



Affiliate Program Terms and Conditions

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND ORION TELESCOPES & BINOCULARS ("ORION," "WE," "US"), A WHOLLY-OWNED SUBSIDIARY OF IMAGINOVA CORP. BY CLICKING ON THE "APPLY" BUTTON AT THE END OF THE AFFILIATE ONLINE APPLICATION (THE "APPLICATION"), YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS.

This agreement ("Agreement") contains the complete terms and conditions between Orion and all its brands, and you, the applicant ("You"), regarding your application to participate in Orion's Affiliate Program (the "Affiliate Program"). Upon our acceptance of your Application and electronic execution of this Agreement by You, or a duly authorized representative of Yours, this will be a legally binding Agreement between You and Orion to affiliate with our brands, telescope.com and Orion Telescopes & Binoculars.

1. Enrolling in the Affiliate Program

To apply for participation in the Affiliate Program, You must properly complete the Application and submit it to us via our web site. We will review the Application and will advise You whether it has been accepted. We reserve the right to accept or reject the Application at our sole discretion.

An application will be automatically rejected if it appears to contain false information or is submitted from an entity that has a web site that violates intellectual property rights or contains or promotes any of the following:

- Discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age
- Sexually explicit materials
- Violence
- Unlawful activities

If at any time after the Application is accepted, Your web site is deemed to have any of the above characteristics, this Agreement is subject to immediate termination. Moreover, we reserve the right, at our sole discretion, to terminate this Agreement at any time for any reason or for no reason.

2. Links to Our Web Site(s)

If You are notified that your Application has been accepted, You will be asked to provide one or more links from your site to our site(s). We will provide You with instructions and special link formats ("Link Formats") designed for accurate tracking and reporting for all links between your site and our site(s) and You will be solely responsible for properly utilizing the Link Formats.

Once established, the links utilizing the Link Formats ("Special Links") will be used to determine any fees to be paid. Failure by You to maintain the Special Links or use the Link Formats as instructed may result in a loss to You of fees.

We will process orders that are placed on our site by customers who follow the Special Links directly from Your site to our site(s) (the "Referred Orders"), and will record those orders as being associated with a referral through the Special Links from our site.

3. Affiliate Referral Fees

On a MONTHLY basis, we will pay a fee to You, in accordance with the Affiliate Referral Fee Schedule below (the "Affiliate Referral Fee"), based on the shipped and delivered ("Shipped") Referred Orders that have been recorded. For a Referred Order to generate a fee, the order must meet the following conditions (the "Qualified Referral Order"):

- A customer must have followed the Special Links from Your site to our site(s).
- A customer must have chosen one or more products.
- The customer must have ordered the products through our automated ordering system ("Shopping Cart") during that same session.
- The customer must have accepted delivery of, and paid us in full for, that order.
- The customer must not have returned the product for a refund or exchange.

Clearance, discontinued items, gift certificates and e-certificates and non Orion Branded products are excluded from earning referral fees. Orders that are placed after a customer enters our site by other means than through the Special Links are not eligible for the Affiliate Referral Fee. Orders placed subsequent to the Referred Order other than through a Special Link as a Referred Order are not eligible for the Affiliate Referral Fee.

All customers who purchase product from us under the Affiliate Program shall be deemed customers of Orion Telescopes & Binoculars and as such are subject to the policies, terms and conditions of its applicable sites.

4. Affiliate Referral Fee Schedule

You will earn an Affiliate Referral Fee based on the net sales revenue of "Shipped" Qualified Referral Orders less shipping and handling charges, taxes collected, service contract revenue, and any other non-product charges on that order (the "Referral Order Revenue") as follows:

Referral fees shall be seven percent 7% of Referral "Shipped" Order Revenue on Orion brand telescopes and binoculars and 3% on all other items through www.orientelesopes.eu. Qualified products do not include gift certificate and/or e-certificate orders purchased through our website. At our sole discretion, we may establish other special referral rates for special promotions that may be available to all or only some of our affiliates.

