

# EXHIBIT 1

## **Special Terms & Conditions » eBay Nov. 2004 Ts and Cs**

### **eBay Affiliate Program - Supplemental Terms and Conditions**

In consideration for Your participation in the Affiliate Program (the "Program") maintained by eBay Inc. ("eBay") through Commission Junction, Inc. ("CJ"), You agree to comply with these Supplemental Terms and Conditions ("Terms and Conditions") in addition to the terms of the Commission Junction Publisher Service Agreement ("PSA"). If any of these Terms and Conditions conflict with those of the PSA, then these Terms and Conditions will control. Capitalized terms not defined herein have the meanings set forth in the PSA.

- (1) **eBay Trademarks.** You will not use in your domain name or URL nor purchase or register in any search, referral, or advertising service (such as Google's AdWords program) any of the following terms:
  - a. Any eBay company trademarks, including "eBay", "PayPal", "Half" or any URL or keyword string that includes eBay company names (for example, "www.yourcompany-ebay.com", "eBay auctions", "eBaymotors", "ebay motors", "eBay jewelry", "PayPalpayments", "paypal payments", "Halfitems", "Half items"); or
  - b. Variations of any eBay company trademarks (for example, "e-bay", "ebay.com", "www.ebay.com", "e-bay", "e bay", "www.ebay", "ww.ebay.com", "e-bay.com", "www,ebay.com", "e.bay", "wwwwebay.com", "ebye", "Pay-Pal", "Pay Pal", "Half.com", "Half com", "Half.ebay.com", "Half ebay com", "ebay half").
  
- (2) **Tracking Tags.** As part of the Program, CJ or eBay may provide you with tools, products, and creative assets (collectively, "Assets") that include information that helps track Transactions generated by You and attribute them to Your Account. You will use each of these Assets only in their intended manner as instructed by CJ, and will not corrupt, modify, or disable them. You will not deliver any eBay-related cookies or other tracking tags to the computers of users that are merely viewing Your advertisements or while Your applications are merely active or open.

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- (3) **Compensation.** You will be compensated in accordance with the then-current Payout schedule for Transactions on the eBay.com site ("Commission-Earning Activity"). A user must take an affirmative action by clicking on your properly-coded link in order for You to be compensated for a transaction. Items that are listed on Froogle (or any of its successor sites) are currently excluded from Commission-Earning Activity.
- (4) **No Affiliate Links.** You may not include affiliate links on any ebay.com page or eBay-owned page, such as an eBay listing or eBay Store. Nor may You use affiliate links to promote your own eBay listings or eBay Store, those of your Sub-Publisher or those of anyone else that you are affiliated with.
- (5) **Terms Governing Downloadable Software.** You will be paid for Commission-Earning Activity derived from downloadable software (DLS) only if the DLS complies with all of these Terms and Conditions and the PSA.
- a. **Legal Compliance.** The operation of the DLS complies with all applicable laws in all relevant jurisdictions and does not deceive consumers about its nature, purpose, or operation.
- b. **Informed Consent.** The DLS is not installed or executed on the computer of any user until that user has given explicit consent to its installation or execution. "Explicit consent" means:
- i. The user has received a clear, brief, and conspicuous notice, in plain language and outside of any user agreement or terms, that the DLS will collect information about web usage (and, if applicable, personally identifiable information), and will use that information to display advertising on the user's computer (including, if possible, a description of the frequency of such advertising);
  - ii. The user has been provided with, or has been provided an opportunity to access, a more detailed description of the type(s) of information collected and the purpose(s) for which it will be used;
  - iii. If the DLS is bundled with other software, the user has been provided with specific identification of the advertising-serving

