

IMAGE LOFT (TRADING AS PRESS LOFT) AFFILIATE TERMS AND CONDITIONS

Please read these Affiliate Terms and Conditions carefully before applying to become an Affiliate, as they set out our and your legal rights and obligations in relation our Affiliate Programme. You will be asked to agree to these Affiliate Terms and Conditions before becoming an Affiliate.

You should print a copy of these Affiliate Terms and Conditions for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our website in future.

These Affiliate Terms and Conditions are available in the English language only.

If you have any questions or complaints about our Affiliate Programme please contact us by email to affiliates@pressloft.com.

1. Definitions and interpretation

1.1 In the Agreement:

“Acceptance Email” means an email sent by the Merchant to the Affiliate in accordance with Clause [2.3] confirming that the Affiliate has been accepted into the Affiliate Programme;

“Affiliate” means the person (natural or legal) specified as the applicant for our Affiliate Programme on the Registration Form;

“Affiliate Programme” means the Merchant's affiliate programme detailed in the Agreement [and on the Merchant Website];

“Affiliate Website” means the website or websites owned and operated by the Affiliate and specified by the Affiliate on the Registration Form;

“Agreement” means the agreement between the Merchant and the Affiliate incorporating these Affiliate Terms and Conditions, the Registration Form and the Acceptance Email, and any amendments to it from time to time;

“Effective Date” means the date the Agreement comes into force as specified in Clause [2];

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, denial of service attacks, virus or other malicious software infections or attacks, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Link” means a hyperlink (whether in text or in an image or otherwise) from the Affiliate Website to the Merchant Website enabling the Merchant to track visitors from the Affiliate Website to the Merchant Website using its affiliate tracking system;

“Merchant” means Image Loft Ltd trading as Press Loft, a company incorporated in England and Wales (registration number 05685925) having its registered office at Enterprise House, 1-2 Hatfields, London, SE1 9PG, United Kingdom;

“Merchant's Services” means monthly paid for subscription services;

“Merchant Website” means the website accessible via the following URL: <http://www.pressloft.com>, plus any other websites notified by the Merchant to the Affiliate from time to time;

“Payments” means payments of such amounts as are specified by the Merchant from time to time on the Merchant Website in respect of the relevant type of Payment Trigger;

“Payment Trigger” means:

- (a) the acceptance of a completed Free Trial application on the Merchant Website for one of its Merchant's Services by a user who visited the Merchant Website by means of a Link and who submitted such application within 60 days of the date of that first visit, providing that such user uploaded at least 25 product images onto the Merchant Website and that these were live for at least 30 days of the 60 day Free Trial period;
- (b) a payment for the Merchant's Services on the Merchant Website made by a user on the Merchant Website by means of a Link within 90 days of the date of that first visit;

“Prohibited Materials” means content, works or other materials that constitute, or that the Merchant reasonably determines constitute:

- (a) material that breaches any applicable laws, regulations or legally binding codes;
- (b) material that infringes any third party intellectual property rights or other rights;
- (c) indecent, obscene, pornographic or lewd material;
- (d) material that is offensive or abusive, or is likely to cause annoyance, inconvenience or anxiety to another internet user;
- (e) computer viruses, spyware, trojan horses or other malicious or harmful routines, programs or software; and/or
- (f) spam or unsolicited bulk email [or unsolicited commercial email].

“Registration Form” means the HTML form on the Merchant Website enabling users to apply to become Affiliates;

“Term” means the term of the Agreement; and

“Verified Payment Trigger” means a Payment Trigger that has been verified by the Merchant using its affiliate tracking system (for the avoidance of doubt, this excludes both Payment Triggers that have not been so verified and events that are not Payment Triggers but are falsely verified as such).

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement.

2. The Agreement

2.1 In order to apply to become an Affiliate, the applicant must complete and submit the Registration Form.

2.2 The Agreement will come into force if and when the Merchant sends to the Affiliate the Acceptance Email, following the submission of a completed Registration Form by the Affiliate.

2.3 The Agreement will continue in force indefinitely, unless and until terminated in accordance with Clause [11].

3. Affiliate Programme

3.1 The Affiliate will within 7 days following the Effective Date include at least one Link on the Affiliate Website, and will maintain at least one Link on the Affiliate Website during the Term.

