

# Senotec Physician Affiliate Terms and Conditions

This Agreement contains the complete terms and conditions that apply to an individual's or entity's participation in the Senotec Physician Affiliate Program (the "Program"). As used in this Agreement, "we" or "Senotec" refers to Senotec Foods, LLC, and "you" or "Senotec Physician Affiliate" refers to the applicant.

## 1. Approval

1.1 All Senotec Physician Affiliate applications are subject to approval by SENOTEC. You are not a Senotec Physician Affiliate until SENOTEC approves your application and you are registered as a Senotec Physician Affiliate in the SENOTEC database. A Senotec Physician Affiliate is not required to pay any fee to participate in the Program.

1.2 To become a Senotec Physician Affiliate, you have to be of legal age of majority in your state or commonwealth and have a valid medical license to prescribe drugs.

1.3 After your application has been submitted to SENOTEC, SENOTEC will notify you in writing (by e-mail or otherwise) whether or not you have been approved as a Senotec Physician Affiliate in the Program.

1.4 Other than receiving the payment of referral commissions, the Senotec Physician Affiliate shall have no claims to any additional compensation, commissions, or business from SENOTEC.

1.5 The relationship between SENOTEC and you is solely as an independent contractor, and nothing in this Agreement will be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You are not authorized to, and you will not bind SENOTEC or incur any obligation or liability on behalf of SENOTEC except as expressly authorized by SENOTEC in writing.

## 2. Getting Started

2.1 To become a Senotec Physician Affiliate, you have to have a current e-mail address, mailing address, and telephone number.

2.2 Once you are approved as a Senotec Physician Affiliate, you will receive a unique URL. This unique URL will directly link to a replicator site of the SENOTEC corporate site. Any patient that purchases a product through your unique URL is connected to you in the SENOTEC master database. Patients can only purchase Senotec products through this unique URL.

2.3 Upon approval, you will be given access to a separate password-protected Senotec Physician Affiliate website. In your Senotec Physician Affiliate section, you will be able to track the purchases by your patients and the aggregated purchases by your referred Senotec Physician Affiliates and their patients to protect patient confidentiality.

2.4 You can order products for personal use and potential resale to your patients from this password-protected Senotec Physician Affiliate website at physician-discounted prices.

2.5 If a referred customer goes to the SENOTEC corporate site, then it is their responsibility to use your URL with that purchase to be linked to you in the SENOTEC database.

2.6 It is your responsibility as a Senotec Physician Affiliate to make sure that any referred patient has been linked to you by the above mechanisms. SENOTEC will not go back to link previous orders to you.

2.7 You may advertise your URL by word of mouth, personal correspondence or e-mail, or via your social networks as long as you follow the Senotec Physician Affiliate Responsibilities.

## 3. Senotec Physician Affiliate Responsibilities

3.1 A Senotec Physician Affiliate agrees that he or she will not:

(i) purchase, register or bid on or attempt to purchase or register any keywords, search terms, or other identifiers that include the term ZONE or the name BARRY SEARS or SEARS or any other trademark, service mark or trade name of SENOTEC and Barry Sears or any variation or misspelling thereof, and any words relating to omega-3 fatty acids, polyphenols, food products with or for use in any search engine, portal, sponsored advertising services or other search referral service;

(ii) register or use URLs or domain names and/or sub-domain names which incorporate the words ZONE, DR. SEARS, BARRY SEARS, or any other trademark, service mark, or trade name of SENOTEC or Dr. Barry Sears or any variation or misspelling thereof.

(iii) Send e-mails to third parties that contain the ZONE, DR. SEARS, or BARRY SEARS names and trademarks or any other name, trademark, service mark, trade name or domain name of SENOTEC or Dr. Barry Sears or SENOTEC's or Dr. Barry Sears' copyrighted content or content from SENOTEC's website, product guide or any other source unless otherwise permitted by this Agreement;

## 4. Referral Fees

4.1 Senotec Physician Affiliates will not receive any referral commissions from Senotec from purchases by their patients. However, a Senotec Physician Affiliate can sell Senotec products to their patients that they have purchased from SENOTEC.

4.2 Except as otherwise stated in this Agreement, SENOTEC agrees to pay a Senotec Physician Affiliate a 10% referral commission for net Product purchases (total charges minus shipping and taxes) made by personally-sponsored SENOTEC physicians and their patients linked to a Senotec Physician Affiliate.

