



SHOPMONKEY, INC.
REFERRAL PROGRAM TERMS AND CONDITIONS

These Terms and Conditions ("Terms") and the Referral Program (as defined below) are effective as of March 25, 2021 (the "Effective Date") and through December 31, 2021.

The Shopmonkey 2021 Referral Program ("Referral Program") allows current Shopmonkey customers and prospective customers in the Shopmonkey Sales Process (as defined below) with contacts in the automotive services industry ("Referrers" or "you") to earn rewards for finding potential customers for Shopmonkey Products and Services, subject to these Terms;

1. DEFINITIONS

1.1 "Incentives" means:

1) For you:

A) with respect to your first two Referred Customers, your choice of a \$100 Gift Card or \$100 in credit towards your own Shopmonkey subscription,

B) with respect to each additional Referred Customers, your choice of a \$200 Gift Card or \$200 in credit towards your own Shopmonkey subscription per Referred Customer,

C) a special surprise gift for your first Referred Customer, and

D) for your third Referred Customer, your choice of one of the following tools:

- [Driver-Drill Kit](#),
- [Jump Starter & Power Pack](#),
- [Underhood Light](#), or
- [iPad](#), and

E) for your fifth Referred Customer, your choice of one of the following tools/packages:

- Two [Torque Impact Wrench Kits](#) or
- \$1,000 Shopmonkey credit

2) For each of your Referred Customers, one month of credit towards the Referred Customer's Paid Subscription.

1.2 "Paid Subscription" means a software-as-a-service subscription for a Shopmonkey Shop Subscription committed to for a period of not less than twelve (12) months and actually paid for by a Referred Customer.

1.3 "Live Customer" means a Referred Customer who obtains a Paid Subscription and who, after three (3) calendar months of using the Shopmonkey Platform in a live, production environment continues to do so on the basis of that Paid Subscription.

1.4 "Referred Customer" means a customer that was brought to Shopmonkey's attention through the Referral Program and sold one (1) or more Shopmonkey Products and Services, and that, in Shopmonkey's sole judgment, satisfies the following conditions:

- (a) The customer must have been submitted into the Referral Program by submission through the Referral Program website (<https://shopmonkey.referralrock.com>), through the provision by you of a personalized referral link or by other means identified there.
- (b) The customer cannot be an existing customer or a previous customer of Shopmonkey;
- (c) The customer cannot be in the Sales Process at the time of the referral or during the prior two (2) months;
- (d) The customer must not have been previously submitted to the Referral Program by you or another party during the prior two (2) months;
- (e) The customer must not have been submitted to any other discount or incentive program operated by Shopmonkey or a referral of such customer otherwise compensated, and
- (f) The customer must purchase one (1) or more of the Shopmonkey Products and Services within six (6) months of submission.

1.5 "Sales Process" means the communications and processes in which Shopmonkey engages a potential customer with the intention to sell Shopmonkey Products and Services.

1.6 "Shopmonkey Products and Services" means the products and services offered by Shopmonkey, including, but not limited to those described on the Shopmonkey Site.

1.7 "Shopmonkey Site" means shopmonkey.io or any subdomain or other site controlled by Shopmonkey where it offers the Shopmonkey Products and Services, and all successors to such sites.

2. OBLIGATIONS; EXCEPTIONS AND EXCLUSIONS

2.1 Referral Program Obligations. Neither party has any obligation to perform in the Referral Program. Shopmonkey reserves the right to refuse to sell Shopmonkey Products and Services to any person for any reason. In addition, Shopmonkey in its sole discretion may cease selling Shopmonkey Products

and Services at any time to any customer including those referred by Referral Company for any reason in accordance with Shopmonkey's agreements with those customers.

2.2 Incentives.

- (a) For each Referred Customer you successfully refer to Shopmonkey in accordance with these terms, Shopmonkey will give the specified Incentive. Gift card selection is powered by Tango Cards.
- (b) Incentives will be delivered no later than the thirty (30) days following the end of the calendar month in which they are awarded.
- (c) Incentives are payable on Referred Customers, not individual shop locations.

2.3 Billings and Payments. Shopmonkey will be responsible for billing customers for the use of Shopmonkey Products and Services, collecting payments and calculating amounts payable with respect to the Referral Program. Shopmonkey will not be required to provide any Referred Customer information to you in support of any such calculation.

3. **REPRESENTATIONS AND WARRANTIES.** By participating in the Referral Program, you represent and warrant that: (a) you have the full right, power and authority to do so and to enter into these Terms and to perform your obligations hereunder; (b) your participation in the Referral Program does not and will not conflict with or result in a breach (including with the passage of time) of any other agreement to which you are a party; and (c) these Terms constitute you valid and binding agreement and are enforceable against you (except as may be limited by public policy or creditors' rights generally).

