

**EARTH SHIFT PRODUCTS
AFFILIATE PROGRAM TERMS AND CONDITIONS AGREEMENT**

This Affiliate Terms and Conditions Agreement (the “Agreement”) is a legally binding agreement between you (“You” or “Your”) and Earth Shift Products (on behalf of itself and its affiliates) (collectively, “Earth Shift Products”, EarthShiftProducts.com”, “ESP”, or “We”) and is effective on the date You accept the terms and conditions of this Agreement as set forth herein (the “Effective Date”). BY SIGNING THIS AGREEMENT AND/OR PARTICIPATING IN THE EARTHSHIFTPRODUCTS.COM AFFILIATE PROGRAM (THE “AFFILIATE PROGRAM”), YOU ACKNOWLEDGE THAT YOU HAVE READ THE TERMS OF THIS AGREEMENT AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS SET FORTH HEREIN, DO NOT SIGN THE AGREEMENT OR PARTICIPATE IN THE AFFILIATE PROGRAM.

1. Eligibility.

To be eligible to be an EarthShiftProducts.com affiliate (“Affiliate”) 1) You must complete and sign the Affiliate Program Application Form along with the Terms and Conditions agreement. 2) You must have a pre-existing client or customer base to which you would promote EarthShiftProducts.com. Upon receipt of your application form EarthShiftProducts.com will evaluate and notify you via e-mail of the acceptance or rejection of your application form. EarthShiftProducts.com reserves, in its sole discretion, with or without reason, the right to accept or reject your registration into the Affiliate Program, including but not limited to a determination that your site or source of affiliates is unsuitable for or incompatible with the Affiliate Program based on the following criteria (collectively (Restrictions?) "Restricted Content"): (a) infringes on EarthShiftProducts.com’s or any other third party's intellectual property, publicity, or privacy rights; (b) violates any law or regulation; (c) contains or presents any false or misleading information; (d) operates or utilizes a website or e-mail link to websites that contain or promote, any of these types of content: libelous, defamatory, obscene, abusive, violent, bigoted, hate-oriented, illegal, cracking, hacking or warez, or the offer of any illegal good or service, or link to a website(s) that do so; (e) promotes discrimination based upon race, sex, religion, nationality, disability, sexual orientation or age; (f) engages in spamming, indiscriminate advertising or unsolicited commercial e-mail; (g) is based outside of the United States (unless You receive prior written approval from EarthShiftProducts.com; and/or (h) engages in any illegal activity of any type, including but not limited to displaying illegal content on Your Website or offering any illegal good or service.

2. True and Complete Information.

You represent and warrant that all information that You provided on the Affiliate Program Application form and in connection with becoming an Affiliate of EarthShiftProducts.com is true and complete. You further agree to maintain and promptly update such information to keep it accurate. If EarthShiftProducts.com determines or has reason to believe that any information provided by You is not true and/or complete, You shall indemnify EarthShiftProducts.com in accordance with Section 14 below and EarthShiftProducts.com may immediately terminate Your participation with respect to the EarthShiftProducts.com website Affiliate Program if such breach also constitutes a breach of Section 1 above.

3. **Content Usage Restrictions.**

You represent and warrant that You shall not, except as specifically provided for pursuant to the Affiliate Program: (i) copy or display any EarthShiftProducts.com Content (as hereinafter defined); (ii) modify, adapt, translate or create derivative works based on the EarthShiftProducts.com Content; (iii) remove, erase, or tamper with any copyright or other proprietary notices in any copy of any of the EarthShiftProducts.com Content; (iv) sell, market, license, sublicense, distribute, disclose or otherwise grant to any person any right or interest in the EarthShiftProducts.com Content; (v) buy or bid on any of the Earth Shift Products trademarks, or variations of the trademarks, on any search engine or site; or (vi) take any action which may cause deception, confusion or otherwise blurs, tarnishes or dilutes the quality of the EarthShiftProducts.com Content or the Earth Shift Products trademarks or other intellectual property or the goodwill associated therewith, all as shall be determined by EarthShiftProducts.com. You agree to use the EarthShiftProducts.com Content exactly in the form provided to You pursuant to the Affiliate Program. Upon termination of this Agreement, for any reason, You shall immediately cease using, displaying or otherwise maintaining any interest in the EarthShiftProducts.com Content. For purposes of this Agreement “EarthShiftProducts.com Content” means any and all trademarks, service marks, logos and other content which EarthShiftProducts.com makes available to You in connection with the Affiliate Program, including, but not limited to, banners, buttons, or other display advertisements created and furnished by EarthShiftProducts.com. Such EarthShiftProducts.com Content may be owned by EarthShiftProducts.com or licensed to EarthShiftProducts.com by a third party. You agree that You do not and will not (i) use or in any way exploit, any information, software, photos, video, text, graphics, music, sounds, ideas, recipes, articles, content and other materials of EarthShiftProducts.com, other than the EarthShiftProducts.com Content, alone or in connection with any other content, including EarthShiftProducts.com Content, and, (ii) include any trademark of EarthShiftProducts.com, or a variant or misspelling of a trademark of EarthShiftProducts.com, in any domain name.

