

ao.com affiliate marketing terms and conditions

## 1. Interpretation

### 1.1. The definitions and rules of interpretation in this

clause apply in this agreement.

**Affiliate:** means the entity or person who displays a Link.

**Affiliate Program:** means the affiliate marketing program run by AO as described in these terms and conditions, in particular in clause 2.

**Affiliate Site:** means the website(s) owned or operated by the Affiliate which display a Link to an Boots Kitchen Appliance Site.

**AO:** means AO Retail Limited (company number 03914998)

**AO Content:** means any content owned by or licensed to AO which is provided by AO to the Affiliate or to any Technology Provider which is then provided to the Affiliate and includes, without limitation, the Link, any tracking code, Boots kitchen Appliance trademarks or logos, the Boots Kitchen Appliance name and Boots Kitchen Appliance Sites and their Look and Feel, any product feed, text, banners or images.

**AO Site(s):** means [www.ao.com](http://www.ao.com) and any other sites that AO may designate as its sites from time to time.

**Attribution Policy:** means AO's attribution policy as set out in clause 3 or as amended from time to time in accordance with that clause.

**Business Day :** a day (other than a Saturday, Sunday or Public Holiday) when banks in London are open for business.

**Confidential Information :** has the meaning given in clause 11.

**Customer:** means a User who transacts on the AO Site.

**Force Majeure Event :** means a civil commotion, riot, invasion, war, threat or preparation for war, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster (but for the avoidance of doubt not including any dispute with employees).

**Group :** in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries.

**holding company and subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

IPR : all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. Intellectual Property Right means any one of the Intellectual Property Rights.

Link: mean a link to an AO Site from the Affiliate Site.

Look and Feel: means the design, organisation layout, colours, and style of the website together with its controls and navigation and general user experience.

Technology Provider: means the third party technology provider which supports the AO Affiliate program.

Products : means the products available on the AO Site(s) for sale,

Public Holiday(s) : Christmas Day, New Year's Day and other public bank holidays in England & Wales.

Relevant Sales : means sales on which an Affiliate can earn commission in accordance with clause 3.

Representatives : has the meaning given in clause 11.2.

Return Period : means 14 days from delivery of the Product or such other duration as AO may offer its customers from time to time.

Term : the term of this agreement, as determined in accordance with clause 12.

Tracking Period: means the period of 30 days commencing when a User clicks on the Link.

User: means a person who has clicked on a Link on the Affiliate Site and is directed to the AO Site.

VAT : value added tax chargeable under the Value Added Tax Act 1994 or any applicable sales tax in any jurisdictions other than England and any similar replacement or additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time and, in the case of a statute, includes any subordinate legislation made under that statute from time to time.

1.9 A reference to writing or written includes faxes and e-mail.

1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.11 A reference to an agreement is a reference to that agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.

1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

1.15 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. Affiliate Program

2.1. AO wishes to engage affiliates to help increase web traffic to AO Site(s) and ultimately to increase its sales. The Affiliate wishes to partake in the program in return for commission.

2.2. AO shall (either directly or through the Technology Provider) provide a Link.

2.3. The Affiliate shall place the Link on the Affiliate Site and shall ensure that the Link features in a prominent position and in the form in which it is provided to the Affiliate. The Affiliate shall not make any changes to the Link without the prior written permission of AO.

2.4. The Affiliate shall use all reasonable endeavours to procure that the Link properly re-directs to the AO Site and shall ensure the Affiliate Site is available 24 hours a day, seven days a week, subject to planned maintenance which must be agreed in advance with AO. Any unscheduled maintenance of the Affiliate Site shall be kept to a minimum.

2.5. The Affiliate acknowledges and permits AO to monitor and perform checks on the Affiliate Site to assess the quality, placement and performance of the Link.

## 3. Tracking and Relevant Sales

3.1. AO (or the Technology Provider as the case may be) shall track when a User has clicked on a Link from the Affiliate Site to the AO Site and shall continue to monitor the User's activity for the Tracking Period.

3.2. If a User then purchases a Product from the AO Site after following such Link and:

(a) such purchase is within the Tracking Period; and

(b) the transaction is then not subsequently cancelled by the User or AO (either in accordance with a customer's statutory or contractual "cooling off" rights or for any other reason whatsoever) within the Return Period; and

(c) the transaction was concluded over the AO Site and not via a call-centre; and

(d) the transaction was not concluded fraudulently; and

(e) the Affiliate has not breached clause 7 in attracting such User to click on the Link;

then, subject always to AO's Attribution Policy, clause 3.4 and clause 6.4 such transaction shall constitute a "Relevant Sale."

3.3. AO operates an Attribution Policy which currently follows the "last click" rule such that should a Customer click on multiple links from different affiliates in its journey in purchasing a Product, the affiliate who hosted the link that was clicked on last in time prior to conclusion of the transaction shall earn commission on such transaction and the transaction shall not constitute a Relevant Sale for other affiliates. Such Attribution Policy may be changed by AO from time to time on giving 14 days' notice.