5. Affiliate Referral Fee Payment

Within approximately 30 days following the end of each month, we will send You a check for the Affiliate Referral Fee earned on the Referral "Shipped" Order Revenue for products that were shipped during that calendar month. If the fees payable to You for any month are less than €25.00, we will withhold payment until the next month in which the accumulated €25.00 minimum is met. All payments are processed and sent by Commission Junction.

If a Qualified Referral Order is returned by a customer after a payment has been issued to You, the associated Affiliate Referral Fee will be deducted from the fees to be paid to You in the future. In the event that the fees for returned products exceed the balance of fees to be paid to You, You may be billed for the differential.

6. Affiliate Prohibitions

a) You may use links and images provided by us only through the affiliate network(s) for the purpose of soliciting Referred Orders. You are expressly prohibited from using the Orion name and any of our brand names, product names, logos, trademarks, service marks, trade dress or copyrighted materials ("Property") on any Web site that promotes illegal activities, violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.

b) You will not purchase or operate any domain name that includes a registered trademark owned by Orion Telescopes & Binoculars, or any deliberate variation or misspelling thereof.

c) You will not purchase advertising on any search engine for keywords containing the term "Orion" or the name of any of its brands (or any substantially similar term). This includes but is not limited to "Orion Telescope," "Skyquest," or any variation or misspelling of these terms. You also agree not to purchase keyword advertising for the terms "telescope" or "binoculars," or any substantially similar term. You Agree not to purchase or bid on URL's pertaining to OrionTelescopes.com, Telescope.com, OrionTelescopes&Binoculars.com and OrionTelescopesandBinoculars.com. Orion reserves the right to supplement this list of prohibited keywords by notice to You, either through an amendment to this Agreement or by email.

d) You will not display Orion Property in a pop-up or pop-under window on any Web site other than your own. This includes the purchase of pop-up or pop-under advertising through a third-party publisher.

e) You will not use any email, at any time, to advertise or promote the Orion name or brands or any product or service related to or offered by Orion without prior written consent from our affiliate marketing manager.

f) You will not use our Property in any press release or print advertisement without obtaining our prior written consent.

h) You will not use your Links to purchase products from our website for resale or commercial use.

i) You will not include our Property within invisible source code.

j) You will not wrap or frame our Site in any manner without our prior written consent.

k) You will not publish invalid promotions, offers and coupon codes.

l) You will not publish expired promotions, offers and coupon codes without an expiration date using month/date/year.

m) All determinations of qualifying links and whether a commission is payable will be made by Orion Telescopes & Binoculars.

7. Indemnification

You agree that You will be solely responsible for, and that You will defend, indemnify and hold us, our corporate parent, subsidiaries, joint ventures, employees, third-party service providers, affiliates and all of our respective officers, directors, agents and representatives harmless from and against any and all claims, suits, damages, losses, liabilities, obligations, penalties and expenses, including legal fees and expenses, relating to or based on: the development, operation and maintenance of Your site, including all materials that appear on Your site; the technical operation of Your site and all related equipment; the creation and posting of product reviews, descriptions and references on Your site and links from such content to our site(s); the accuracy and propriety of materials posted on Your site; the sale or offering for sale, use or consumption of any products or services on your site; and allegations that materials posted on Your site violate or infringe upon the rights of any third party, or are libelous or otherwise illegal.

8. Term

The Term of this agreement will begin upon our acceptance of your program application and will end on the date this agreement is terminated by either party (The "Term"). Either You or we may terminate this agreement at any time, with or without cause, for any reason whatsoever, by giving the other party two days' written notice of termination. Upon the termination of this agreement for any reason, You will immediately cease use of, and remove from your site, all Links and Licensed Materials and any other names, marks, symbols, copyrights, logos, fanciful or other characters, designs, representations, figures, drawings, photographs, ideas or other proprietary designations or properties owned, developed, licensed or created by us and/or provided by or on behalf of us to You pursuant to this agreement or in connection with the Program. You will not receive any fees on product sales occurring following the end of the Term, and fees earned through the end of the Term will remain payable only if the related orders are not canceled or returned. We may withhold your final payment for a reasonable time to ensure that the correct amount is paid.