4. **Content Usage Restrictions - Websites.**

For any search functionality on Your site using the Earth Shift Products trademarks or Logos, (a) Earth Shift Products Links must always appear at the top of the list, (b) any Link that contains Earth Shift Products in the title must connect the user directly back to the EarthShiftProducts.com website, and (c) such Link must be supplied to You by EarthShiftProducts.com.

5. **Links to EarthShiftProducts.com Website.**

You may not place EarthShiftProducts.com Content, or Internet connections (“Links”) to the EarthShiftProducts.com website or website content: in newsgroups, message boards, chat rooms, blogs, social media outlets or similar forums (collectively, “Forums”); in pop-up, pop-under or similar ads delivered by third-party software applications; in unsolicited e-mail or other types of spam, banner networks, counters, guest books, IRC channels or through similar Internet resources; on web pages that also provide or feature Forums; or anywhere other than on Your Website or emails, Facebook posts, or Twitter feeds that You control and operate; and You may not embed or include such EarthShiftProducts.com Content or Links

in software applications (such as toolbars), in each case unless You receive EarthShiftProducts.com's prior written permission. You must place Links to the EarthShiftProducts.com website or website content such that it is unlikely that the Links will mislead the visitor, and such that it is reasonably likely that the Links will deliver bona fide transactions by the visitor to EarthShiftProducts.com from the Link. You shall not cause any transactions to be made that are not in good faith, including, but not limited to, using any device, program, robot, Iframes, hidden frames, JavaScript popup windows, redirects or clicking on Links that You place to EarthShiftProducts.com. You shall not establish or cause to be established any promotion that allows third parties ("Sub-Affiliates") to place EarthShiftProducts.com Content or EarthShiftProducts.com's Links on their websites or in their e-mails or other advertisements, unless You receive EarthShiftProducts.com's prior written permission.

6. **Property Ownership Rights.**

You agree and acknowledge that EarthShiftProducts.com retains all rights, title and interest in and to all property rights embodied in or associated with the EarthShiftProducts.com Content. You represent and warrant that You will not take any action or assist any third party to take action challenging, contesting or otherwise inconsistent with EarthShiftProducts.com's ownership of the EarthShiftProducts.com Content and any goodwill and benefits accruing from the use of such EarthShiftProducts.com Content will automatically vest in EarthShiftProducts.com.

7. **Operation and Maintenance of the EarthShiftProducts.com Web Site.**

You acknowledge and agree that EarthShiftProducts.com may accept or reject, in its sole and absolute discretion, all memberships or purchases from customers placed on or through the EarthShiftProducts.com website. You further acknowledges and agrees that (i) You do not have any authority to make or accept any offer or commitment on behalf of EarthShiftProducts.com, (ii) EarthShiftProducts.com cannot, and does not, guarantee the availability and accessibility of the EarthShiftProducts.com website, and (iii) EarthShiftProducts.com is solely responsible for all pricing, membership processing, online fulfillment, cancellation, refunds and all other aspects of the EarthShiftProducts.com website and its products and offerings. All personal information obtained from customers on the website shall be the exclusive property of EarthShiftProducts.com.

8. **Representations and Warranties.**

You hereby represent and warrant to EarthShiftProducts.com that: (i) You have duly and validly executed this Agreement and it constitutes Your legal, valid, and binding obligation, enforceable against You in accordance with its terms; (ii) the execution, delivery, and performance by You of this Agreement and the consummation by You of the transactions contemplated hereby will not, with or without the giving of notice, the lapse of time, or both, conflict with or violate (a) any provision of law, rule, or regulation to which You are subject, (b) any order, judgment, or decree applicable to You or binding upon Your assets or properties, (c) any provision of Your by-laws or certificate of incorporation if applicable, or (d) any agreement or other instrument applicable to You or binding upon Your assets or properties; (iii) no consent, approval, or authorization of, or exemption by, or filing with, any governmental authority or any third party is required to be obtained or made by You in

connection with the execution, delivery, and performance of this Agreement or the taking by You of any other action contemplated hereby; and (v) there is no pending or material threatened claim, action, or proceeding against You, or any subsidiary or affiliate of Yours, with respect to the execution, delivery or consummation of this Agreement, or with respect to Your trademarks, and there is no basis for any such claim, action, or proceeding.

9. **Payments.**

EarthShiftProducts.com agrees to pay to You the commission amount in the format set forth in the Affiliate Program Application Form, which may be changed from time to time with notice given pursuant to Section 15 below.

10. **Responsibility for Affiliate URLs.**

You will be solely responsible for the development, operation, and maintenance of all URLs that are linked to the EarthShiftProducts.com website and for all materials that appear on such URLs. You acknowledge and agree that it shall be responsible for complying with the terms hereof.

