 If you earn commissions from a Merchant, and that Merchant does not pay us what it owes us in relation to those commissions, we don't have to pay those commissions to you until we are paid by the Merchant.

10.6 We will not make any payments which are less than a certain amount (called the "**Minimum Threshold**"). If you have total commissions which are less than the Minimum Threshold, they will be held to your account. When the total amount of commissions held to your account reaches the Minimum Threshold, those commissions will become payable. The amount of the Minimum Threshold may change from time to time, and more information can be found on the Intranet.

10.7 If we suspect you have generated commissions in breach of this Agreement you will, by way of future assignment, assign to us all of your rights and ownership in those commissions. This includes any commissions you have already been paid, which you will repay to us when we ask.

10.8 If we can't get in contact with you using the contact details set out in your application, and:

(a) we cannot pay you commissions because you have provided incomplete or incorrect payment information; or

(b) you don't log on to our website for 12 months;

you waive your right to be paid those commissions and you assign (way of future assignment) all of your rights and ownership in any commissions which we are holding to your account.

10.9 If we are late paying you commissions, you cannot terminate this Agreement on the basis that the delay constitutes a breach of this Agreement.

10.10 You will not receive any interest on commissions held to your account.

11. BILLING

11.1 You agree that we can raise invoices on your behalf for any of the commissions payable to you during the term of this Agreement. This is known as „self-billing“. Therefore you must not raise invoices for any of these commissions.

11.2 We will provide a copy of this Agreement to HMRC if they request documentation of our right to issue invoices on your behalf.

11.3 You must notify us immediately if you:

(a) stop being registered for VAT;

(b) transfer your business as a going concern; or

(c) become registered under another VAT number.

11.4 We may engage a third party to issue invoices on your behalf.

12. REPRESENTATIONS AND WARRANTIES

12.1 By entering this Agreement, you are making the following promises to us (known as "**Warranties**"). You warrant that:

- (a) you have full power and authority to enter into this Agreement;
- (b) you are and will be responsible for compliance with all applicable laws, rules and regulations related to your website and the performance of your obligations under this Agreement;
- (c) you are solely responsible for your website, including:
 - (i) its development, maintenance and operation;
 - (ii) any of its content;
 - (iii) any technologies its uses; and
 - (iv) the means by which Visitors and other users access it; even if service providers help you to operate your website.

12.2 any information on your website regarding goods and services for sale by any Merchant, including pricing, discounts, promotions and description is (so far as you are aware) accurate, up to date, complete and non-misleading;

12.3 you own or have the right to use any content on your website and none of that content infringes the intellectual property rights of any third party; and

12.4 you will not do anything or omit to do anything which would cause us to be in breach of our own obligations under the DPA or the Regulations.

12.5 If you breach any of the terms of this Agreement, including any of the Warranties, you will indemnify us against any losses or liabilities (including legal fees) we suffer which are arising in connection with that breach.

13. DISCLOSURE OF INFORMATION AND CONFIDENTIALITY

13.1 "**Confidential Information**" includes any information which is disclosed to you and marked or described as confidential. Confidential Information also includes any information disclosed to you and which ought reasonably be treated as being confidential. Know-how, information about Merchants, data and software are all examples of Confidential Information. If you are unclear on whether any information disclosed to you is Confidential Information, you should ask us whether or not it can be disclosed.

13.2 Confidential Information does not include any information which is publicly available, unless it has become publicly available because you have disclosed it. Confidential Information also does not include any information which you receive from a third party, unless that third party is breaching an obligation of confidentiality by disclosing it to you.

13.3 You must not disclose any Confidential Information to any third parties and you must keep take all reasonable steps and precautions to prevent disclosure of Confidential Information. You must not use Confidential Information for any purpose other than enjoying your rights or fulfilling your obligations under this Agreement.

13.4 The disclosure of our Confidential Information may cause us harm which cannot be repaired, or may cause us losses which cannot be recovered or compensated. Therefore, if Confidential Information is disclosed in breach of this Agreement, or if disclosure of Confidential Information is threatened, you agree that we can obtain an injunction against you to prevent disclosure. Our right to an injunction is in addition to any other rights we may have to protect our Confidential Information. If the court grants us an injunction, you must pay all of our legal costs of applying for the injunction.

14. YOUR INFORMATION

By entering this Agreement, you consent to us publishing your name on our websites. You also consent to us publishing the information you provide to us on our websites, unless you notify us that that information is confidential or that information ought reasonably be treated as being confidential.

