



The Wishlist-Facebook Application
Terms of Business

Terms of Business

1. INTERPRETATION

1.1 Definitions:

- 1.1.1 **"The Account"**: means the account set up for each User by DWL for purposes of accumulating Social Rewards earned by the User;
 - 1.1.2 **"Agreement"**: means the contractual arrangements entered into by the Parties as set out herein;
 - 1.1.3 **"The Application"**: means the ShopWindow Toolset which DWL has made available to the User through the website www.facebook.com;
 - 1.1.4 **"Social Reward"**: means those monies paid by the Merchant to DWL in respect of a Validated Transaction which are remitted to the User and deposited into the Account;
 - 1.1.5 **"Commission"**: means the monies payable by the Merchant to DWL once a Pending Transaction is classified as a Validated Transaction and a proportion thereof will be paid to the User as a Social Reward;
 - 1.1.6 **"DWL"**: means Digital Window Limited (company number 4010229);
 - 1.1.7 **"Facebook Rules"**: means the "Facebook" Terms of Use (as revised from time to time);
 - 1.1.8 **"Merchant"**: means any person or entity who has entered into a contract with DWL and whose Products (via the Merchant's Website) will be accessible by use of the Shop Window Toolset;
 - 1.1.9 **"Merchant's Website"**: means any website owned or operated by a Merchant which offers Products for sale to Users;
 - 1.1.10 **"Parties"**: means the User and DWL;
 - 1.1.11 **"Pending Transaction"**: means those purchase of Products by Users using the Application which are awaiting final confirmation from the Merchant as to whether Commission (and therefore a Social Reward) is payable, such transactions will be marked with a *pending status* in the User's Account;
 - 1.1.12 **"Products"**: means the goods and services sold by Merchants which are available for sale on the ShopWindow Toolset;
 - 1.1.13 **"ShopWindow Toolset"**: means the applications developed by DWL which utilise the Product data and all links associated with them;
 - 1.1.14 **"Validated Transaction"**: means a Pending Transaction in respect of which the Merchant has confirmed that a Commission (and therefore a Social Reward) or a Pending Transaction in respect of which the Validation Period has expired and accordingly a Commission (and therefore a Social Reward) is payable;
 - 1.1.15 **"Validation Period"**: means the period of time following a Pending Transaction in which the Merchant can query whether a Commission (and therefore a Social Reward) is payable;
 - 1.1.16 **"The User"**: means yourself, the user of the Application.
- 1.2 The headings in this Agreement are provided for ease of reference only and shall not be taken into account in the construction or interpretation thereof.
- 1.3 In this Agreement unless the context otherwise requires, reference to:
- 1.3.1 the singular shall include reference to the plural and vice versa;
 - 1.3.2 any gender shall include references to the other, and words importing a gender shall include every gender;
 - 1.3.3 a "person" includes an individual, company, limited liability partnership or partnership;

- 1.3.4 a statute, enactment, order, regulation or other similar instrument shall be construed as a reference to it as from time to time amended, consolidated or re-enacted and includes all instruments or orders made under such enactment.

2. **DWL'S OBLIGATIONS**

- 2.1 During the Term, DWL shall:
 - 2.1.1 allow the User to access and use the Application;
 - 2.1.2 debit the Social Reward to the User's Account within 2 business days of the Merchant paying DWL the Commission in accordance with clause 4.1;
 - 2.1.3 capture and process the User's personal data for the purposes of performing its obligations to the User under this Agreement and in accordance with the Data Protection Act 1998.

3. **THE USER'S OBLIGATIONS**

- 3.1 The User warrants that he/she is over 18 years of age and is permanently resident in the UK.
- 3.2 The User recognises that personal data and sensitive personal data will be disclosed to DWL and the User gives his / her consent to such disclosure of information.
- 3.3 The User agrees:
 - 3.3.1 to register using his / her proper legal identity and to provide all requested information and personal details accurately;
 - 3.3.2 not to provide or use in connection with the Application any information or material that infringes the rights of any other person;
 - 3.3.3 not to provide, promote, distribute, place or otherwise publish any content which is libellous, defamatory, obscene, pornographic, abusive, or otherwise objectionable, fraudulent or violates any law;
 - 3.3.4 not to buy or ask a third party to buy on its behalf any product which falls into the following categories:
 - 3.3.4.1 firearms;
 - 3.3.4.2 knives;
 - 3.3.4.3 prescription medicine;
 - 3.3.4.4 tobacco;
 - 3.3.4.5 gaming;
 - 3.3.4.6 pornography.

