

Website Affiliate Agreement

This agreement (the "Agreement") is made between www.balconybonsai.com.au (the "Company"), and the Affiliate, and collectively, the "Parties") for participation in The Company's affiliate program. If Affiliate does not want to participate in the affiliate program, please disregard the following agreement.

Affiliate wishes to include certain materials promoting Company, and to include a link to Company's website within those materials on Affiliate's website;

NOW THEREFORE, in consideration of the mutual promises, covenants, warranties, and other good and valuable consideration set forth herein, the Parties agree as follows:

1. **Promotional Materials.** Company shall make available to Affiliate certain banner advertisements, button links, text links, and/or other graphic or textual material for display and use on the Affiliate website (the "Promotional Materials"). Affiliate shall display the Promotional Materials on Affiliate's website prominently and as Affiliate sees fit, provided that the manner of display shall be subject to the terms and conditions of this Agreement. Affiliate shall also include a link from the Promotional Materials to Company's website, as specified by Company.

2. **Use of Promotional Materials.** The Affiliate's use and display of the Promotional Materials on the Affiliate's site shall conform to the following terms, conditions and specifications:

a. Affiliate may not use any graphic, textual or other materials to promote Company's website, products or services other than the Promotional Materials, unless Company agrees to such other materials in writing prior to their display.

b. Affiliate may only use the Promotional Materials for the purpose of promoting Company's website (and the products and services available thereon), and for linking to Company's website.

c. Affiliate will not alter, add to, subtract from, or otherwise modify the Promotional Materials as they are prepared by Company. If Affiliate wishes to alter or otherwise modify the Promotional Materials, Affiliate must obtain prior written consent from Company for such alteration of modification.

d. The Promotional Materials will be used to link only to Company's website, to the specific page and address as specified by Company.

3. **License.** Company hereby grants to Affiliate a nonexclusive, nontransferable license (the "License") to use the Promotional Materials as specified under the terms and conditions of this Agreement. The term of the License shall expire upon the expiration or termination of this Agreement.

4. Intellectual Property. Company retains all right, ownership, and interest in the Promotional Materials, and in any copyright, trademark, or other intellectual property in the Promotional Materials. Nothing in this Agreement shall be construed to grant Affiliate any rights, ownership or interest in the Promotional Materials, or in the underlying intellectual property, other than the rights to use the Promotional Materials granted under the License, as set forth in Section 3.

5. Relationship of Parties. This Agreement shall not be construed to create any employment relationship, agency relationship, or partnership between Company and Affiliate. Affiliate shall provide services for Company as an independent contractor. Affiliate shall have no authority to bind Company into any agreement, nor shall Affiliate be considered to be an agent of Company in any respect.

6. Commissions.

a. In exchange for Affiliate's display of the Promotional Materials, and for Affiliate's compliance with and performance of the terms and conditions of this Agreement, Company shall pay to Affiliate a commission (the "Commission") in the amount of a percentage of product sold to a user that accesses Company's website through a link on Affiliate's website. The current percentage posted is 50%-75%. This percentage is subject to change by the Company at any time. Notification to Affiliate of any change in commission percentage will be given by Company at the email address on hand for the Affiliate. Commission will be based on purchases made by a user for any new and recurring purchases for the life of the registered user.

b. In the event that Affiliate materially breaches this Agreement and Company terminates this Agreement within 30 days of such breach, then any accrued and payable Commissions owing to Affiliate shall be forfeited, and Company shall not be obligated to pay such Commissions to Affiliate.

7. Affiliate's Representations and Warranties. Affiliate represents and warrants the following:

- a. Affiliate has the legal authority to enter into this Agreement and to be bound to the promises, covenants, and other duties set forth in this Agreement.
- b. Affiliate's website does not contain any materials that are:
 - i. Sexually explicit, obscene, or pornographic;
 - ii. Offensive, profane, hateful, threatening, harmful, defamatory, libelous, harassing, or discriminatory (whether based on race, ethnicity, creed, religion, gender, sexual orientation, physical disability, or otherwise);
 - iii. Graphically violent, including any violent video game images; or
 - iv. Solicitous of any unlawful behavior
- c. Affiliate has obtained any necessary clearances, licenses, or other permission for any intellectual property used on Affiliate's website. Nothing on Affiliate's website infringes upon the intellectual property rights of any person or entity. No person or entity has brought or threatened an action claiming such infringement, nor does Affiliate have any reason to believe that any person or entity will bring or threaten such a claim in the future.
- d. Affiliate will not use the Promotional Materials in any manner other than those set forth in Section 2 above.
- e. Affiliate will not make any claim to ownership of the Promotional Materials, or of the copyright, trademark, or other intellectual property therein.
- f. Affiliate will not publish or otherwise distribute any advertising materials for Affiliate's website that reference Company or Company's website unless Company gives prior written consent to the distribution of such materials. Affiliate will not use Company's name (or any name that is confusingly similar to Company's name) for any purpose on its website, in its promotional materials, or in any other context except to promote Company's website as specified in this Agreement. Affiliate will not register any domain name that incorporates Company's name, or that is confusingly similar to Company's name.
- g. Affiliate will not engage in the distribution of any unsolicited bulk emails (spam) in any way mentioning or referencing Company or Company's website.

8. Indemnification. Affiliate shall indemnify Company and hold harmless Company from any claim, damage, lawsuit, action, complaint, or other costs arising out of any breach of Affiliate's warranties set forth in Section 7 above. Affiliate shall also indemnify and hold harmless Company for any damage, loss or other cost arising out of the use or misuse by Affiliate of the Promotional Materials.

9. Confidentiality. Any information that Affiliate is exposed to by virtue of its relationship with Company under this Agreement, which information is not available to the general public, shall be considered to be “Confidential Company Information.” Affiliate may not disclose any Confidential Company Information to any person or entity, except where compelled by law, unless Affiliate obtains prior written consent for such disclosure from Company.

10. Term.

a. This Agreement shall take effect immediately, and shall remain in full force and effect indefinitely, or until terminated pursuant to this Section 10.

b. Either Party shall have the right to terminate this Agreement at any time and for any cause. The terminating Party must give written notice to the other Party at least 30 days prior to the intended date of termination.

11. Taxes. Company shall not be responsible for any taxes owed by Affiliate arising out of Affiliate’s relationship with Company as set forth in this Agreement. Company shall not withhold any taxes from the Commissions paid to Affiliate.

12. Limitation of Liability. Company shall not be liable for any loss of profits or costs, or for any direct, indirect, special, incidental or consequential damages, including costs associated with the procurement of substitute goods or services (whether Company was or should have been aware or advised of the possibility of such damage), arising out of or associated with any loss, suspension or interruption of service, termination of this Agreement, use or misuse of the Promotional Materials, or other performance of services under this Agreement.

13. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

14. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

15. Headings. The headings for section herein are for convenience only and shall not affect the meaning of the provisions of this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement between Company and Affiliate, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.