4.3 Referral Fees are based on the aggregate amount received by SENOTEC from the aggregated sales to their referred Senotec Physician Affiliates and their patients for product purchases, excluding amounts collected by SENOTEC for sales taxes, duties, shipping and handling, and similar charges. SENOTEC will make referral fee payments to you in U.S. dollars for all referral fees earned (less any taxes withheld under applicable law) no later than 35 days after the end of each calendar month. A processing fee of \$3 will be automatically deducted for each payment made to you, and checks will only be distributed if there is a minimum check value of \$5 after the deduction of the \$3 processing fee. Earnings from net commission check less than \$5 will be forfeit to SENOTEC. Any referral commissions paid on return products will be deducted from your next commission check. If you terminate your Senotec Physician Affiliate status in a given month, no referral commissions will be paid in that month or thereafter.

4.4 Referral Fees shall not be paid for sales in which SENOTEC fails to collect amounts due for any reason, including fraud of any kind. Referral Fees are earned by a Senotec Physician Affiliate after the order, payment, and shipment have occurred. If a product purchased by a referred customer is returned to SENOTEC, the amount of that referral commission and any shipping charges paid by SENOTEC will be deducted from your future commission checks.

4.5 If any referral fee is paid or owed to you as a result of your engaging in any activity prohibited by this Agreement, SENOTEC reserves the right to immediately terminate this Agreement.

4.6 Every individual who purchases a Product is a customer of SENOTEC. SENOTEC shall have the sole right and responsibility for processing all orders placed by customers linked to you via your Senotec Physician Affiliate URL. We will be responsible for all aspects of order processing and fulfillment. Among other things, we will prepare order forms, process payments, cancellations, returns, and handle customer service. A Senotec Physician Affiliate acknowledges that all agreements relating to sales to customers shall be between SENOTEC and the patient. Prices for the Products will be set solely by SENOTEC in its discretion.

4.7 SENOTEC will track sales made to all of your patients as well as the sales of your aggregated SENOTEC Physician Affiliates and their patients linked to you and will make available to you reports in the password-protected your Senotec Physician Affiliate section summarizing this sales activity. The form, content, and frequency of the reports may vary from time to time at our discretion. You will have access to a password-protected site to review an online statement of all transactions affecting the referral fees earned by you. You will be solely responsible for the confidentiality and use of your password, and for all communications entered using your password.

4.8 All Senotec Physician Affiliates are independent contractors according to Section 1.5 of this Agreement, and SENOTEC will not treat you as an employee with respect to the Internal Revenue Code, Social Security Act, Federal Unemployment Acts, or any other federal, state, or local statute, ordinance, rule, or regulation. Among other things, this means that we will not deduct any taxes from the referral fees you earn, and we will issue a Form 1099 or equivalent to you at the end of each calendar year, which reports all payments made to you by SENOTEC, as required by the IRS. You agree that you have the whole responsibility to pay federal and state income taxes, Social Security, and similar obligations to any government about any payments you receive from SENOTEC.

4.9 SENOTEC will use commercially reasonable efforts to keep the SENOTEC Website operational and to track all individuals linked to you in the SENOTEC database. However, technical difficulties may occasionally cause temporary service and tracking interruptions, and you agree that SENOTEC will not be liable in any way for such interruptions.

## **5. Term and Termination**

5.1 The duration of the Agreement is dependent on the Senotec Physician Affiliate having a valid medical license. It is the responsibility of a Senotec Physician Affiliate to notify SENOTEC that their medical license has been successfully renewed.

5.2 SENOTEC has the right to terminate this Agreement at any time and for any reason by sending the other party written notice of termination, in either print or electronic format, to either the street address or e-mail address identified in the Senotec Physician Affiliate Application or any new address provided by the Senotec Physician Affiliate. Notices are effective upon delivery (or if any such address has been changed without notifying the other party, upon attempted delivery) to any such address. For purposes of notification of termination by SENOTEC, delivery via e-mail is considered a written and immediate form of notification.

5.3 Referral fees earned, but not paid, before termination may be withheld for a reasonable time to ensure that the correct final referral fee is paid to you.

5.4 Upon termination of this Agreement, all rights and licensees of a Senotec Physician Affiliate hereunder shall immediately terminate; and

5.5 The exercise by SENOTEC of any right granted to it in this Agreement to terminate this Agreement or suspend access or service shall not result in a breach of this Agreement by SENOTEC. Neither the exercise of such right nor any consequence thereof shall give rise to or be the basis of any claim by or liability to the other party, whether in contract, tort, or otherwise.