4. **SOCIAL REWARDS**

- 4.1 The User acknowledges that a Social Reward will only be paid to the User if:
 - 4.1.1 a Pending Transaction is regarded by the Merchant and DWL as being a Validated Transaction;
 - 4.1.2 DWL receives Commission in respect of that Validated Transaction from the Merchant;
 - 4.1.3 Under no circumstances will the Social Reward become payable to the User earlier.
- 4.2 A Social Reward shall not be payable if:
 - 4.2.1 a Validated Sale is cancelled within the prescribed cancellation period as provided for under the Consumer Protection (Distance Selling) Regulations 2000;
 - 4.2.2 DWL suspects that the User has acted fraudulently;
 - 4.2.3 the User has "spammed" or used unsolicited email.

- 4.3 If it comes to the Merchant's or DWL's attention that the circumstances in clause 4.2 have occurred and the Social Reward has been debited to the User's Account then DWL will be entitled to deduct such monies from the Account in order to repay the Social Reward to the Merchant in question.
- 4.4 All statistics are collected and calculated by DWL and will be the only valid statistics used by DWL when determining what Commissions (and therefore Social Rewards) are due.
- 4.5 DWL is a facilitator, arranging payment of Social Reward to the Users. If DWL cannot recover Commission from the Merchant then DWL will be under no obligation to remit Social Reward to the Users.
- 4.6 The User recognises that a Merchant may change or discontinue Social Rewards at any time and accordingly the Social Rewards that the User may otherwise have expected to receive may change.

5. **TERMINATION**

- 5.1 DWL will terminate the User's participation in the Application if:
 - 5.1.1 The User is in breach of clause 4.2.2 (fraudulent behaviour) or 4.2.3 (spamming) or clause 3;
 - 5.1.2 the User has more than one Account (whereupon all Accounts will be closed);
 - 5.1.3 the User is in breach of the Facebook Rules;
 - 5.1.4 the User does not use the Application in any six month period.
- 5.2 If DWL terminates the Users' participation in the Application following the User's breach of clause 5.1 DWL will be entitled to retain any balance in the User's Account and the User cannot subsequently register with the Application (regardless of the identity that the User may use to re-register).
- 5.3 The User can at any time terminate the Application but any balance in the Account and Social Rewards potentially payable to the User in respect of Pending Transactions or Validated Transactions will unless DWL at its discretion agrees to the contrary be retained by DWL.

6. **LIMITATION OF LIABILITY**

- 6.1 Nothing in this Agreement shall operate to exclude or limit either Party's liability for death or personal injury caused by its negligence or fraud.
- 6.2 Neither Party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any special, indirect or consequential loss or damage.
- 6.3 The User also acknowledges that:
 - 6.3.1 DWL is the neutral host of the Application and has no responsibility or liability in relation to the arrangements that are entered into with Merchants as part of the Application. No warranty can be made as to the performance of the Merchants;
 - 6.3.2 The Application, its use and the results of such use are provided "as is" to the fullest extent permissible pursuant to applicable law. DWL disclaims all warranties express or implied, including, but not limited to, implied warranties of satisfactory quality and fitness for a particular purpose, in relation to the Application, its use and the results of such use. Without limiting the foregoing, DWL specifically disclaims any warranty (a) that the Application will be uninterrupted or error-free, (b) that defects will be corrected, (c) that there are no viruses or other harmful components, (d) that the

security methods employed will be sufficient, or (e) regarding correctness, accuracy, or reliability.

- 6.3.3 The Application relies on the performance of third parties beyond DWL's control. This includes the entity that may operate the Account;
- 6.3.4 The Merchant will be responsible for selling the Products to the User and DWL will not be responsible for the performance of the Merchant, whether any particular Products are available or for any liability that may arise if the Products are defective or do not meet the statutory requirements of the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982. In such circumstances the User's remedy is to approach the Merchant and seek redress.

7. **GENERAL**

- 7.1 This Agreement shall be governed and construed in all respects in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the English courts.
- 7.2 This document sets out the entire agreement and understanding between the Parties. No other representation or statement (excluding those which are fraudulent), whether or not in writing, shall form a term herein.
- 7.3 Nothing in this Agreement is intended to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other and no Party will have authority to act in the name or on behalf of or otherwise to bind the other.
- 7.4 No third party shall acquire rights pursuant to the Contracts (Rights of Third Parties) Act 1999.