program(s) ("Adware") in the bundle; and

- iv. After receiving the notice specified in (i) and after being provided, or provided an opportunity to access, the information specified in (ii) and (iii), the user affirmatively chooses to have the DLS installed or executed on his or her computer.
- c. **Easy Removal.** A user must be able to completely uninstall the DLS through a means that the user can readily identify and perform without undue effort or specialized knowledge (preferred alternatives include providing easy access to an uninstall process from the content or framing of the DLS or a readily recognizable icon or listing the DLS in the add/remove feature in the Windows operating system). Uninstall processes must not be deceptive, complicated or confusing (such as listing DLS under multiple, confusing or deceptive names, requiring users to re-boot unnecessarily, using confusing language in pop-up challenges, or requiring more clicks than necessary to complete the un-install process). Each DLS-affiliated feature must contain the name of the DLS in the uninstall user interface.
- d. **Full Disclosure.** All ads generated on the user's screen by the DLS identify the DLS as the source of the ad, using the same name as provided most prominently at the time the DLS was downloaded.
- e. **No Persistent Ads.** Users must be able to close (without ending their browser sessions) any DLS-generated pop-ups, pop-unders, or other advertisements that cover otherwise viewable content.
- f. **Value to User.** Either the DLS or an application bundled with the DLS must have meaningful value to the user that outweighs any burden imposed. For example, DLS that is combined with a comparison-shopping engine would meet this requirement.
- g. **Limited Number of Ads.** The DLS will not serve an unreasonable number of pop-up or pop-under advertisements per day or per web browsing session.
- h. **Not Aimed at Children.** The DLS is not specifically or primarily marketed to children under the age of 18 or downloadable from websites or services primarily oriented toward children.
- i. **Prohibited Operations.** Neither the DLS, nor any other software bundled with or distributed with the DLS, performs any of the following functions unless explicitly instructed to do so by the user:
- i. sending unsolicited information or material to another

computer;

- ii. diverting the user to another site not requested by the user;
- iii. initiating or terminating a user's connection to the Internet;
- iv. modifying the user's settings with respect to browser home page, Internet connections (including default access provider), bookmarks, or security levels;
- v. keystroke logging;
- vi. automatic re-installing or re-activating itself or another application after being uninstalled or removed by the user; or
- vii. removing or disabling security, pop-up-blocking, anti-virus, anti-Adware, or anti-spyware programs on the user's computer. For these purposes, spyware is defined as software that surreptitiously gathers a user's personally identifiable information.

j. **Other Terms.** You will provide CJ with an accurate and thorough description of the DLS on which any of Your ads appear. You will also notify CJ in writing or by email such that CJ receives your notice at least 10 days before there is any material change to the operation of the DLS. Except for any perpetual eBay search box or any toolbar that has a perpetual link to eBay, the DLS will not display an ad (including any pop-ups, pop-unders or tool bars) that contains eBay affiliate links while an eBay page is open on a user's computer.

(6) **Terms Governing Incentive Sites.** You will not directly or indirectly offer any consideration or incentive for any Commission-Earning Activity or for clicking on an affiliate program-coded link unless expressly authorized to do so in writing by CJ. Each such written authorization will authorize only one specific incentive.

(7) **Your Responsibility for Your Agents.** You will not make any commitments or representations on behalf of eBay with regard to any relationship you enter into with Your Sub-Publishers or any other third parties (collectively, "Agents") in connection with your promotion of an eBay site. You will ensure that Your Agents agree to terms and conditions that are at least as restrictive as the PSA and these Terms and Conditions, subject to applicable law. Any violation by Your Agents of the terms and conditions of this Agreement shall constitute a violation by You, and CJ and eBay shall have full recourse against You with respect to

such a violation.

- (8) **Disclaimer of Warranties.** EBAY AND CJ DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EBAY AND CJ, EACH INDIVIDUALLY, EXPRESSLY DISCLAIMS ALL LIABILITY RELATING TO THESE TERMS AND CONDITIONS OR THE PROGRAM.
- (9) **Compliance.** You hereby represent and warrant to eBay and CJ that You will comply with CAN-SPAM Act of 2003 as amended and any other applicable laws governing email communications or downloadable software applications. Except for any transactional emails that comply with the CAN-SPAM Act of 2003, You will not send any marketing emails that contain eBay-related messaging unless You have signed an agreement with CJ that authorizes such email.
- (10) **Publisher's Indemnification Obligations.** You will defend, indemnify, and hold each of eBay and CJ harmless against all claims, liabilities, and expenses claimed or incurred by third parties directly or indirectly as a result of distribution or use of applications or content by You, Your Agents, or anyone else that you are affiliated with.
- (11) **Remedy for Breach.** If You breach any of these terms, in addition to any other available remedies, eBay may remove You from the Program immediately, withhold or recover any compensation for transactions not in compliance with these terms, and seek removal of any search terms registered or purchased in violation of the terms.
- (12) **Amendment.** eBay may amend these Terms and Conditions by notifying You through CJ, email, or mail sent to Your address of record. You may review any revised Terms and Conditions for up to seven days after eBay sends its notice. After seven days, the revised terms will automatically take effect and become fully enforceable. If You do not agree with the revised Terms and Conditions,

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You will remove Yourself from the Program through Your Account and remove and stop promoting any eBay Links.

- (13) *Acceptance.* By clicking on the "ACCEPT" link below, You are agreeing to be bound the terms in these Terms and Conditions. If You do not understand or agree to all of the terms and conditions of these Terms and Conditions, click the "CLOSE" button.

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