The Affiliate will be provided with updates during the Term, from which the Affiliate will be able to:

- (b) access analytics information relating to the Affiliate's performance; and
- (c) download code to use as Links

4. Affiliate obligations

4.1 The Affiliate will provide the Merchant with:

- (a) such co-operation as is required by the Merchant (acting reasonably) in connection with the Affiliate Programme; and
- (b) all information and documents required by the Merchant (acting reasonably) in connection with the Affiliate Programme.

4.2 The Affiliate must not:

- (a) include any Prohibited Materials on the Affiliate Website, or include any hyperlink to any Prohibited Materials on the Affiliate Website;
- (b) market the Affiliate Website using spam or unsolicited emails or other unsolicited communications, or using any form of spyware, parasiteware, adware or similar

software, or using any other antisocial or deceptive methods; and

- (c) increase or seek to increase the number of Payment Trigger events using any fraudulent or deceptive method.

4.3 The Affiliate will not take any action in connection with the Affiliate Programme which might reasonably be expected to lead to the possibility of damage to the reputation and goodwill of the Merchant and/or the Merchant Website.

5. Intellectual Property Rights

5.1 The Merchant grants to the Affiliate during Term a worldwide, non-exclusive, royalty-free licence to reproduce the Links electronically and to publish the Links on the Affiliate Website.

5.2 The Merchant does not warrant that the use of the Links by the Affiliate will not infringe any third party Intellectual Property Rights or give rise to any other liability on the Affiliate.

6. Payments

6.1 In respect of each Verified Payment Trigger, the Merchant will make a Payment to the Affiliate, subject always to the other terms of the Agreement.

6.2 The Merchant will account to the Affiliate for all Payments due in respect of a calendar month before the end of the following calendar month, unless the amount due is less than £50, in which case the Payments may be held over to the next accounting date.

6.3 If the Affiliate is registered for VAT in the European Union then:

- (a) all Payments amounts stated in or in relation to the Agreement or on the Merchant Website are stated inclusive of VAT payable by the Merchant to the Affiliate;
- (b) the Affiliate is solely responsible for accounting for such VAT to the relevant tax authorities; and
- (c) the Affiliate must provide to the Merchant within 30 days following the making of a Payment under this Clause [6] a valid VAT receipt in respect of such Payment.

6.4 If the Merchant is required by law to deduct withholding tax or any other taxes or duties from any Payments, then the Merchant will deduct such amounts from the Payments before paying them to the Affiliate.

6.5 Payments to the Affiliate will be made in UK Pounds Sterling by PayPal or bank transfer (using such payment details as are provided by the Affiliate on the Registration Form).

6.6 If the Merchant does not pay any amount properly due to the Affiliate under or in connection with the Agreement, the Affiliate may charge the Merchant simple interest on the overdue amount at the rate of 3% per year above the UK base rate of HSBC Bank Plc from time to time.

6.7 No Payments will be due in respect of:

- (a) any visits to or actions upon the Merchant Website made by or on behalf of:

- (i) the Affiliate;
 - (ii) any parent undertaking or subsidiary of the Affiliate;
 - (iii) any employee, agent or officer of the Affiliate or any parent undertaking or subsidiary of the Affiliate; or
 - (iv) any natural person related to any of the above;
- (b) any amount received by the Merchant by means of the fraudulent or unlawful use of a credit, debit or other payment card, or by any other fraudulent or unlawful means; or
- (c) any purchases on the Merchant Website which are subsequently cancelled, refunded, reversed, or charged-back,

and the Merchant will be entitled to require repayment of Payments made as a result of such visits, actions and purchases.

6.8 Both before and after termination, the Merchant will be entitled to set off any amount owed to the Affiliate against any amount the Affiliate owes to the Merchant whether under the Agreement or otherwise, and against any loss or damage suffered by the Merchant whether in relation to the Agreement or otherwise arising out of the Affiliate's acts or omissions.

7. Warranties

7.1 Each party warrants to the other party:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) that it will perform its obligations under the Agreement with reasonable care and skill.