9. Modification

We may modify any of the terms and conditions contained in this Affiliate Referral Agreement, at any time and at our sole discretion, by posting a change notice or a new agreement on our site(s). Modifications may include, for example, changes in the fee schedule, payment procedures and Program rules. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED PARTICIPATION IN THE PROGRAM FOLLOWING OUR POSTING OF A CHANGE NOTICE OR NEW AGREEMENT ON OUR SITE(S) WILL CONSTITUTE BINDING ACCEPTANCE OF THE CHANGE.

10. Limitation of Liability

WE WILL NOT BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (OR LOSS OF REVENUE, PROFITS OR DATA) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE AFFILIATE REFERRAL PROGRAM, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Further, our aggregate liability arising with respect to this agreement and the Affiliate Referral Program will not exceed the total Affiliate Referral Fees paid or payable to You under this Agreement.

11. Disclaimers

We make no express or implied warranties or representations with respect to the Program or any products sold through the Program including, without limitation, warranties of fitness, merchantability, noninfringement, or any implied warranties arising out of a course of performance, dealing, or trade usage. In addition, we make no representation that the operation of our site(s) will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

12. Independent Investigation

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, HAVE HAD AN OPPORTUNITY TO CONSULT WITH YOUR OWN LEGAL ADVISORS IF YOU SO DESIRED, AND AGREE TO ALL THE TERMS AND CONDITIONS SET FORTH HEREIN. YOU AGREE THAT, IN INTERPRETING THIS AGREEMENT, NO WEIGHT SHALL BE PLACED UPON THE FACT THAT THIS AGREEMENT HAS BEEN DRAFTED BY US, AND YOU SHALL NOT ASSERT THAT THIS AGREEMENT IS UNENFORCEABLE OR INVALID ON THE GROUNDS THAT IT IS A CONTRACT OF ADHESION, THAT IT IS UNCONSCIONABLE, OR ANY SIMILAR THEORY. YOU UNDERSTAND THAT WE MAY AT ANY TIME, DIRECTLY OR INDIRECTLY, SOLICIT CUSTOMER REFERRALS ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT OR OPERATE WEB SITES THAT ARE SIMILAR TO OR COMPETE WITH YOUR WEB SITE. YOU HAVE INDEPENDENTLY EVALUATED THE DESIRABILITY OF PARTICIPATING IN THE PROGRAM AND ARE NOT RELYING ON ANY REPRESENTATION, GUARANTEE OR STATEMENT OTHER THAN AS SET FORTH IN THIS AGREEMENT.

13. Entire Agreement

The provisions contained in this agreement constitute the entire agreement between the parties with respect to the subject matter of this agreement, and no statement or inducement with respect to such subject matter by any party which is not contained in this agreement shall be valid or binding between the parties.

14. Assignment

You may not assign or transfer this agreement or any interest herein, nor shall the same be assignable by operation of law, without our prior written consent. For this purpose, "assignment" shall include any sale of a majority of the voting power of your capital stock or any merger, consolidation or other comparable transaction following which you are not the surviving corporation.

15. Governing Law

This agreement shall be governed by, and construed in accordance with, the laws of the State of California. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this agreement, or arising out of any matter pertaining to this agreement, shall be submitted for trial, without jury, before the federal or state courts located in the State of California. Only California state and federal courts with jurisdiction in Santa Cruz County shall be the exclusive forums for any lawsuits. The parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the State of California in any matter to be submitted to any such court pursuant hereto.

16. Miscellaneous

No release, discharge or waiver of any provision of this agreement will be enforceable against or binding upon either party unless in writing and executed by the party granting such release, discharge or waiver. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

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17. Not all applicants will be accepted. We are looking for partners with medium-to-high traffic websites with lifestyle product categories, and/or specialized market websites that are relevant to our product selection. When applying to the program, please provide as much detailed information as possible about your marketing intentions. We will terminate the affiliate relationship if there is no sales activity during a 6 month period.