

Last Updated: 20 October 2022

These Zella DC Terms and Conditions ("**Terms**") govern your participation in the Zella DC Partner Program ("**Partner Program**") and are an agreement between Zella DC (also referred to as "the **Company**", "**we**," "**us**," or "**our**") and you or the entity you represent ("**you**" or "**your**" or "the **Partner**"). These Terms take effect when you click the check box presented with these Terms ("**Effective Date**"). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into these Terms for an entity, such as the company you work for, you represent to us that you have the legal authority to bind that entity. Please see Section 16 for definitions of certain capitalised terms used in these Terms.

1. Joining the Partner Program

- 1.1. To join the Zella DC Partner Program, you must agree to the Terms and be accepted by the Company.
- 1.2. This agreement is personal to the Partner. The Partner may not delegate or sub-contract any of its obligations under this agreement.
- 1.3. Nothing in this agreement shall be deemed to create a partnership or the relationship of employer and employee between the parties.
- 1.4. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties. Each party acknowledges that he does not rely on any representation, warranty, or other terms not forming part of this agreement in entering into this agreement.
- 1.5. All conditions, warranties and other terms implied by the law of any country are hereby excluded as far as the law of such country permits.
- 1.6. The Company may assign or transfer the benefit of this agreement.

2. Conduct

The Partner will, always:

- 2.1. conduct activities in the Partner Program in a professional and competent manner, and
- 2.2. comply with all applicable laws, rules, and regulations, and orders of any governmental authority, and
- 2.3. not engage in any harmful, false, or deceptive acts or practices, and
- 2.4. not use any advertising or marketing material except that supplied by the Company or agreed in writing by the Company.
- 2.5. not make or publish any disparaging remarks or comments about the Products or the Company. This is an essential term and will survive termination of this agreement.
- 2.6. adhere to the marketing style guide issued by the Company from time to time, and not advertise Zella DC products without prior written approval from the Company.
- 2.7. use Zella DC's Intellectual Property including, but not limited to, its trademarks for the sole purpose of advertising and marketing the Products and in its promotional material for the Products but for no other purposes.

- 2.8. not deface, obscure or remove any of the Products, Zella DC's trademarks or reservations or notifications of its Intellectual property or the intellectual property rights of any third-party component supplier and will at all times comply with the other obligations of the Terms relating to the application or use of the Zella DC trademarks or other Intellectual Property
- 2.9. from the date of termination of this agreement, refrain from manufacturing, distributing or selling, or otherwise assist directly or indirectly any third party to manufacture, distribute or sell, any product which can reasonably be said to compete with or be substituted for Zella DC Products for a period of no less than:
 - 2.9.1. five (5) years, or if that is deemed unenforceable;
 - 2.9.2. three (3) years, or if that is deemed unenforceable;
 - 2.9.3. one (1) year, or if that is deemed unenforceable;
 - 2.9.4. six (6) months.

3. Partner Sales

- 3.1. All sales by the Partner on behalf of the Company shall be made on the Company's standard terms and conditions; and the Partner shall, while dealing with all Customers and prospective Customers for the Product, bring to their notice such terms and conditions.
- 3.2. The Partner shall not make or give any promises, warranties, guarantees or representations concerning the Products other than those contained in the Terms of Use.

4. Opportunity Deal Registration ("Deal Reg")

- 4.1. A Deal Reg is submitted by completing the online Deal Registration form on the Partner Portal (<https://partners.zelladc.com/deal-registration/>).
- 4.2. A Deal Reg is valid for three months and extensions may be requested. In the situation where multiple Deal Regs are received for one opportunity from several Partners, the Company reserves the right to select the most appropriate Partner to continue with the opportunity based on the following criteria:
 - 4.2.1. Customer preference, or
 - 4.2.2. Partner's knowledge of the opportunity, and
 - 4.2.3. Partner's ability to pursue the opportunity from a sales and technical capability.

5. Partner discount

- 5.1. Partner discount is between 10% and 20% (price is calculated on up front purchase of Zella MDC Base and Cooling only).

6. Confidentiality and Publicity

- 6.1. You may use Zella DC Confidential Information provided to you under the Partner Program only for your participation in the Partner Program or as otherwise expressly permitted by Zella DC in writing.

- 6.2. Unless otherwise expressly permitted by Zella DC in writing, you will not disclose Zella DC Confidential Information during, and for the five (5) years following, your involvement in the Partner Program
- 6.3. You will take all reasonable, technical, and organisational measures to avoid disclosure, dissemination or unauthorised use of Zella DC Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature.
- 6.4. You will not issue any press release or make any other public communication regarding your participation in the Partner Program without our prior written consent.

7. Intellectual Property

- 7.1. The Partner acknowledges that the Intellectual Property Rights belong exclusively to the Company and if the Partner should create any new intellectual property relating to the Products, then that too shall belong to the Company. The Partner agrees to take any action necessary to confirm or vest the title of the Company in that intellectual property.
- 7.2. The Partner agrees to be vigilant in seeking out any infringement of the Intellectual Property Rights and bringing to the Company's attention, any that he finds or suspects.

