

# Mel Bay Affiliate Program Operating Agreement

In consideration of the mutual promises below, you and we agree as follows:

## 1. Nature and Scope of the Agreement

Our business is to offer and sell various music related products on our website (“**Products**”). You would like to advertise our Products on your website and allow your customers to link to our website to buy our Products, and earn a commission on any orders which we fulfill that originate from your website. We are willing to have you participate in our Affiliate Program on the terms and conditions below.

## 2. Application Process/Content of Your Website

We are willing to enter into this Agreement with you based on the Application you provided to us and our review of your website. If we learn that any of the information in your Application was not accurate, we can terminate this Agreement immediately on written notice to you. In addition, if at any time your website contains any of the following kinds of content that we find to be unsuitable, we can terminate this Agreement immediately on written notice to you: (i) sexually-explicit materials; (ii) promotion of violence; (iii) defamatory language; (iv) promotion of any type of discrimination; (v) violation of any party’s intellectual property rights; or (vi) any illegal activities or content.

## 3. Links on Your Website

You may advertise our Products on your website in accordance with the terms of this Agreement and the guidelines we provide to you in writing. In order to link your website to our website and allow us to track and process orders placed by customers from your website to our website, you will have to place links on your website to our website in accordance with the instructions and formatting requirements in our guidelines. However, you are solely responsible for your website and all materials and content that appears on your website. You agree to indemnify and hold us harmless from and against any or all claims, damages and expenses (including attorney’s fees) asserted or awarded against us relating to your website or its contents.

## 4. Qualifying Product Sales

In order for a Product sale to qualify for a commission, your customer must follow a link from your website to our website, purchase the Product using our online ordering systems, accept delivery, and then remit payment to us. All orders are subject to our acceptance or rejection. We can add, modify or delete items from our list of Products or change prices at any time. All customers will be considered to be our customers. We will be solely responsible for (i) determining and establishing prices, discounts, extension of credit, delivery terms and all other terms and conditions of sale, and (ii) doing all billing and invoicing, establishment of credit arrangements, and collections of accounts. You are not entitled to a commission on any order we do not accept. We will periodically send you reports tracking orders, acceptances and commissions paid.

## **5. Commission Schedule**

As sole compensation for your services, you will receive on Product orders accepted by us and paid for by the customer, commissions payable on the Net Sales Price depending on the type of website you operate. Once we have accepted your application you will receive an addendum to this Operating Agreement with the details of your commission rate. This addendum will need to be signed and returned to us before the commencement of affiliate relationship.

“**Net Sales Price**” means the gross sales price, less taxes, shipping costs, discounts, service charges and other similar items.

## **6. Commission Payments**

Your commissions will be credited or paid once they reach \$20. Commissions to be paid by credit will be credited to your account with us, and commissions to be paid in cash will be paid by check mailed to your address, by the 15th day of the month following the month in which payment is received from the customer. If your commissions total less than \$20, they will accrue until they reach \$20 before payment. You may choose to have us hold your commissions until they accrue to a higher dollar amount by sending us written notice of your request. In the event of non-payment, return of Product, credit or allowances, your commissions will be adjusted accordingly. Upon termination of this Agreement, you will be entitled to receive commissions on all orders accepted by us prior to the date of termination, payment to be made only as provided in Section 5 and this Section 6.

## **7. Our Trademarks**

“MEL BAY”<sup>®</sup> is a registered trademark of Mel Bay Publications, Inc. You have the non-exclusive right to use “MEL BAY”<sup>®</sup> on your website solely in accordance with this Agreement to link your customers to our website. You have no other rights to “MEL BAY”<sup>®</sup> and whatever use you make of “MEL BAY”<sup>®</sup>, including any goodwill that is generated, is for our exclusive benefit.

## **8. Term and Termination**

We reserve the right to change to the terms and conditions of this agreement at our discretion. Any changes will take effect as soon as written notice has been provided to the affected parties. This Agreement will continue in force and effect until either party terminates it upon written notice to the other party, with or without cause. Upon termination, you must remove from your website the link to our website.

## **9. Independent Contractor**

You are an independent contractor and not our agent, employee, franchisee, sales representative or legal representative. You are solely responsible for all costs and expenses you incur in connection with your services under this Agreement.

**10. Assignment**

You may not assign or transfer this Agreement without our prior written consent. We may assign this Agreement.

**11. Notices**

All notices must be in writing and served either by personal delivery, certified mail, return receipt requested, overnight courier or receipted e-mail transmission sent to the other party's address or e-mail address set forth in this Agreement or any other address or e-mail address provided by that party. Notices will be deemed received at the earlier of the date received, the business day after sending if served by overnight courier or e-mail, or three (3) business days after mailing if sent by certified mail.

**12. No Punitive, Exemplary, Special, Incidental or Consequential Damages**

We will not be liable for any punitive, exemplary, special, incidental or consequential losses damages or expenses in connection with this Agreement. Any claims you make will be limited to the actual damages you sustain, but our liability will not exceed the total commissions paid to you under the Agreement.

**13. Controlling Law**

This Agreement, and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by, construed and enforced under the substantive laws of the State of Missouri, without giving effect to its conflict of law principles.

**14. Legal Proceedings**

The jurisdiction and venue of any legal proceedings for the resolution of disputes arising under or in connection with this Agreement shall be in the federal or state courts of Franklin County, Missouri, and the parties consent to the jurisdiction of such courts.

**15. Miscellaneous**

Failure by either party at any time to enforce any of the terms of this Agreement or a breach by the other party shall not constitute a waiver of any provisions of this Agreement or subsequent breaches. Neither party shall be liable to the other party for any failure to comply with the terms of this Agreement due to causes beyond its reasonable control. This Agreement shall inure to the benefit of and be binding on the parties and their respective heirs, personal representatives, successor and permitted assigns.

**16. Entire Agreement**

This is the entire agreement between the parties with respect to the subject matter of this Agreement, and it supersedes any prior written or oral understandings between them. Except as otherwise provided herein, no amendment or modification of this Agreement, including by custom, usage of trade or course of dealing or performance, will be effective unless and until executed in writing by both parties.