

Bormerco LLC Agreement - Terms and Conditions

This is a legally binding agreement between B & H Foto & Electronics Corp. ("B&H", "us", "our", "ours") and you ("you", "yours"). By completing and submitting the online application, you acknowledge that you have read, understand and agree to be bound by this operating agreement.

This Agreement ("Agreement") contains the complete terms and conditions concerning the B&H Affiliate Program ("B&H Affiliate Program"), the purpose of which is the establishment of a link ("B&H Affiliate Link") from your website to our website, www.bhphoto.com ("B&H Website"). Please note that the B&H Affiliate Program is administered through **MyAffiliateProgram** owned by **Bormerco LLC**.

1. Enrollment

Submit a complete application via the B&H Website. Your application will be evaluated in good faith and we will notify you of its acceptance or rejection. Your application may be rejected if we determine (in our sole discretion) that your site is unsuitable for the B&H Affiliate Program. Unsuitable sites include, but are not limited to, those that promote sexually explicit materials; promote violence; promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age; promote illegal activities; include "B&H Photo Video Pro Audio," or any other trademark of B&H or its affiliates, or variations or misspellings of any of them, in their domain name or other HTML tags, including page titles, meta-tags, or HTML comment tags, or in any paid search programs. By participating in the B&H Affiliate Program you agree that you will not engage in any such activities. If we reject your application, you are welcome to reapply to the B&H Affiliate Program at any time. If subsequent to the acceptance of your application, your site is determined (in our sole and absolute discretion) to be unsuitable for the B&H Affiliate Program, we may immediately terminate this Agreement at any time without notice. Only those parties that can enter lawfully into and form contracts under applicable law can participate in the B&H Affiliate Program.

2. B&H Affiliate Link

As a B&H Affiliate Program member, we will make available to you a variety of graphic and textual links which, subject to the terms and conditions of this Agreement, you may display on your website. The B&H Affiliate Link will serve to identify your site as a member of our B&H Affiliate Program and will establish a link from your site to ours. In return for us providing you with the B&H Affiliate Link, you agree to cooperate fully with us in order to establish and maintain the B&H Affiliate Link. You also agree that you will display in your site only those graphic or textual images that are provided by us, and you will immediately substitute such images with any new images that are provided by us from time to time throughout the term of this Agreement.

Further, as a condition of being provided with the B&H Affiliate Link, you hereby represent and warrant that: (a) you will not attempt to reproduce, distribute, modify, prepare derivative works of, translate, reverse engineer, reverse compile or disassemble the B&H Affiliate Link, or any portion thereof; and (b) you will maintain a legally sufficient privacy policy to permit the collection, use, and transfer of information collected by and through the B&H Affiliate Link

3. Limited License

Except for the limited license granted under this section, you do not obtain any rights under this Agreement in any intellectual property, including, without limitation, any intellectual property with respect to the B&H Affiliate Link, link formats, technical specifications, guidelines or graphical artwork referenced above, or with respect to the B&H domain name.

You also acknowledge that we (and our agents) may crawl or otherwise monitor your site for the purpose of ensuring the quality and reliability of links on your site (for example, to detect links that are broken or non-functional, links to products that are out of stock or otherwise unavailable, etc...). Therefore, you agree that we and our agents may take such actions and that you will not seek to block or otherwise interfere with such crawling or monitoring (and that we and our corporate affiliates, consultants and agents may use technical means to overcome any methods used on your site to block or interfere with such crawling or monitoring).

By participating in the B&H Affiliate Program, you consent to us sending you occasional email updates regarding the program.

You will not, in connection with this Agreement, display or reference on your site, any trademark or logo of any third party seller appearing on the B&H Website unless you have an independent license for the display of such trademark or logo; use any data, images, text, or other information obtained by you from us or the B&H Website in connection with this Agreement only in a lawful manner and only in accordance with the terms of this Agreement.

