

# AFFILIATE AGREEMENT

Each participant in the affiliate program offered by Marsali Enterprises Inc. (the ~~%Program Operator+~~) at <http://bestgasgrillsdeals.com> (the ~~%website+~~) expressly agrees to this affiliate agreement.

**NOTICE: Please read this agreement carefully. Unless you expressly agree and consent to this agreement, you may NOT participate in the affiliate program. By participating in the affiliate program, you are agreeing to comply with and be legally bound by the terms and conditions of this contract. If you do not agree to all of the terms of this agreement, please do not register for the affiliate program.**

This agreement incorporates the Program Operator's Terms and Conditions of Use (located on this website) herein as if it were set forth in full.

Throughout this agreement, ~~%affiliate program+~~ refers to the affiliate program operated by the Program Operator in part for the website.

## AFFILIATES

Each affiliate is an independent contractor of the Program Operator and not an employee. Nothing herein is intended to create an employer/employee relationship.

## COMMISSIONS & REFERRAL FEES

Whenever someone orders through your affiliate link, your affiliate ID is credited with a referral fee. When another affiliate registers as an affiliate using your affiliate link, your account is credited as the Sponsoring affiliate. You do not earn a referral fee for any other affiliate's registration. The commission/referral fee amount varies from product, service or opportunity. The rate at which your referral fee is generated can be found on the website and is subject to change at any time. If the website is silent as to the commission rate, then the base rate is 4%.

Before any affiliate may be sent a commission check, the affiliate must submit to the Program Operator identification information. Such identification information shall include, at a minimum, a copy of a government issued, picture, identification card (for example, a driver's license). These documents shall be faxed to the Program Operator as per the instructions sent in your "Welcome, affiliate" email. You will not receive any payment of commission/referral fees until such time as you submit the required documentation to the Program Operator.

Commissions on products and services are paid at the rates as indicated on the website. The Program Operator strives to pay similar rates on further products, services, and opportunities, but reserves the right to pay a different scale if necessary.

## INCOME TAX LIABILITIES

Each affiliate acts as an independent contractor and as such is responsible for any or all United States, state, or foreign income taxes and any other tax liabilities that affect or concern the sales of the products or services, in your state or location. If you are NOT a resident of the United States, the Program Operator will withhold the appropriate U.S. income tax applicable to foreign nationals, prior to your receipt of any commissions. The Program Operator does so pursuant to the United States Internal Revenue Service laws (also known as the United States Tax Code) and other applicable laws. It is the affiliate's sole responsibility, and not the responsibility of the Program Operator, to take any steps necessary to recover these sums under the Tax Code and other applicable laws.

## EMBARGOED NATIONS & SPECIALLY DESIGNATED NATIONALS

The United States controls the export of products and information. Each affiliate agrees to comply with such restrictions and to not export or re-export the materials (including software) to countries or persons prohibited under the export control laws. By becoming an affiliate, you are agreeing that you are not in a country where such export is prohibited or are not a person or entity to which export is prohibited. You are responsible for compliance with the laws of your local jurisdiction with regard to the import, export, or re-export of the materials (including software).

Each affiliate is responsible for compliance with all applicable U.S. laws and regulations, including but not limited to, those laws pertaining to export control. By registering as an affiliate, you warrant that you are not a citizen or resident of a country designated as having Embargoed Nation Status and further, you also warrant that you are not on the list of Specially Designated Nationals or Blocked Persons maintained by the U.S. Treasury Department. The products and/or services are exported from the United States in accordance with the Export Administration Regulations. Diversion to other countries is contrary to U.S. law and is prohibited.

In compliance with the United States Patriot Act, only those who have provided appropriate identification information and do not reside within an embargoed nation and who are not listed on the Specially Designated Nationals list may receive commission checks paid by either the Program Operator.

## **COMMISSION SCHEDULE**

Commissions are paid once per month by payment processor on the 1st day of the month for sales made from the first through the last day of the previous month, and are paid by the Program Operator.