4. **INDEMNIFICATION.** You will indemnify, defend, and hold harmless Shopmonkey and its directors, officers, and employees from and against all taxes, losses, damages, liabilities, costs, and expenses, including attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with: (a) any failure by you to participate in the Referral Program in accordance with all applicable laws, rules, and regulations, (b) any violation or claimed violation of a third party's rights resulting in whole or in part from Shopmonkey's use of your work product under these Terms; or (c) from your failure to be classified as an independent contractor with respect to the Referral Program.

5. **DISCLAIMER OF WARRANTIES.** SHOPMONKEY MAKES NO REPRESENTATIONS OR WARRANTIES TO REFERRER WITH RESPECT TO THE SHOPMONKEY PRODUCTS AND SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER UNDER TORT, CONTRACT OR ANY OTHER THEORY, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS DESCRIBED HEREIN, IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND THE REFERRAL PROGRAM EXCEED THE AGGREGATE OF THE AMOUNTS PAID

OR PAYABLE BY EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO ANY SUCH CLAIM OF LIABILITY.

7. TERM AND TERMINATION

7.1 Term. These Terms and the Referral Program shall commence on the Effective Date and shall continue through December 31, 2021.

7.2 Termination. Without prejudice to any other right or remedy available at law or in equity in respect of any event described below, the Referral Program may be terminated by Shopmonkey at any time and without penalty. Such a termination will not relieve Shopmonkey of liability for payment of referral rewards payable prior to termination.

8. DISPUTE RESOLUTION

8.1 Arbitration. Except as set forth in Section 8.4 below, any dispute or controversy arising out of, relating to, or concerning any interpretation, or concerning any interpretation, construction, performance, or breach of these Terms, will be settled by arbitration to be held in San Jose, California in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in the dispute or controversy. The decision of the arbitrator will be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

8.2 Arbitration Fees. In the event of any arbitration the Parties hereto arising from or related to a party's performance or breach of these Terms, the prevailing party shall be entitled to and shall receive, in addition to any relief granted by the arbitrator, their reasonable attorneys' fees and other costs and expenses incurred in prosecuting or opposing the prosecution of such action. Further, if any action at law or in equity is necessary to enforce or interpret the terms of these Terms, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursement, in addition to any other relief to which the party may be entitled.

8.3 Waiver or Right to Jury Trial. This arbitration clause constitutes a waiver of each Party's right to a jury trial for all disputes relating to all aspects of these Terms and the Referral Program.

8.4 Equitable Remedies. The Parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of these Terms and without abridgement of the powers of the arbitrator.

8.5 Consideration. Each party's promise to resolve claims by arbitration in accordance with the provisions of these Terms, rather than through the courts, is consideration for the other party's like promise.

9. MISCELLANEOUS

9.1 Nonassignment and No Subcontractors. Neither these Terms nor any rights under these Terms may be assigned or otherwise transferred by you, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Shopmonkey. Subject to the foregoing, these Terms will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

9.2 Waiver. Any waiver of the provisions of these Terms by Shopmonkey or of Shopmonkey's rights or remedies under these Terms must be in writing to be effective.

9.3 Severability. If any term, condition, or provision in these Terms is found to be invalid, unlawful, or unenforceable to any extent, the parties will endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement.

9.4 Governing Law. The internal laws of California, but not the choice of law rules, govern this Agreement.

9.5 Headings. Headings are used in these Terms for reference only and will not be considered when interpreting this Agreement.

9.6 Notices. All notices, approvals, consents, waivers, and other communications under these Terms must be in writing and will be deemed to have been given when (a) in the case of Shopmonkey, when received, if sent by a nationally recognized overnight delivery service or U.S. mail to 5671 Santa Theresa Blvd., Suite 212, San Jose , CA 95123; or (b) in the case of Referrer, when sent by email to the addresses, facsimile numbers and/or email addresses provided with submission of the Referred Customer to which the communication relates or to such other addresses, facsimile numbers or email addresses as a party may designate by notice to the other party from time to time.

9.7 Independent Contractors. The relationship between the parties is that of independent contractors. Nothing in this Agreement shall be deemed to create an employment, partnership, joint venture or agency relationship between the parties.

9.8 Entire Agreement. These Terms represent the complete agreement of the parties, supersedes all prior discussions, communications and agreements between the parties with respect to the subject matter hereof, and cannot be amended or modified except in a writing signed by both parties.