



CUSTOMER REGISTRATION FORM

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Customer's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name (if different from above):				
Physical Address:			State:	Postcode:
Billing Address:			State:	Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
ABN:		ACN:		Date Established <i>(current owners)</i> :
Nature of Business:				
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.:	
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.:	
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="checkbox"/> 30 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required?		<input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO
Accounts Email Address:				
Accounts Contact:			Phone No:	
Bank and Branch:			Account No:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of DSM (Pacific) Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

SIGNED (CUSTOMER): _____ **SIGNED (DSM):** _____
 Name: _____ Name: _____
 Position: _____ Position: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

DSM (Pacific) Pty Ltd – Terms & Conditions of Trade

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| <p>1. Definitions</p> <p>1.1 "DSM" means DSM (Pacific) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of DSM (Pacific) Pty Ltd.</p> <p>1.2 "Customer" means the party who buys the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by DSM to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be deemed to refer to the other).</p> <p>1.4 "Price" means the Price payable (plus any GST that where applicable) for the Goods as agreed between DSM and the Customer in accordance with clause 5 below.</p> <p>1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and DSM.</p> <p>2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with DSM and it has been approved with a credit limit established for the account.</p> <p>2.4 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, DSM reserves the right to refuse delivery.</p> <p>2.5 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, DSM reserves the right to vary the Price for alternative Goods, subject to prior confirmation and agreement of both parties in accordance with clause 5.2 below.</p> <p>2.6 Notwithstanding clause 2.5, DSM also reserves the right to halt all Services until such time as DSM and the Customer agree to such changes. DSM shall not be liable to the Customer for any loss or damage the Customer suffers due to DSM exercising its rights under this clause.</p> <p>2.7 The Customer accepts and acknowledges that DSM reserves the right to cease supply of Goods immediately in the event that the Customer becomes aware that the Customer is not selling the Goods supplied in direct competition with DSM's prospective clientele (including but not limited to the Customer on-selling from their website and/or any alternative online auction site).</p> <p>2.8 All literature, samples, specifications, submitted under any quotation is expressly illustrative and is by way of general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services DSM is to supply. DSM will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.</p> <p>2.9 Any diamonds herein involved have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions. DSM hereby guarantees that the diamonds are conflict free, based on personal knowledge and/or written warranties provided by the supplier of the diamonds.</p> <p>3. Electronic Transactions Act 2000</p> <p>3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>4. Change in Control</p> <p>4.1 The Customer shall give DSM not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any other change in the Customer's details (including but not limited to changes in the Customer's name, address, contact phone or fax numbers, or business practice). The Customer shall be liable for any loss incurred by DSM as a result of the Customer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At DSM's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by DSM to the Customer or</p> <p>(b) the Price as at the date of delivery of the Goods according to DSM's current price list; or</p> <p>(c) DSM's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 DSM reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) as a variation to the Goods originally scheduled (including any applicable plans, specifications or changes in design) is requested; or</p> <p>(c) if during the course of the Services, the Goods cease to be available from DSM's third party supplier, then DSM reserves the right to provide alternative Goods; or</p> <p>(d) in the event of a variation to the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond DSM's control.</p> <p>5.3 At DSM's sole discretion, a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date determined by DSM, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) by way of instalment payments in accordance with DSM's payment schedule, which is agreed upon by both parties;</p> <p>(c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by DSM.</p> <p>5.5 Payment may be made by cash, bank cheque, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and DSM.</p> <p>5.6 The Customer shall not be entitled to a refund or deduction from the Price, any sums owed or claimed to be owed to the Customer by DSM nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must also pay GST on any GST. DSM must pay for any supply by DSM under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>6. Delivery of Goods</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods at DSM's address; or</p> <p>(b) DSM (or DSM's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 At DSM's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>6.3 Any time specified by DSM for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. DSM will not be liable for any loss or damage incurred by the Customer as a result of delivery being late.</p> <p>6.4 DSM may deliver the Goods separately or in instalments. Each separate instalment shall be invoiced and paid in accordance with these terms and conditions.</p> <p>7. On-Line Ordering</p> <p>7.1 The Customer acknowledges and agrees that:</p> <p>(a) DSM does not guarantee the website's performance;</p> <p>(b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by DSM;</p> <p>(c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;</p> <p>(d) there are inherent hazards in electronic distribution, and as such DSM cannot warrant against delays or errors in transmitting data between the Customer and DSM including orders, and you agree that to the maximum extent permitted by law, DSM will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;</p> <p>(e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by anyone by outside influences;</p> <p>(f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, DSM shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.</p> <p>7.2 DSM reserves the right to terminate the Customer's order if it learns that they have provided false or misleading information, interfered with other users or the administration of DSM's business, or violated these terms and conditions.</p> <p>8.