There is a minimum commission amount of . This is the minimum amount that you must earn before you will be paid commissions. In any commission period, your commission must exceed this amount before you will receive any sums for that period. Commissions below this minimum amount will be held until such time as the commission equals or exceeds this amount.

Commissions are not paid for any sales for which payment has not been received, or for any transaction that has been rejected for any reason.

We are not responsible for paying interest to affiliates for accrued but not yet delivered commission payments.

If a transaction incurs a charge-back, or if an online transaction is not completed in every way, no commission payment is due to the affiliate. If a commission has already been paid, then it will be deducted from an active affiliate's future commissions.

All commissions are paid in US Dollars by PayPal or bank draft. Affiliates requesting bank drafts will have a processing fee of \$10.00 deducted from the check. This fee may change at any time.

Each affiliate is responsible for selecting the payment processor, through which to receive their commissions/referral fees, from the payment processors supported by the Program Operator. If you elect a payment processor through which to receive your commissions and you later terminate the account or the account becomes unavailable for any reason, the Program Operator is not responsible for your not receiving the money. Each affiliate is responsible for always maintaining the payment processor through which they receive their commissions/referral fees OR selecting an alternate method of payment supported by the Program Operator. This election is entirely made by the affiliate and the Program Operator assumes no responsibility for non-receipt of payments made according to the payment processor elected by the affiliate, or the affiliate's lack of ability to then conform to the payment processors or processes supported by the Program Operator. The Program Operator assumes no responsibility for an affiliate not electing a payment processor. If an affiliate fails to elect a payment processor, any sums due will be paid via check and any fees applicable to payments by check or bank draft will be deducted.

## **MIXING OF PRODUCTS**

As an affiliate of the Program Operator, your website on which you advertise any products or services of the Program Operator may only include products that are not capable of being viewed by persons 13 years of age or younger unless the Program Operator specifically allows such products. Your website may NOT contain any content or images that are NOT suitable for being viewed by persons 13 years of age or younger if you include any reference whatsoever to the Program Operator, the website, the eBook(s), or your affiliate Link. On any website on which you

include any reference whatsoever to the Program Operator, its products, services, and eBooks, you may NOT include any reference whatsoever to any form of "Adult" content. Any violation of these requirements will result in immediate termination of your affiliate status and you shall forfeit any commissions/referral fees that may be due. In the event that any violation of these requirements results in the suspension or termination of any payment processor for or the Program Operator, you shall be liable for liquidated damages in the amount of \$10,000 as well as actual and any consequential or actual damages that or the Program Operator may incur.

### **PAYMENT PROCESSOR FEES**

All commissions are calculated based on the net transaction. In other words, all payment processor fees are first deducted from the sums collected from the customer. Then, all payment processor fees are deducted. The remaining amount is a commissionable sale. The commission rate listed on the website is then applied to determine the amount due the affiliate. Any sums paid for payment processor fees are not commissionable. The Program Operator may also charge a per transaction fee for every transaction processed. In the event that a per-transaction fee is applied, the amount of the fee can be seen on the website. Any such fee is not commissionable and is also deducted from the sums paid by the customer, prior to the calculation of any commission.

### **SPAM & UNSOLICITED COMMERCIAL EMAIL (UCE)**

The Program Operator does not tolerate the sending of unsolicited bulk emails (UCE or SPAM) which promote, or make reference to the Program Operator, or any of their associated companies or websites, Partners, or employees, the websites, products or services. The provisions of the Terms and Conditions pertaining to UCE or SPAM shall apply to each affiliate. Any affiliate who, in the opinion of the Program Operator, breaches this rule will have their affiliate status canceled and any outstanding commissions will be forfeited.

### **UNPROFESSIONAL CONDUCT**

The Program Operator and their associated companies operate with the strictest codes of professional conduct. Any affiliate who brings the Program Operator or their employees, partners, or associates into disrepute, or who promotes any form of slander, racism, or unfair business practices, will have their affiliate status canceled and any outstanding commissions will be forfeited.