7.2 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law and subject to Clause [9.1], no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

8. Indemnity

The Affiliate will indemnify and keep indemnified the Merchant, and the Merchant's officers, employees, representatives, agents and subcontractors, against all damages, liabilities, losses, costs and expenses (including legal expenses) arising out of or as a result of any breach by the Affiliate of any term of the Agreement.

9. Limitations and exclusions of liability¹

9.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause [9] [and elsewhere in the Agreement]:

- (a) are subject to Clause [9.1];
- (b) govern all liabilities arising under the Agreement [or any collateral contract] or in relation to the subject matter of the Agreement [or any collateral contract], including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

9.3 The Merchant will not be liable to the Affiliate in respect of any loss of profits, income, revenue, use, production or anticipated savings.

9.4 The Merchant will not be liable to the Affiliate for any loss of business, contracts or commercial opportunities.

9.5 The Merchant will not be liable to the Affiliate for any loss of or damage to goodwill or reputation.

9.6 The Merchant will not be liable to the Affiliate in respect of any loss or corruption of any data, database or software.

9.7 The Merchant will not be liable to the Affiliate in respect of any special, indirect or consequential loss or damage.

9.8 The Merchant will not be liable to the Affiliate for any losses arising out of a Force Majeure Event.

9.9 The Merchant's liability to the Affiliate in relation to any event or series of related events will not exceed the greater of:

- (a) £50 and;
 - (b) the total amount paid and payable by the Merchant to the Affiliate under the Agreement during the 3 month period immediately preceding the event or events giving rise to the claim.
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10. Force Majeure Events

- 10.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement, those obligations will be suspended for the duration of the Force Majeure Event.
- 10.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will promptly notify the other.
- 10.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

11. Termination

- 11.1 Either party may terminate the Agreement immediately at any time by giving written notice to the other party.
- 11.2 The Merchant may terminate the Agreement immediately [by cancelling the Affiliate's account on the Merchant Website or] by giving written notice to the Affiliate if the Affiliate:
- (a) commits any [material] breach of any term of the Agreement;
 - (b) becomes insolvent or bankrupt or enters into any insolvency or bankruptcy process or procedure; or
 - (c) (where the Affiliate is an individual) the Affiliate dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs.

12. Effects of termination

- 12.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): [Clauses 1, 8, 9, 12 and 13.3 to 13.11].
- 12.2 If the Agreement is terminated by the Merchant under Clause [11.2] or in the circumstances described in Clause [11.2], the Merchant will not have any obligation to make any further Payments to the Affiliate.
- 12.3 Subject to Clause [12.2]:
- (a) the Merchant will pay to the Affiliate all Payments arising from Verified Payment Triggers activated on or before the date of effective termination of the Agreement in accordance with the terms of the Agreement; and
 - (b) termination of the Agreement will not affect either party's accrued rights as at the date of termination.

13. General

- 13.1 Any notice given under the Agreement must be in writing (whether or not described as “written notice” in the Agreement) and must be delivered by email to affiliates@pressloft.com (in the case of the Affiliate) or the Merchant Website (in the case of the Merchant) (or as notified by one party to the other in accordance with this Clause).
- 13.2 A notice will be deemed to have been received at the relevant time where the notice sent by or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 13.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 13.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 13.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties. The Affiliate will not make any statement on the Affiliate Website or otherwise which expressly or impliedly suggest that there is any such relationship between the parties.
- 13.6 The Agreement may be varied by the Merchant posting a new version of the Agreement on the Merchant Website [and notifying the Affiliate in writing that the Agreement has been varied]. The Affiliate's continued participation in the Affiliate Programme after receipt of such a notice will constitute the Affiliate's acceptance of the varied Agreement.
- 13.7 The Affiliate hereby agrees that the Merchant may freely assign [any or all of] its rights and [/ or] obligations under the Agreement [to any successor to all or substantial part of the business of the Merchant from time to time]. The Affiliate may not without the prior written consent of the Merchant assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any of its rights or obligations under the Agreement.
- 13.8 Save as provided for in Clause [8], the Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 13.9 The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause [9.1], each party acknowledges that no representations or promises not expressly contained in the Agreement have been made by or on behalf of the other party.
- 13.10 The Agreement will be governed by and construed in accordance with the laws of England

and Wales.

- 13.11 The courts of England and Wales will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.