15. DISCLAIMER AND LIMITATION OF LIABILITY

15.1 THE NETWORK AND ANY SERVICES OR SOFTWARE WE PROVIDE, AND THE USE AND RESULTS OF ANY OF THEM, ARE PROVIDED "AS IS". WE EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL WARRANTIES OF ANY KIND (WHETHER EXPRESS, IMPLIED OR STATUTORY), RELATING TO THE NETWORK AND ANY SERVICES OR SOFTWARE WE PROVIDE TO YOU. THIS INCLUDES IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. WE ALSO DISCLAIM ANY WARRANTY THAT: THE NETWORK AND ANY SERVICES OR SOFTWARE WE PROVIDE WILL BE UNINTERRUPTED OR ERRORFREE; THAT DEFECTS WILL BE CORRECTED; THAT THERE ARE NO VIRUSES OR OTHER HARMFUL COMPONENTS; THAT THE SECURITY METHODS EMPLOYED WILL BE SUFFICIENT; OR REGARDING CORRECTNESS, ACCURACY, OR RELIABILITY. IN PARTICULAR, WE MAKE NO WARRANTY THAT OUR METHODS AND SYSTEMS FOR TRACKING TRANSACTIONS WILL BE UNINTERRUPTED OR ERROR-FREE, AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS. NO WARRANTY IS MADE AS TO THE ACTIONS OF ANY MERCHANTS.

15.2 Subject to paragraph 15.4, we will not be liable to the you for: loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or the actions or omissions of any Merchants

15.3 Subject to paragraph 15.4, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Agreement shall be limited to the amount of the commissions actually paid to you under the Agreement in the twelve (12) months before the date on which the claim arose.

15.4 We are not limiting any of our liability for death or personal injury, or for liability incurred as a result of fraud or fraudulent misrepresentation.

16. RESERVATION OF RIGHTS

16.1 If we want, we can change, suspend or discontinue any of the services or software of we provide to you, any part of the Intranet and any of our websites.

16.2 If a Visitor is directed to a Merchant's website, but that website is no longer operating, we can direct the Visitor to another website. This might mean you earn a different commission.

16.3 We keep for ourselves any of our intellectual property rights which are not expressly granted to you under this Agreement.

16.4 If we suspect you are in breach of this Agreement (which includes the Code of Conduct), we can take one or some of the following actions:

- (a) suspend you from the Intranet and/or the Network;
- (b) remove or disable any Merchant Links placed on any of your websites; and
- (c) withhold payment of any commissions held to your account.

17. TERM AND TERMINATION

17.1 The Agreement commences when you submit an application. The Agreement will stay in force until it is terminated in accordance with these terms and conditions. Either you or us can terminate this Agreement by giving the other party one months' written notice.

17.2 Either you or us can terminate this Agreement immediately by giving the other party written notice if the other party:

- (a) is, or likely to become, insolvent or bankrupt
- (b) is unable to pay its debts or negotiates with its creditors; or
- (c) appoints an administrator or other insolvency practitioner.

17.3 If this Agreement is terminated, neither party will be obligated to pay the other party for any losses or costs which result from such termination.

18. CONSEQUENCES OF TERMINATION

If this Agreement is terminated for any reason:

18.1 all rights and liabilities which exist before the date of termination shall not be effected;

18.2 paragraphs 12, 14, 15, 18, 19 and 20 shall survive termination and stay in force;

18.3 all licences granted in this Agreement will terminate and you must immediately stop using the Materials;

18.4 you will not receive any commissions which are earned after the date of termination.

19. NOTICES

Notices under this agreement must be given in writing and sent to the addresses set out below:

19.1 To DWL: 2 Thomas More Square – 5th Floor, London, E1W 1YN; Attention Anthony Clements.

19.2 To you: the address and contact details and email address sent out in your application.

20. GENERAL

20.1 The Agreement will be interpreted so as to give effect to the intention of the parties and the spirit of the Agreement when taken as a whole.

20.2 In this Agreement, where any items are listed or given as examples, the list and examples are not definitive. Therefore, items similar to the listed items or examples may also be included. Where we use the singular tense in this Agreement, we are also referring to the plural tense (and vice versa). When we refer to an individual, we are also referring to companies and other incorporations.

20.3 This Agreement is personal to you. You may not assign or transfer any of your rights or obligations unless we agree in writing. We can assign or transfer any of our rights or obligations as long as we give you notice.

20.4 If you ever owe us money, we can deduct that money from any commissions we owe you.

20.5 Neither party will be liable under the Agreement if it is prevented from performing its obligations by anything beyond its reasonable control.

20.6 This Agreement will not constitute a partnership or joint venture of any kind between you and us, nor will it constitute any party the agent of another party for any purpose. You have no authority bind us and we have no authority to bind you.

20.7 Third parties don't have any rights under this Agreement.

20.8 The Agreement is the whole agreement between you and us. Any older agreements between you and us relating this subject matter are replaced by this agreement. Any terms or representations which are not included in this Agreement are not enforceable, but we are not limiting our liability for fraud or fraudulent misrepresentation.