The Program Operator reserves the right to reject any affiliate application if, in the Program Operator's opinion, that person or entity violates established laws or commonly held standards of decency. For example, we will reject applications from any person or company that promotes any form of violence, illegal activities, or from applicants who the Program Operator prefers not to be associated with.

### **AFFILIATE SALES & TRACKING**

After signing up for the affiliate program, you will receive a unique affiliate URL which you will use to advertise the website. When someone clicks through this URL, a cookie will be set in their browser with your affiliate ID and their IP address may also be logged with your affiliate ID. During that visit to the website or any later visit, when a purchase is made the commission will be given based on the existence of the cookie.

In order to receive proper credit for sales, a person or entity must purchase through your unique affiliate URL. Masking or cloaking of the links (whether done by software or by a script and sometimes referred to as "affiliate link cloaking") may or may not work with parts of the Sites. The Program Operator allows masking or cloaking but you must provide a repeatable process for our verification of the cloaked link, otherwise the use of the masked or cloaked link is disallowed.

### **TERM & TERMINATION**

This agreement will begin upon your sign-up with the affiliate program and will end when either you or the Program Operator terminates your affiliate status, or if your account is inactive in any continuous twelve month period. An affiliate may terminate this agreement at any time, and for any reason, by writing to - or emailing - the Program Operator at the email address listed on the website. The affiliate may not transfer this agreement, or any rights conveyed in this agreement, to any third party whatsoever.

The Program Operator may also terminate this agreement at any time, and for any reason, by writing to affiliate at the email address listed in the affiliate's Profile, with 30 days notice. The Program Operator may transfer this agreement to any party whatsoever, at any time, and this agreement shall remain in full force and effect, without notice to affiliate. However, if this agreement should terminate for cause due to violation of this agreement or the Terms and Conditions, this agreement shall terminate immediately and affiliate shall forfeit all right to any commissions then due.

## **RIGHTS TO MODIFY AGREEMENT**

The Program Operator, and its associated companies may, in good faith, modify any of this agreement and/or the Terms and Conditions (including the affiliate Commission Schedule), at any time and at its sole discretion, by posting a change notice or a new agreement on the website. These changes will come into force immediately upon posting. The affiliate's continued participation in the affiliate program following the said posting of a change notice or new agreement shall constitute binding acceptance by the affiliate of the change.

If any modification to this agreement is not acceptable to the affiliate, the affiliate's only recourse is to terminate this agreement. Upon termination of this agreement, the former affiliate must remove all affiliate links and graphics from its web site, and refrain from publishing same in any manner whatsoever.

## **NO MISUSE**

It is understood that any individual that uses the Program Operator system shall not use it in connection with obscene, defamatory, slanderous, hateful, illegal or politically disruptive material, the definition of which shall be at the sole discretion of the Program Operator. It is also understood that affiliates shall not try to cheat the system in an effort to increase their payments due. If such misuse is detected, the affiliate will be immediately terminated as an affiliate and any sums paid and any sums payable as and for commissions will be withheld. All affiliates further agree to refrain from engaging in any hostile activity toward the system. Any individual that engages in such hostile activity, such as hacking, shall be held liable for any loss sustained by the Program Operator, or its associates due to such action.

## **AS-IS ONLY**

There is no warranty or guarantee of any kind with respect to the Program Operator system as far as reliability, stability, quality or dependability. This means that the Program Operator, or its associates is not responsible for any loss or damage incurred directly or indirectly due to the use of the Program Operator website, products, services, or any other facet of the system. This shall include, but is not limited to, any system malfunction, period of being inoperative or unavailable, loss of data or discontinuation of service, other inconveniences.

## **FEES**

Affiliates shall be charged NO FEE by the Program Operator for setting up an account to join affiliate programs or to join any program.