11. **No Joint and Several Liability.**

You acknowledge and agree that neither EarthShiftProducts.com, its subsidiaries, parents, other affiliates, directors, officers, employees, agents, successors or assigns (collectively, the "EarthShiftProducts.com Parties"), shall be liable to any party, including You, for any claim, liability, suit, action, judgment, loss, costs, expenses or other damages related to or in connection with Your Website(s) and/or any content or other information displayed or contained thereon, including but not limited to, claims of infringement. Without limiting the generality of the proceeding sentence, You acknowledge and agree that, EarthShiftProducts.com shall not be liable to You or any of Your subsidiaries, parents, other affiliates, directors, officers, employees, agents, successors or assigns for any claims for indemnification, contribution or otherwise.

12. **Affiliate Indemnification.**

You, at its Your expense, shall indemnify, defend and hold harmless, EarthShiftProducts.com against any claim, suit, action, judgment, liability, loss, cost, expenses and other damages, including, without limitation, reasonable attorney's fees, based upon or in connection with (i) any breach or alleged breach of Your representations and warranties hereunder, (ii) the failure to comply with or perform any obligation or agreement of You hereunder, or (iii) the Your Website(s) and/or any content or other materials displayed or contained thereon, including, but not limited to, claims of infringement.

13. **Term of the Agreement.**

This Agreement shall begin on the Effective Date and shall terminate on the date You are no longer an Affiliate of EarthShiftProducts.com pursuant to the Affiliate Program.

14. **Termination.**

EarthShiftProducts.com may terminate this Agreement at any time and for any reason upon seven (7) days written notice (e-mail or other electronic communication will suffice) to Affiliate with effect from the 8th day from such notice. EarthShiftProducts.com may

terminate this Agreement immediately, without notice, if EarthShiftProducts.com determines, in its sole discretion, that Affiliate has breached Affiliate's obligations pursuant to Section 1. In addition, EarthShiftProducts.com may terminate this Agreement, in its sole discretion, immediately upon written notice (e-mail or other electronic communication will suffice) if: (a) Affiliate has failed to comply with or has breached Section 3, 4 or 5; (b) EarthShiftProducts.com believes in good faith that You are harming, blurring or tarnishing the Earth Shift Products brand, any other trademark, service mark or trade name owned or licensed by EarthShiftProducts.com or EarthShiftProducts.com's reputation; (c) EarthShiftProducts.com believes in good faith that Your actions or one or more of Your Websites is causing or would cause EarthShiftProducts.com to be in breach of its contractual obligations with third parties.

15. **Modification of Agreement.**

EarthShiftProducts.com reserves the right to modify this Agreement upon no less than seven (7) days notice to Affiliate. EarthShiftProducts.com may modify this Agreement by notifying Affiliate, and such notification may be completed electronically email. IF ANY MODIFICATION IS UNACCEPTABLE TO AFFILIATE, AFFILIATE'S SOLE RECOURSE IS TO TERMINATE THIS AGREEMENT. AFFILIATE'S CONTINUED PARTICIPATION AS AN AFFILIATE FOLLOWING THE MODIFICATION OF THIS AGREEMENT SHALL CONSTITUTE ACCEPTANCE OF SUCH MODIFICATION BY AFFILIATE.

16. **LIMITATION OF DAMAGES.**

EarthShiftProducts.com WILL HAVE NO LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF REVENUE OR PROFITS ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR THE AFFILIATE PROGRAM, EVEN IF EarthShiftProducts.com WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, EARTHSHIFTPRODUCTS.COM'S AGGREGATE LIABILITY ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR THE AFFILIATE PROGRAM WILL IN NO EVENT EXCEED THE TOTAL REVENUE SHARE PAID OR PAYABLE BY EarthShiftProducts.com TO AFFILIATE UNDER THE AFFILIATE PROGRAM DURING THE IMMEDIATELY PRECEDING 12 MONTH PERIOD PRIOR TO THE DATE SUCH LIABILITY AROSE.

17. **WARRANTY DISCLAIMER.**

EarthShiftProducts.com MAKES NO WARRANTIES, REPRESENTATIONS, GUARANTEES, OR CONDITIONS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. IN PARTICULAR, EarthShiftProducts.com MAKES NO REPRESENTATION

THAT THE OPERATION OF THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE.

18. **Independent Contractors.**

EarthShiftProducts.com and Affiliate are independent contractors and nothing in this Agreement or the Affiliate Program is intended to or will create any form of partnership, joint venture, agency, franchise, sales representative, or employment relationship.

19. **Governing Law.**

This Agreement is governed by and in accordance with the substantive laws of the State of California. Any lawsuit relating to this Agreement must be brought in the federal or state courts located in Los Angeles, California.

20. **Headings.**

The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify, or place any construction upon or on any of the provisions of this Agreement.

21. **Assignment.**

The Affiliate may not assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without EarthShiftProducts.com's prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and enforceable against the parties and their respective successors and assigns.

22. **Waiver.**

EarthShiftProducts.com's failure to enforce strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

23. **Entire Agreement.**

This Agreement, along with any applicable Program Terms that You accept, represents the complete agreement and understanding between the parties, and supersedes any other oral or written communications or understandings between the parties regarding the subject matter hereof. No amendment or modification to this Agreement will be binding upon EarthShiftProducts.com unless agreed to by an authorized representative of EarthShiftProducts.com.