20.9 You and we irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute that arises out of this Agreement. The Agreement and any dispute arising out of it shall be governed by the law of England and Wales.

DIGITAL WINDOW LIMITED
AFFILIATE CODE OF CONDUCT

This Code of Conduct, together with our terms and conditions ("**Terms**"), forms part of the Agreement between you and Digital Window Limited ("**we**" "**our**" or "**us**").

Capitalised phrases used in this Code of Conduct have the meanings attributed to them in the Terms.

1. GENERAL

1.1 When acting in your capacity as an Affiliate, you will act ethically and reasonably at all times.

1.2 You will not provide us with any information which is inaccurate, incomplete or misleading.

1.3 If we request, you will provide us with sufficient information about your business practices to enable us to evaluate your suitability as an Affiliate.

1.4 You will ensure that your websites do not reflect unfavourably on us or any Merchant. Your website must be in keeping with the image presented by the Merchants you promote.

1.5 You are responsible for the quality and origin of the Visitors you direct to Merchants' websites.

1.6 You will not hyperlink your website to any of our websites without our approval.

1.7 You will not interfere with any data sent to or from us or any of our websites.

1.8 You will periodically check the Intranet for any changes to this Code of Conduct, which can be found in the „Links and Tools“ section.

2. CONTENT OF YOUR WEBSITE

2.1 You are solely responsible for any information or content on your website.

2.2 Your website will not contain, distribute or promote any information or content which:

(a) infringes any intellectual property rights;

(b) we consider to be:

(i) libellous or defamatory;

(ii) obscene or pornographic;

(iii) abusive;

- (iv) violent or bigoted;
 - (v) dishonest or fraudulent;
 - (vi) in violation of any law; or
 - (vii) otherwise objectionable.
- (c) we consider to be promoting or condoning any of the items listed in paragraph (b).

2.3 Your website will conform to good advertising practices, including any advertising codes of best practice.

3. MANIPULATION OF THE NETWORK

3.1 You will not cause or attempt to:

- (a) manipulate or subvert the operation of Network, the Intranet, any of our websites or any Merchant's websites;
- (b) interfere with any system for tracking Visitors or Transactions, or for paying commissions;
- (c) cause any commissions to be paid to you other than in respect of bona fide and validated Transactions;
- (d) earn commissions other than in respect of Visitors which actually and intentionally access a Merchant's website via a Merchant Link.

3.2 Your website will not make any use of any:

- (a) computer hacking;
- (b) „spam“ or use unsolicited marketing;
- (c) computer viruses, spyware, adware, malware or malicious software code;
- (d) methods of influencing a search engine's operation in breach of that search engine's terms of use;
- (e) software emulation;
- (f) robots (other than hyperlink checkers), forced clicks, automatic openings of websites, automatic Cookie dropping or „Cookie stuffing“.

3.3 You will not place or use any software on an internet user's computer or phone (or other device used to access the internet) which can disable, remove or place Cookies, or which promotes or displays Merchant Links. This includes as part of a „shopping assistant“, price comparison“, or „reminder“ service.

4. MERCHANT LINKS

You will:

- 4.1 do what you can to help us to ensure that the Merchant Links are working properly;
- 4.2 only use the Merchant Links to procure validated Transactions;
- 4.3 not use the Merchant Links:
 - (a) to mislead Visitors;
 - (b) in any way that may alter the look, feel or functionality of the Merchant Website;
- 4.4 not use hyperlinks to any Merchant Websites other than the Merchant Links provided by or approved by us.

5. HARDCODING

You acknowledge that hard-coding any banner, button or Merchant Link into your website may impact their future accuracy.

6. TRAFFIC DATA

- 6.1 You will immediately provide us with information on the origins of all Visitors you direct to Merchant's websites ("**Traffic Data**") if we ask.
- 6.2 You will be responsible if any Traffic Data you provide is inaccurate, incomplete or misleading even if service providers help you to operate your website or to direct Visitors to Merchants' Websites. You will immediately notify us if you become aware that we have received Traffic Data which is inaccurate, incomplete or misleading.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 You will not infringe any of our intellectual property rights or the intellectual property rights of any Merchant or any third party.
- 7.2 You will not use any domain name which is confusingly similar to the domain name of any Merchant's website.
- 7.3 You will not use or attempt to register any trade marks or trade names that are confusingly similar to any trade marks owned or used by us or any Merchant.

8. MERCHANTS

You will not use any information gained under this Agreement or in your capacity as an Affiliate to solicit any Merchants without our prior written approval.

9. COMPLIANCE WITH THE SPIRIT OF THIS CODE OF CONDUCT

The rules contained in this Code of Conduct are not exhaustive, and you will not breach the spirit this Code of Conduct. Only we can decide what constitutes a breach of the spirit of the Code of Conduct.