Goods On Consignment</p> <p>8.1 Where Goods are supplied on consignment the following provisions apply specifically to those Goods:</p> <p>(a) the Goods shall be at the Customer's risk from the time of delivery and the Customer shall be responsible for insuring the Goods;</p> <p>(b) the Customer may retain possession of the Goods until the Customer sells them or DSM requires re-delivery of them to DSM, whichever first occurs;</p> <p>(c) if DSM requires re-delivery of the Goods such re-delivery shall be at the Customer's cost;</p> <p>(d) the Customer shall notify DSM on a fortnightly basis of all consignment Goods sold during that fortnightly period and shall within seven (7) days of that fortnightly advice pay DSM for the Goods sold.</p> <p>9. Distribution of Goods</p> <p>9.1 Orders from Customers are accepted on the basis that:</p> <p>(a) Goods may only be resold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale, and</p> <p>(b) Goods to be sold for retail or displayed for sale at any of the nominated locations advised by DSM to the Customer, DSM, and</p> <p>(c) sale of Goods by mail order, internet or any other method outside of the traditional display and sell at the approved location is prohibited without prior written consent of DSM, and</p> <p>(d) Goods are to be displayed, presented and marketed in the manner that is in the best interest of the brand name.</p> <p>9.2 Any default of 9.1 may at DSM's sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.</p> <p>9.3 DSM has sole discretion on which brands or products are made available to any approved Customer and DSM does not guarantee continuing supply of any specific brand or product.</p> <p>10. Display Stands Provided On Loan</p> <p>10.1 Display stands shall at all times remain the property of DSM.</p> <p>10.2 DSM agrees that they shall be responsible for delivery of the display stand to the Customer.</p> <p>10.3 The Customer agrees that:</p> <p>(a) the display stand is only to be used to display DSM's Goods; and</p> <p>(b) the display stand is to be kept stocked to the agreed minimum levels at all times; and</p> <p>(c) the Customer is responsible for the upkeep of the stand and agrees to take all due care to ensure that the display stand is safe and secure in any way; and</p> <p>(d) they shall immediately advise DSM if for any reason they opt to remove the display stand from display.</p> <p>10.4 DSM reserves the right to require the immediate return of the stand in the event that the conditions in clause 10.3 are not met.</p> <p>10.5 The Customer may opt to return the stand to DSM at any time, but may not throw it away, or give it to any other party, unless with the express permission of DSM.</p> <p>10.6 If the stand is damaged or lost whilst in the care of the Customer then the Customer shall be liable for the full replacement of the stand (notwithstanding that such costs shall not exceed the value of the stand as stated in DSM's display stand agreement).</p> <p>11. Risk</p> <p>11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>11.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, DSM is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DSM is sufficient evidence of DSM's rights to receive the insurance proceeds without the need for any person dealing with DSM to make further enquiries.</p> <p>11.3 The Customer acknowledges that variations of colour and shade are inherent in the Goods. While every effort will be taken by DSM to match colour and shade of the Goods, DSM shall not be liable for any colour or shade variations resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.</p> <p>11.4 Any advice, recommendation, information, assistance or service provided by DSM in relation to Goods or Services supplied is given in good faith based on DSM's own knowledge and expertise and shall not constitute an offer or warranty on the part of DSM and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.</p> <p>11.5 The Customer acknowledges that Goods supplied may</p> <p>(a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural imperfections, inclusions, indentations and may fade or change colour over time; and</p> <p>(b) expand, contract or distort as a result of exposure to heat, cold, weather; and</p> <p>(c) mark or stain if exposed to certain substances; and</p> <p>(d) be damaged or disfigured by impact or scratching;</p> <p>11.6 The Customer must supply DSM with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. DSM shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.</p> <p>12. Title</p> <p>12.1 DSM and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid DSM all amounts owing to DSM; and</p> <p>(b) the Customer has met all of its other obligations to DSM.</p> <p>12.2 Receipt by DSM of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>12.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1:</p> <p>(a) the Customer is only a bailee of the Goods and must return the Goods to DSM on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for DSM and must pay to DSM the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Customer shall not convert, sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for DSM and must pay or deliver the proceeds to DSM on demand;</p> <p>(d) the Customer shall not convert or protect the Goods or interfere with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of DSM and must sell, dispose of or return the resulting product to DSM as its sole directs;</p> <p>(e) the Customer irrevocably authorises DSM to enter any premises where DSM believes the Goods are kept and recover possession of the Goods;</p> <p>(f) DSM may vary the terms of any Goods to transfer whether or not delivery has occurred;</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods while they remain the property of DSM;</p> <p>(h) DSM may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>13. Personal Property Securities Act 2009 ("PPSA")</p> <p>13.1 In this clause financing statement, financing charge statement, security agreement, and security interest refer to a document referred to in clause 13.3(a)(i) or 13.3(a)(ii).