## **6. Warranty Disclaimer; Limitation of Liability**

6.1 EXCEPT AS EXPRESSLY PROVIDED IN THE PRECEDING PARAGRAPH, SENOTEC PRODUCTS, SERVICES, AND THE SENOTEC WEBSITE ARE PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION:

- (i) Warranties concerning the availability, accuracy, or content of information, products, or services or results; and
- (ii) Warranties of title, merchantability, or fitness for a particular purpose, unless such warranties are legally incapable of exclusion.

6.2 In no event shall SENOTEC be liable to a Senotec Physician Affiliate for any indirect, special, exemplary, consequential, or incidental damages, even if informed of the possibility of such damages, reasonable attorneys' fees, costs, and expenses related thereto, arising out of SENOTEC's breach. In no event shall SENOTEC be liable to a Senotec Physician Affiliate (whether in contract or based on warranty, negligence, tort, strict liability, or otherwise) in an aggregate that is in excess of the amount of commissions paid or accrued to a Senotec Physician Affiliate during the period of one year immediately preceding the date the liability for such damages arose.

6.3 The parties acknowledge that the provisions in Section 6.2 above are an essential element of the benefit of the bargain reflected in this Agreement.

## **7. Intellectual Property Rights**

7.1 All right, title and interest in and to the Products and Services (including without limitation all patent, copyright, trade secret, trademark, service mark, tradename, and other intellectual property rights embodied in or marketing by a Senotec Physician Affiliate with the Products and Services) are and shall remain the sole and exclusive property of SENOTEC.

## **8. Indemnification**

8.1 You hereby agree to indemnify and hold SENOTEC and all of their respective directors, officers, employees, agents, shareholders, partners, members, and other owners, harmless against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees) arising from or related to:

(i) any use by you of the SENOTEC links in violation of this Agreement,

(ii) any breach or alleged breach by you of any provision of this Agreement including, but not limited to, the representations, warranties, and covenants made by you herein,

(iii) any claim related to your site, including, but not limited to, the content therein not attributable to us which defames or infringes the rights of others, or

(iv) any act or omission to act by you.

## **9. Additional Terms**

9.1 A Senotec Physician Affiliate shall not assign, transfer, or delegate its obligations under this Agreement, either in whole or in part, without the prior written consent of SENOTEC. Any attempted assignment, transfer, or delegation in violation of the provisions of this provision will be void. Subject to the foregoing restriction, this Agreement will be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

9.2 The provisions of this Agreement are severable. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be deemed invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the other provisions of this Agreement that can be given effect. Such provision will be modified to render it enforceable in a manner calculated to affect the original intent of the parties as nearly as possible.

9.3 No delay or failure by SENOTEC in exercising any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right. No waiver of any term of this Agreement will be valid unless in writing.

9.4 The parties agree that breach of this Agreement by a Senotec Physician Affiliate would result in irreparable damage to SENOTEC for which no adequate remedy would be available at law. Therefore, a Senotec Physician Affiliate agrees that SENOTEC shall be entitled to equitable relief, including injunctive relief and specific performance in the event of a breach by a Senotec Physician Affiliate. Nothing in this paragraph shall prevent SENOTEC from seeking and obtaining damages, including consequential damages, for breach of this Agreement.

9.5 This Agreement shall be deemed a mutual agreement and shall not be construed or interpreted in favor or against either party on the basis of preparation of the Agreement.

9.6 SENOTEC reserves the right to modify the terms and conditions of this Agreement in its sole discretion at any time by posing a modified or new Agreement on the SENOTEC website. If any modification or new Agreement is unacceptable to a Senotec Physician Affiliate, a Senotec Physician Affiliate's sole recourse is to terminate this Agreement. A Senotec Physician Affiliate's continued participation in the Program after notice of modification to the terms and conditions of this Agreement constitutes a Senotec Physician Affiliate's binding acceptance to the change.

9.7 This Agreement has been made in and shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. Any action to enforce this Agreement shall be brought in the federal or state courts located in the Commonwealth of Massachusetts, and the parties agree to submit to the jurisdiction of the state and federal courts in that state.

9.8 Official notices to SENOTEC should be sent to Senotec Physician Affiliate Program, 200 Corporate Place, Peabody, Massachusetts 01960.

9.9 A Senotec Physician Affiliate is an independent contractor and shall have no authority to obligate or bind SENOTEC in any respect.

9.10 This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and all prior agreements and understandings, written and oral, between the parties hereto with respect to subject matter hereof are superseded and cancelled.

9.11 The following sections shall survive termination of this Agreement: 3, 8, and 9.