We grant you a limited, nonexclusive, non-transferable, revocable right to use the graphic image and text solely for the purpose of you participating in the B&H Affiliate Program. You may not modify the graphic image or text in any way. All of our rights in the graphic image and text, any other images, our trade names and trademarks, and all other intellectual property rights are reserved. Should we decide to revoke your license, we will give you notice.

You acknowledge B&H's ownership in its licensed materials, agree that you will not do anything inconsistent with B&H's ownership and that all of your use of the licensed materials will inure to the benefit of and on behalf of B&H, and, if requested, agree to assist B&H in recording this Agreement with appropriate government authorities. You agree that nothing in this Agreement gives you any right, title or interest in the licensed materials other than the right to use the licensed materials in accordance with this Agreement. You also agree that you will not attack the title of B&H to the licensed materials or the validity of the Licensed Materials or this Agreement.

4. Order Processing

Only items that were purchased by customers who use the B&H Affiliate Link from your site to the B&H Website are considered direct sales ("Direct Sales"). Direct Sales placed through the B&H Affiliate Link on your site are reduced by items that are not shipped, cancelled by customers, returned, charged back or refunded at a later date. We reserve the right to exclude items ordered by you (using the B&H Affiliate Link which would otherwise qualify for Direct Sales) and to not pay commissions for them, if we deem it necessary, in our sole and absolute discretion, to prevent abuse of the B&H Affiliate Program, or to reject orders that do not comply with any requirements that we periodically may establish. B&H will be responsible for processing orders and will handle all customer service issues. We will track sales by customers who purchase products by using the B&H Affiliate Link from your site to the B&H Website. A statement of activity is available to you on B&H Website.

5. Commissions

Commissions for direct sales are earned in the following manner:

Direct Sales Commissions - base is 2.0%

When the total commissions due to you exceed eighty U. S. dollars (\$80.00) at the end of any calendar month, we will send a commission check for the applicable commissions (less any taxes required to be withheld under applicable law). Such commission checks will be sent approximately thirty (30) days after

the end of any calendar month in which accumulated earned commissions exceed eighty U.S. dollars (\$80.00). If at the end of any calendar month earned commissions are less than eighty U.S. dollars (\$80.00), such earned commissions will be disbursed once they exceed eighty U.S. dollars (\$80.00). If your participation in the B&H Affiliate Program terminated and your commissions are less than eighty U.S. dollars (\$80.00), such commissions shall be forfeited.

6. B&H Policies

Customers who buy products through this B&H Affiliate Program are customers of B&H. All of B&H's standard policies and operating procedures will apply to these customers. We may change our policies and operating procedures at any time. Product prices and availability may vary from time to time.

7. Responsible for Maintaining your Website

The responsibility for the development, operation, and maintenance of your site and for all materials that appear on your site rests with you. B&H cannot be responsible for the technical operation of your site and all related equipment; creating and posting product descriptions on your site and linking those descriptions to the B&H Website catalog; the accuracy and appropriateness of materials posted on your site; ensuring that materials posted on your site do not violate or infringe upon the rights of any third party (including, for example, copyrights, trademarks, privacy, or other personal or proprietary rights); ensuring that materials posted on your site are not libelous or otherwise illegal; ensuring that your site accurately and adequately discloses, either through a privacy policy or otherwise, how you collect, use, store, and disclose data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers.

8. Indemnification

You shall indemnify, defend and hold harmless B&H, its officers, directors, employees, agents, invitees, licensees, tenants, attorneys, successors and assigns from any and all claims, suits, demands, actions, losses, damages, costs and expenses of every kind or nature (including, but not limited to B&H's attorneys' fees and expenses) relating to or arising out of (i) the B&H Affiliate Program; (ii) this Agreement (including, but not limited to, any breach by you of this Agreement or of any representation, warranty or agreement contained herein); or (iii) any act or omission by you, or any of your agents or employees. We disclaim all liability for these matters. Further, you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, attorneys' fees) relating to the development, operation, maintenance, and contents of your site.