8. Termination

- 8.1. Either party may, by giving at least 30 days' notice, terminate this agreement for any or no reason.
- 8.2. Zella DC may also terminate this agreement or your participation in any aspect of the Partner Program immediately upon notice to you;
 - 8.2.1. if you are in material breach and fail to cure within a reasonable time period specified by Zella DC, or
 - 8.2.2. if your participation in the Partner Program could subject us or our affiliates to harm, or
 - 8.2.3. in order to comply with the law or requests of governmental entities.

9. Effect of Termination

Upon termination of this agreement:

- 9.1. you will immediately return, cease use of, and remove from your website, or, if instructed by us, destroy all Zella DC marketing materials in your possession, and
- 9.2. you will immediately cease to identify yourself or hold yourself out as a Partner Program participant or Program Partner

10. Terms are Divisible

Each subparagraph in this agreement is independent and severable from each other paragraph and therefore separately enforceable. If any restriction is unenforceable for any reason but would be enforceable if part of the wording were deleted, it will apply with such deletions as may be necessary to make it valid and enforceable.

11. Notices and Service

- 11.1. Any notice or other information required or authorised by this agreement to be given by either Party to the other may be given by hand or sent by first class pre-paid post, or electronic means to the other Party at the address last provided for that type of communication.
- 11.2. Any notice or other information sent by electronic means shall be deemed to have been duly sent on the date of transmission.
- 11.3. Service of any legal proceedings concerning or arising out of this agreement shall be effected by causing the same to be delivered to the party, to be served at the main place of business (in the case of the Company) or the registered office (in the case of the Partner), or to such other address as may from time to time be notified in writing by the Party concerned.

12. Force Majeure

"Force Majeure" means a cause beyond the reasonable control of the Party claiming the benefit of clause 12, including, without limitation:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion (cyclone, tidal wave, landslide, adverse weather conditions);
- (b) strike, lockout, or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockage, revolution, riot, insurrection, civil commotion, pandemic, or epidemic;
- (d) any action, inaction, demand, order, restraint, restriction, requirement, prevention, frustration or hindrance by or of any person, government or other competent authority;
- (e) embargo (unavailability of or delay in obtaining materials essential equipment or transportation (or qualified employees); and
- (f) breakage or accident or other damage to machinery.

13. Dispute Resolution

In the event of a dispute arising out of or in connection with these Terms or any agreement between you and us, then you agree to attempt to settle the dispute by engaging in good faith with us in a process of mediation before commencing arbitration or litigation. Should arbitration become a final requirement any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Supreme Court (Arbitration) Rules 2016 (WA) (Arbitration Rules), which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one.

The seat, or legal place, of arbitration shall be Perth, Western Australia.

The language to be used in the arbitral proceedings shall be English.

The governing law of the agreement shall be the substantive law of Western Australia.

14. Waivers

The failure by either Party to enforce at any time or for any period any one or more of the terms of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms of this agreement.

15. Jurisdiction

The validity, construction and performance of this agreement shall be governed by the laws of the State of Western Australia. Any dispute arising in connection with this agreement shall be subject to the exclusive jurisdiction of the Courts of the State of Western Australia.

16. Definitions

"Confidential Information" means all the following:

- a. the trade secrets of any Party.
- b. the names of all past, present, and prospective Customers, including all record regarding Products sold or supplied to them.
- c. the names of all past, present, and prospective employees of such Party; and (d) the Party's past, present, and prospective systems, methods and procedures used in the operation of such Party's business.
- d. any other oral, written, electronic and/or recorded information of any Party's business, products, financial condition, operations, assets or liabilities.
- e. any documentary information that is marked "Confidential" "Private" "Secret" "In Confidence" or "Not to be disclosed".
- f. all notes, analyses, summaries, compilations, studies projections, forecasts budgets, price lists or records of any Party that is marked confidential or which by its nature is confidential.

The Confidential Information excludes information that is:

- a. generally available in the industry other than as a result of wrongful disclosure, or
- b. independently acquired or developed by a Party without breach of this agreement, or
- c. available to a Party on a non-confidential basis from a third person not bound by any confidentiality agreement or fiduciary obligation owed to the other Party.

"Customer" means any Person that is an existing or potential Customer of the Partner, or any Person introduced by the Partner that purchases or agrees to purchase any Products.

"Initial Order" means a Purchase Order received for one or more Zella DC products from a new Customer that has not at any point purchased any Zella DC products.

“Intellectual Property” or **“Intellectual Property Rights”** means:

- a. the various rights and property conferred under statute, common law, and equity in relation to patents, inventions, designs, copyrights, trademarks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets and confidential information, and the right to have trade secrets and confidential information kept confidential, and all other intellectual property rights as defined by Article 2 of the World International Property Organisation Convention of July 1967; and:
- b. all applications for registration, extension, renewal, or otherwise in respect of the rights and property referred to in paragraph (a) of this definition. ”

“Law” means all applicable statuses, Acts, rules, regulations and by-laws.

“Partner” means you will provide a Purchase Order and purchase outright from the Company, at a reduced cost as specified in section 5, Zella DC products with the intent to resell to a third party.

“Party/Parties” means the Parties to this Agreement and includes their lawful successors and assigns. Any reference to a Party will include, where applicable, any subsidiary controlled by a Party or by the same persons who control that Party.

“Person” means anybody that is recognised by Law whether a natural person, an entity or a corporation.

“Products” means all goods offered to the Partner by the Company and accepted by the Partner to sell.

“Purchase Order” means an official purchase order from the Customer.