## **ELECTRONIC COMMUNICATIONS & EMAIL**

The Program Operator requires your primary email address be listed in your affiliate Profile. Affiliates will not be able to use the website or participate in the affiliate program until their email addresses are verified. Those who fail to verify their email address or use an email address that generates an error response consistently (e.g., "User is over quota" or "Mailbox full") will forfeit any commissions due and this contract will be terminated immediately. You may not use an email address with an auto responder as your Program Operator email address. When you visit the Program Operator's websites or send emails to, you are communicating electronically. You consent to receive communications from the Program Operator electronically. The Program Operator will communicate with you by email or by posting notices on this site. You agree that all agreements, notices, disclosures and other communications that the Program Operator provides to you electronically satisfy any legal requirement that such communications be in writing. If you are an affiliate, you understand that you may NOT opt out of any emails that you receive from the Program Operator. As an affiliate, you must continually have a valid email account on file with the Program Operator or we reserve the right to terminate your participation immediately, without any refund of any license fees paid or payment of any commission due.

## **UNAUTHORIZED CHARGING OR RECEIPT OF PAYMENTS THROUGH THE SITES**

No affiliate, or other person or entity may use the website, or the Program Operator payment processing system, for private transactions. Any revenue collected through the website or through the Program Operator payment processing system may become the sole property of the Program Operator. Any revenue collected through the Program Operator payment processing system may become the sole property of the Program Operator. Specifically, affiliates may not link to the website for processing of products or services that are not wholly sponsored by the Program Operator and authorized by the Program Operator and further, may not link to the website for processing of any products beyond what the Program Operator has identified as salable products for the website and specific affiliate sales. Should any affiliate of the Program Operator or other person or entity construct links that process orders through the Program Operator payment processing system, the act will be considered an attack of computing resources with intent to damage the website and therefore treated as a serious computer crime. Violators will be prosecuted to the fullest extent of the law.

## **CHARGING OR RECEIVING ANY PAYMENT FOR ASSISTING YOUR AFFILIATES**

The progress of any affiliate benefits the Program Operator in many ways. If You recruit, sponsor, or obtain an affiliate through the websites, by any means, You should always be willing to assist such affiliate at no charge to such affiliate. If you are unwilling to assist such affiliates without charge, your affiliate status with the Program Operator will be terminated immediately and any commissions due will be withheld permanently as partial compensation for managing the associated and impacted affiliates.

## **AFFILIATE IDENTIFICATION NUMBERS**

You will be provided an affiliate identification number. Your affiliate ID number may be numeric and/or CaseSensitive. For example, the code 'learn\_more' is different from 'Learn\_More'. You are responsible for maintaining the secrecy and security of your affiliate ID number and password. You agree to hold the Program Operator harmless in the event that any such information is shared by you with any other person or entity whatsoever.

## **NO PREDATORY ADVERTISING**

All affiliates in the affiliate program agree to refrain from any type of predatory advertising practices, the definition of which shall be at the sole discretion of the Program Operator, and shall include, but not be limited to, dynamically replacing the affiliate ID of one affiliate with that of another with the effect of "stealing" the commission away from the affiliate that earned it, whether this be intentional or not. Affiliates may not adjust any of the supplied affiliate links to reset cookies or bypass other safeguards in the system. Affiliates understand that engaging in such practices is grounds for immediate termination and forfeiture of any earned commissions.

## **LIABILITY**

The Program Operator will not be liable for indirect or accidental damages (loss of revenue, commissions) due to affiliate system sale tracking failures, commission processing system failures, losses of database files or backups thereof, attacks on computing resources, computer viruses, the continued viability of their products, any results of "intents of harm" to the program, or acts of God or Nature. The Program Operator makes no claim that the operation of the websites or that the Program Operator network will be error-free nor will the Program Operator be held liable for any interruptions or errors.