9. Compliance with Laws

As a condition to your participation in the B&H Affiliate Program, you agree that while you are a B&H Affiliate Program member you will comply with all laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions or other requirements of any governmental authority that has jurisdiction over you, whether those laws, etc. are now in effect or later come into effect during the time you are a B&H Affiliate Program member. Without limiting the foregoing obligation, you agree that as a condition of your participation in the B&H Affiliate Program you will comply with all applicable laws (federal, state or otherwise) that govern marketing email.

10. Term of Agreement

The term of this Agreement will begin upon our acceptance of your B&H Affiliate Program application and will end when terminated by either party. Either you or we may terminate this Agreement at any time, with or without cause, by giving the other party 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 to the B&H Website, and all of our trademarks, trade dress, and logos, and all other materials provided by or on behalf of us to you pursuant hereto or in connection with the B&H Affiliate Program. You are eligible to earn commissions only on sales of qualifying products that occur during the term, and commissions earned through the date of termination 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.

11. Modification

We may modify any of the terms and conditions contained in this Agreement, at any time and in our sole discretion, by posting a change notice or a new agreement on the B&H Website. Modifications may include, for example, changes in the scope of available commissions, commission schedules, payment procedures, and B&H Affiliate Program rules. If any modification is unacceptable to you, your only recourse is to terminate this agreement. Your continued participation in the B&H Affiliate Program following our posting of a change notice or new agreement on the B&H Website will constitute binding acceptance of the change.

12. Nature of Our Relationship

You and B&H are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or accept any offers or representations on behalf of B&H. You will not make any statement, whether on your site or otherwise, that reasonably would contradict anything in this Section.

13. Limitation on Liability

IN NO EVENT SHALL B&H'S LIABILITY EXCEED THE COMMISSION FEES PAID TO YOU WITHIN THE PREVIOUS TWELVE (12) MONTHS IN NO EVENT SHALL B&H BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST SAVINGS, OR LOSS OF BUSINESS OPPORTUNITY) ARISING OUT OF OR RELATING TO THE B&H AFFILIATE PROGRAM EVEN IF B&H HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. WARRANTIES

WE MAKE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE B&H AFFILIATE PROGRAM OR ANY PRODUCTS SOLD THROUGH THE B&H AFFILIATE PROGRAM, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, B&HABILITY, NON-INFRINGEMENT, 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 THE B&H WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE, AND WE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.

15. The Laws Governing this Agreement

This Agreement will be governed by the laws of the United States and the State of New York, without reference to rules governing choice of laws. You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns. Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such provision or any other provision of this Agreement.

16. Spyware and Other Parasites

Any affiliate suspected of a relationship, formal or informal, with any provider of spyware or parasitic software (as judged by any interference with the operation by design of B&H and/or its partner sites) is subject to punitive actions by B&H, without notice, including but not limited to: suspension of affiliate account; termination of affiliate account; withholding of payments to affiliate; and public notification of affiliate's suspected malfeasance. B&H encourages affiliates to report suspicions of such relationships; and, should substantial proof, as judged by B&H, be provided, B&H reserves the right to assign a value equal to unpaid monies earned by the offending affiliate (or a part thereof) to the reporting affiliate as a bounty.

17. Independent Investigation

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO ALL ITS TERMS AND CONDITIONS. YOU UNDERSTAND THAT WE MAY AT ANY TIME ADMIT OTHERS INTO THE B&H AFFILIATE PROGRAM ON TERMS THAT MAY DIFFER FROM THOSE CONTAINED IN THIS AGREEMENT. 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.

18. Privacy

B&H respects the privacy of our affiliate partners which we treat as confidential in accordance with B&H's Privacy & Security Policy (<https://www.bhphotovideo.com/find/HelpCenter/PrivacySecurity.jsp#cali>). We do not disclose confidential information to any third parties except for those outside companies carefully selected by B&H to assist us in managing the B&H Affiliate Program.