</p> <p>13.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to DSM's Services – that have previously been supplied and that will be supplied in the future by DSM to the Customer.</p> <p>13.3 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information not to be complete, accurate and up-to-date in all respects) which DSM may reasonably require to:</p> <p>(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) consent to a default in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, DSM for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) register a financing charge statement in respect of a security interest without the prior written consent of DSM;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of DSM;</p> <p>(e) immediately advise DSM of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>13.4 DSM and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>13.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>13.7 Unless otherwise agreed to in writing by DSM, the Customer waives their right to
receive a verification statement in accordance with section 157 of the PPSA.</p> <p>13.8 The Customer must unconditionally ratify any actions taken by DSM under clauses 13.3 to 13.5. Subject to any express provisions to the contrary (including those contained in this clause 13) the Customer agrees to these terms and conditions in full and to be bound by the effect of contracting out of any of the provisions of the PPSA.</p> <p>14. Security and Charge</p> <p>14.1 In consideration of agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>14.2 The Customer indemnifies DSM from and against all DSM's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DSM's rights under this clause. The Customer irrevocably appoints DSM and each director of DSM as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.</p> <p>15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>15.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify DSM in writing of the damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other defect defined in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow DSM to inspect the Goods.</p> <p>15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>15.3 DSM acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DSM makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. DSM's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>15.5 If the Customer is a consumer within the meaning of the CCA, DSM's liability is limited to the extent permitted by section 64 of Schedule 2.</p> <p>15.6 If DSM is required to replace the Goods under this clause or the CCA, but is unable to do so, DSM may instead offer to replace the Goods with other goods of a similar nature.</p> <p>15.7 If the Customer is not a consumer within the meaning of the CCA, DSM's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by DSM at DSM's sole discretion;</p> <p>(b) limited to any express warranty or warranty card provided to the Customer;</p> <p>(c) otherwise negated absolutely.</p> <p>15.8 Subject to this clause 15, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 15.1; and</p> <p>(b) DSM has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, DSM shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods;</p> <p>(b) the Customer using any Goods for purposes for which they were designed;</p> <p>(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by DSM;</p> <p>(e) the Customer using fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>15.10 DSM may in its absolute discretion accept non-defective Goods for return in which case DSM may require the Customer to pay handling fees of up to twenty (20%) percent of the value of the returned Goods plus any freight costs.</p> <p>15.11 The Customer's items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.</p> <p>15.12 Notwithstanding anything contained in this clause if DSM is required by a law to accept a return then DSM will only accept a return on the conditions imposed by that law.</p> <p>16. Intellectual Property</p> <p>16.1 Where DSM has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of DSM. Under no circumstances may such designs, drawings and documents be used without the express written approval of DSM.</p> <p>16.2 The Customer warrants that all designs, specifications or instructions given to DSM will not cause DSM to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DSM against any action taken by a third party against DSM in respect of any such infringement.</p> <p>16.3 The Customer agrees to indemnify DSM (at its cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DSM has created for the Customer.</p> <p>17. Default and Consequences of Default</p> <p>17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at DSM's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>17.2 If the Customer owes DSM any money the Customer shall indemnify DSM from and against all costs and disbursements incurred by DSM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DSM's contract default fee, and bank dishonour fees).</p> <p>17.3 Further to any other rights or remedies DSM may have under this contract, if a Customer has made payment to DSM, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DSM under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention of DSM's obligations under this agreement.</p> <p>17.4 Without prejudice to DSM's other remedies at law DSM shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to DSM shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable by the Customer to DSM becomes overdue, or in DSM's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by DSM;</p> <p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver or liquidator is appointed in respect of the Customer or any asset of the Customer.