## **MISCELLANEOUS PROVISIONS**

a) If any part of this agreement or the Terms and Condition is declared void, this agreement and the Terms and Conditions shall, to the maximum practicable extent, be construed without reference to that part. No term or provision of the Agreement shall be waived unless in writing and signed by the party waiving the provision and any waiver shall apply only to the specific event or situation which it describes and shall not be continuing. No affiliate may assign or sublicense this agreement without the Program Operator's prior written consent.

b) All legal or other fees incurred in collecting returned checks or declined credit cards or any other lack of payment related to a sale made by an affiliate will be payable by the affiliate. Any sums not collected from the affiliate or affiliate's customer are not commissionable, and any fees incurred during processing or handling of sales made by

the affiliate will be deducted in whole from any commissions due to the affiliate. Further, in the event that the commissions due the affiliate are insufficient to cover any sums, the affiliate agrees to pay the full amount to the Program Operator.

c) IF THE FOREGOING LIMITATIONS OR THE LIMITATIONS WITHIN THE TERMS AND CONDITIONS ARE HELD TO BE UNENFORCEABLE, THE PROGRAM OPERATOR'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT TO ANY PERSON OR ENTITY SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY THAT PERSON OR ENTITY FOR THE PRODUCT, SERVICE, AND OR EBOOK OR SOFTWARE (LICENSE).

d) To the extent you have in any manner violated or threatened to violate the Program Operator's intellectual property rights, the Program Operator may seek injunctive or other appropriate relief in any court located in El Paso, Texas, USA and you consent to exclusive jurisdiction and venue in such courts. Use of the Program Operator website is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. You agree that no joint venture, partnership, employment, or agency relationship exists between you and the Program Operator as a result of this agreement or use of the website, products, and/or services. The Program Operator's performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement is in derogation of the Program Operator's right to comply with governmental, court and law enforcement determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.

e) This Agreement shall be governed and construed in accordance with the laws of Texas, USA applicable to agreements made and to be performed in Texas, USA. You agree that any legal action or proceeding between the Program Operator and you for any purpose concerning this agreement or the parties' obligations hereunder, will first attempt to be resolved with the help of a mutually agreed-upon online mediator. Any costs and fees (other than attorney fees) associated with the mediation will be shared equally by each of us.

f) If it proves impossible to arrive at a mutually satisfactory solution through online mediation, we agree to submit the dispute to binding arbitration at the following location: for legal actions or proceedings between the Program Operator and you, in El Paso, Texas, USA under the commercial rules of the American Arbitration Association. Judgment upon the award rendered by the arbitration may be entered in any court with jurisdiction to do so.

In no case shall you have the right to go to court or have a jury trial. You will not have the right to engage in pre-trial discovery except as provided in the rules; you will not have the right to participate as a representative or member of any class of claimants pertaining to any claim subject to arbitration; the arbitrator's decision will be final and binding with limited rights of appeal.

g) Any cause of action or claim you may have with respect to the website, the products, the services, or the eBook(s), must be commenced within ninety (90) days after the claim or cause of action arises or such claim or cause of action is barred. The Program Operator's failure to insist upon or enforce strict performance of any provision of this agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this agreement. The Program Operator may assign its rights and duties under this agreement to any party at any time without notice to you. Use of headings in this document is for convenience only and does not identify legal boundaries or terms explicitly.

h) The Program Operator may modify this agreement, and the agreement this creates, at any time, simply by updating this posting and without notice to you. This is the ENTIRE agreement regarding all the matters that have been discussed.

i) The Program Operator may transfer any rights or responsibility that it may have to any person or entity whatsoever. Nothing herein shall alter or encumber the right of the Program Operator to transfer any such rights or responsibilities. Any transfer by the Program Operator shall cause this agreement, and any other agreement then in effect (as well as any other contract between you and the transferring party) to transfer simultaneously, all without permission.

j) Should this affiliate program be deemed illegal in any jurisdiction, the Program Operator has the right to immediately terminate this program, without recourse. If the payment processors utilized by the Program Operator determine that sales made through affiliates cannot be processed through the payment processor, then the Program

Operator has the right to immediately terminate this Program, without recourse. Nothing herein is intended to imply that the Program Operator will always offer any affiliate program, or this affiliate program, for all products, services, and/or opportunities sold by the Program Operator on the websites or that the Program Operator will offer any affiliate program whatsoever.

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