3.4. If a User concludes a transaction within the Tracking Period but such transaction is concluded via the use of a device or hardware different from the device or hardware used when the Link was clicked on, the Affiliate acknowledges that AO shall not be able to identify that such activity was processed by the same User and accordingly the Affiliate shall not earn commission on such sales.

#### 4. Commission

4.1. The Affiliate shall earn commission on the net Product sales price for each Relevant Sale at a rate of 1.5%.

4.2. For the avoidance of doubt, commission is calculated on the price of the Product actually paid by the Customer exclusive of VAT or other sales tax and any other promotional discounts or, cash-back offers. Further commission shall not be payable on any ancillary services purchased by the Customer in connection with the purchase of the Product (including without limitation delivery charges, connection or installation charges or recycling/disposal charges), nor for any extended warranty/protection plan income.

4.3. AO shall be entitled to amend the rate of commission on giving 14 days' notice.

4.4. Commission paid shall be paid in sterling and shall be deemed to include VAT or other sales tax payable in respect thereof.

## 5. Payment of Commission

5.1. AO shall pay applicable commission to the Technology Provider in accordance with the terms of its agreement with the Technology Provider. AO shall not be liable for any failure by the Technology Provider to distribute commission to the Affiliate.

## 6. AO Content

6.1. AO grants the Affiliate, during the Term, a personal and non-assignable, royalty-free non-exclusive licence to use the AO Content for the sole purpose of displaying the Link(s). No further use of any AO Content or any other Intellectual Property Rights of AO will be made by the Affiliate without the prior written approval of AO.

6.2. The Affiliate will not do anything in its use of the AO Content or AO's Intellectual Property Rights that could adversely affect their value and/or validity.

6.3. Save as set out in this clause 6, AO reserves all of its right, title and interest in the AO Content and any other of its Intellectual Property Rights which may come into the possession of the Affiliate under this agreement from time to time.

6.4. AO may from time to time issue promotion or voucher codes in an effort to promote sales. The Affiliate shall only promote voucher codes that are provided to it in writing or otherwise through the Affiliate Program. AO reserves the right to withhold payment of commission if non-authorised voucher codes are used in connection with Relevant Sales.

Voucher code terms and conditions specified by AO (VCTCs) must be clearly displayed onsite. Where voucher codes are issued with an expiry date this should be clearly displayed and codes should be removed or explicitly marked as expired after this date. AO reserves the right not to pay commission to any Affiliate found to be displaying unauthorised codes or found to be displaying voucher codes but without the VCTCs until the code(s) are removed/VCTCs are displayed. AO appreciates that consumers may use voucher codes that they have found via a site other than that which is awarded the sale and this will be investigated before decisions on commission payment are made. Affiliates must adhere to voucher code best practice guidelines from time to time in force (including but not limited to those set by the Internet Advertising Bureau UK) at all times.

## 7. Paid Advertising Restriction

7.1. The Affiliate shall not be entitled use paid search advertising and to bid on any keywords which include reference to the "AO" name or business.

7.2. Without prejudice to the generality of the foregoing the Affiliate shall not bid on

(a) the following restricted key words:

AO  
Ao.com  
Ao.de  
· Appliances Online

(b) any voucher codes used by AO

(c) any phrases including such restricted key words or the voucher codes or any misspellings thereof, confusingly similar words or any other derivatives or variations;

nor shall the Affiliate use such terms in the headlines or descriptions associated with such paid search advertising. Further the Affiliate must ensure such terms are negatively matched in PPC Campaigns or paid search listings to ensure that the Affiliate does not appear on any search strings that include the AO brand names.

7.3. AO may extend the list of “restricted key words” on giving 7 days’ notice at any time.

## 8. Warranties and Affiliate Undertakings

8.1. Each party hereby warrants that:

(a) It has all necessary rights, title and power to enter this agreement and the obligations of it hereunder constitute valid and binding obligations.

(b) It shall perform its obligations hereunder with due care and skill and in good faith towards the other party.

8.2. The Affiliate warrants that:

(a) It and the Affiliate Site shall comply with all applicable laws.

(b) It shall not upload any viruses or other malware which could damage the Link or the AO Site or a User’s systems or intercept data or personal information

(c) It shall not engage any bots spiders or other types of crawlers or programs to track the Links or scrape the AO Sites or do anything which could unfairly congest or adversely affect the proper operation of the AO site.

(d) It shall only promote AO through display of the Link and otherwise as may be agreed in writing.

8.3. The Affiliate is solely responsible for the development of, content on (save for the Link and any other AO Content which AO has agreed can be displayed) and operation of the Affiliate Site. The Affiliate warrants that the Affiliate Site shall not infringe the Intellectual Property Rights of third parties.

8.4. The Affiliate further warrants that it shall safeguard AO’s brand and shall do nothing to bring AO into disrepute. Without prejudice to the generality of the foregoing, the Affiliate shall procure that no discriminatory or offensive material is included on the Affiliate Site.