</p> <p>18. Cancellation</p> <p>18.1 Without prejudice to any other remedies DSM may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions DSM may suspend or terminate the supply of Goods to the Customer. DSM will not be liable to the Customer for any loss or damage the Customer suffers because DSM has exercised its rights under this clause.</p> <p>18.2 DSM may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice DSM shall repay to the Customer any money paid by the Customer for the Goods. DSM shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>18.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DSM as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will result in the collection of amounts outstanding in relation to the Goods.</p> <p>18.5 In the event that the Customer decides to terminate this or any jewellery program with DSM, the Customer agrees to give thirty (30) days written notice of said termination.</p> <p>19. Privacy Act 1988</p> <p>19.1 The Customer agrees for DSM to obtain from a credit reporting body (CRB) a personal credit report containing personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history) about the Customer in relation to credit provided by DSM.</p> <p>19.2 The Customer agrees that DSM may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other
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General</p> <p>22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce the law of the State, Territory or Commonwealth of these terms and conditions shall be invalid, void or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which DSM has its principal place of business, and are subject to the jurisdiction of the courts of the Sydney Courts in that State.</p> <p>22.3 Subject to clause 15 DSM shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by DSM of these terms and conditions (alternatively DSM's liability shall be limited to any losses which under no circumstances shall exceed the Price of the Goods).</p> <p>22.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). DSM may elect to subcontract any part of the Services but shall not be limited in doing so. The Customer agrees to these terms and conditions and to be bound by the effect of contracting out of any of the provisions of the PPSA.</p> <p>22.5 The Customer agrees that DSM may amend these terms and conditions by notifying the Customer in writing. If any changes to these terms and conditions take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for DSM to provide Goods to the Customer.</p> <p>22.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>22.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p> | <p>15.12 Notwithstanding anything contained in this clause if DSM is required by a law to accept a return then DSM will only accept a return on the conditions imposed by that law.</p> <p>16. Intellectual Property</p> <p>16.1 Where DSM has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of DSM. Under no circumstances may such designs, drawings and documents be used without the express written approval of DSM.</p> <p>16.2 The Customer warrants that all designs, specifications or instructions given to DSM will not cause DSM to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DSM against any action taken by a third party against DSM in respect of any such infringement.</p> <p>16.3 The Customer agrees to indemnify DSM (at its cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DSM has created for the Customer.</p> <p>17. Default and Consequences of Default</p> <p>17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at DSM's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>17.2 If the Customer owes DSM any money the Customer shall indemnify DSM from and against all costs and disbursements incurred by DSM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DSM's contract default fee, and bank dishonour fees).</p> <p>17.3 Further to any other rights or remedies DSM may have under this contract, if a Customer has made payment to DSM, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DSM under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention of DSM's obligations under this agreement.</p> <p>17.4 Without prejudice to DSM's other remedies at law DSM shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing
to DSM shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable by the Customer to DSM becomes overdue, or in DSM's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by DSM;</p> <p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver or liquidator is appointed in respect of the Customer or any asset of the Customer.</p> <p>18. Cancellation</p> <p>18.1 Without prejudice to any other remedies DSM may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions DSM may suspend or terminate the supply of Goods to the Customer. DSM will not be liable to the Customer for any loss or damage the Customer suffers because DSM has exercised its rights under this clause.</p> <p>18.2 DSM may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice DSM shall repay to the Customer any money paid by the Customer for the Goods. DSM shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>18.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DSM as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will result in the collection of amounts outstanding in relation to the Goods.</p> <p>18.5 In the event that the Customer decides to terminate this or any jewellery program with DSM, the Customer agrees to give thirty (30) days written notice of said termination.</p> <p>19. 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