8.5. All transactions on the AO Site shall be subject to AO's terms and conditions of sale, in force from time to time. The Affiliate shall make no warranties or representations about the products or services AO save for those which AO give specific written permission

## 9. Data

9.1. The Affiliate acknowledges that any Users who transact on the AO Site become customers of AO. Should AO divulge any customer data to the Affiliate, then the Affiliate shall:

(a) be the data processor of such data and shall act strictly upon the instructions of AO in relation to the data

(b) employ secure and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

9.2. Both parties shall observe and comply with all applicable data protection legislation.

## 10. Announcements

Neither party will make any announcement relating to these terms or their subject matter or issue any press release, or enter into any advertising or marketing in relation to these terms without the prior written approval of the other party except as required by law or by any legal or regulatory authority.

## 11. Confidential Information

11.1. Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers ("Confidential Information"), except as permitted by this clause 11.

11.2. Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, agents, consultants or subcontractors (Representatives) who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

(b) as may be required by law, court order or any governmental or regulatory authority.

11.3. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery,

copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

## 12. Contract Term

12.1. This agreement shall commence upon AO accepting the Affiliate into its affiliate program by providing the Link in accordance with clause 2.1. Subject to the remainder of this clause, the agreement shall continue in force subject to either party giving 30 days' notice to terminate.

12.2. Either party may terminate this agreement immediately by notice in writing if the other party commits a material breach of any of the terms of this agreement (and, if such breach is capable of remedy, fails to remedy the breach within 14 days of receiving notice from the other party specifying the breach and requiring the breach to be remedied).

12.3. Either party may terminate this agreement with immediate effect by writing to the other party if the other party suffers an event of insolvency.

12.4. Unless this agreement has been terminated for cause (i.e. under clause 12.2 or 12.3), AO shall pay commission on Relevant Sales after termination where a User clicked on the Link before termination (but subject always to clause 3.3 [and 3.4]). If this agreement is terminated for cause then no further commissions shall be payable.

12.5. Subject to clause 12.4, termination of this agreement shall not prejudice any of the parties' rights and remedies which have accrued as at termination.

12.6. Upon termination each party shall promptly return (or destroy at the other party's option) the other party's Confidential Information and Content and any licences granted by AO to the Affiliate in connection with this agreement shall terminate immediately.

## 13. Force Majeure

13.1. A party, provided it has complied with clause 13.2 below will not be liable for any failure to fulfil or delay in fulfilling its obligations where the delay or failure is due to Force Majeure Event.

13.2. A party that is subject to a Force Majeure Event will not be in breach of this agreement provided that:

(a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

(b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

(c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under these terms in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.



#### 14. Indemnity

The Affiliate shall indemnify AO against all limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by AO arising out of or in connection with:

(a) any claim made against AO arising as a result of the Affiliate Site or Affiliate Content infringing the Intellectual Property Rights of a third party; and

(b) any claim made against AO by a third party arising out of the breach, negligent performance or failure or delay in performance of this agreement by the Affiliate, its employees, agents or subcontractors.

#### 15. Limitation of Liability

15.1. AO's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the commission payable to the Affiliate (which shall be paid in accordance with clause 5).

15.2. AO shall not be liable for any failure of the Link or its tracking code. Further AO shall not be responsible if a User deletes tracking code or refuses to allow cookies.

15.3. AO shall not under any circumstances whatever be liable to the Affiliate, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any , special, indirect or consequential damage suffered by the Affiliate that arises under or in connection with this agreement.

#### 16. Assignment

The Affiliate shall not assign, transfer, charge or deal in any other manner with any of its rights under this agreement or purport to do any of the same or subcontract any or all of its obligations under this agreement without having obtained the prior written consent of AO.

#### 17. Entire Agreement

This agreement represents the entire agreement between the parties as at today's date and they agree that this agreement supersedes all prior representations (except fraudulent misrepresentations), agreements, statements and understandings, whether oral or in writing, relating to the subject matter of this agreement.

#### 18. Third Party Rights

The parties do not intend for any clause in this agreement to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a signatory to it.

#### 19. No Partnership

Nothing in this agreement shall be deemed to constitute a partnership between the parties nor shall anything in this agreement be deemed to constitute one party as agent of the other.

## 20. Waiver

20.1. Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

20.2. No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

20.3. No single or partial exercise of any right or remedy under this agreement shall prevent or restrict the further exercise of that or any other right or remedy.

## 21. Variation

This agreement may be amended by AO from time to time on giving the Affiliate not less than 30 days' notice of changes, save as provided otherwise herein. Should the Affiliate not be prepared to abide by the changes it can terminate this agreement on giving AO 10 days' notice, provided that such notice of termination is given within 20 days of AO giving its amendment notice. In the absence of AO receiving any notification of termination within such period, the Affiliate will be deemed to have accepted the changes.

## 22. Severability

If any provision of this agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of this agreement and the remainder of such provision shall continue in full force and effect.

## 23. Jurisdiction and Governing Law

This agreement shall be governed by the law of England and Wales and each party agrees to submit any dispute which may arise out of, under, or in connection with these Terms to the exclusive jurisdiction of the courts of England and Wales.