

DPLUSK AUSTRALIA PTY LTD ACN 607 664 853
WHOLESALE AGREEMENT TERMS AND CONDITIONS

TO: DplusK Australia Pty Ltd ACN 607 664 853 (as licensee of the dk active trademark) and each of its subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns (dk active).

THE CUSTOMER (Customer)

Name (incl ACN if a Company):	
Trading as:	
Postal Address:	
Street Address:	
Email Address:	
Telephone No:	
Facsimile No:	
Purchasing Contact:	Name:
	Contact Number:
	Email Address:
Accounts Payable Contact:	Name:
	Contact Number:
	Email Address:
Date:	

AUTHORISED PERSON completing this form:

By signing below, the Authorised Person binds the Customer to the Agreement and dk active relies on this Agreement in providing the Goods.

Position:		
Name:		
Address:		
Telephone:		
	Customer Signature:	Date:
	Witness Signature:	Witness Name (print)

TERMS AND CONDITIONS OF TRADE

To the fullest extent legally permissible, all dealings between dk active and the Customer relating to any Goods offered by dk active are subject to the following terms and conditions in this agreement unless otherwise agreed in writing:

1. DEFINITIONS

'Agreement' means this agreement and includes any schedules or annexures attached hereto.

'Customer' means the company, entity listed or person named on page 1 of this agreement.

'Goods' means any garment or product labelled with the DplusK or dk active logo or as agreed between the Customer and dk active.

'The Goods Price' means the price of a garment listed on the dkactive.com website does not include freight charges.

'Invoice' means the final tax invoice for all Goods purchased by the Customer from dk active and must contain GST.

'Consumer' means the person or entity whom purchases the Goods from the Customer.

'Australian Consumer Law' means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

'Confidential Information' means:

- (a) the terms of this Agreement and their subject matter, including Information submitted or disclosed by a party during negotiations, discussions and meetings relating to this Agreement;
- (b) Information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
- (c) all other Information belonging or relating to a Disclosing Party, or any Related Entity of that Disclosing Party, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any Related Entity of that Disclosing Party.

2. ORDERING

- 2.1 The initial order placed by the Customer, once accepted and approved by dk active must be greater than \$1000. Re orders will have a minimum value of \$250 for a Customer based in Australia.

2.2 Customers based outside of Australia will have a minimum order value of \$1000 per order.

3. FREIGHT

Dk active will offer free freight to the Customer for all orders with a purchase price above \$1000 (excl GST) however the weight per order is capped at a maximum of 20kg. Freight will be paid for in full by the Customer for all orders that exceed the maximum weight of 20kg.

4. SUPPLY OF GOODS

Dk active hereby makes a standing offer to supply Goods and the Customer hereby warrants to distribute such Goods on and subject to the terms of this Agreement.

5. PRICING

5.1 The price for the Goods are set out on the dk active Wholesale website and a login is required to be able to view these prices. Dk active reserves the right to change The Goods Price including wholesale & retail Goods prices at our discession without notice given to the Customer. The Goods Price does not include the cost of delivering the Goods to the destination required by the Customer. An invoice for the Goods ordered under a Purchase Order will be forwarded to the Customer within a reasonable time.

5.2 Any discount agreed on between dk active and the Customer can not be applied to stock under promotion or already discounted. The agreed discount can only be applied to full price Goods.

6. ORDERING

6.1 Dk active will discuss with the Customer either at the time of purchase or before if required, the method in which orders for Goods will be placed, be it either through online means or paper means and also the preferred payment method for the purchase. For the avoidance of doubt, all Customers will be placed on a "Payment at Order" account which requires payment in full before the Goods are dispatched.

6.2 Any Purchase Order submitted must, as a minimum, specify the following details:

- (a) the required Goods (including the quantity of each item required);
- (b) the Delivery Point; and
- (c) whether it requires an estimate of the delivery fees associated.

6.3 The Customer acknowledges that the delivery fees are determined on weight and size of the order being placed. Should dk active provide an estimate of the delivery

fees, the Customer acknowledges that such figure is an estimate only and may change subject to the fees issued by the delivery provider.

- 6.4 If the Customer is on a "Payment at Order" account, the Customer acknowledges that dk active will only commence packing the Purchase Order once payment is received for the Goods Invoice, and that if payment of the Goods Invoice is received later than what is stated in this clause, the estimated delivery date may be affected.
- 6.5 Payments of all invoices must be made free from any deductions and offsets, must be made in immediately available funds by the due date and will be at the Customer's risk until received by dk active.

DELIVERY

- 6.6 The Customer must ensure ease of access to the Delivery Point in order for the Goods to be delivered. Should the Delivery Point require an additional step in order for delivery to be effective, for instance, attending at a reception, or entering a code, such steps are required to be provided to dk active at least 3 days prior to the estimated delivery time. If the Customer does not provide these instructions to dk active resulting in a failed delivery, then the Customer acknowledges it may be liable for cost associated with a failed delivery attempt, if chargeable by the delivery provider.
- 6.7 Dk active's delivery provider will deliver and the Customer must accept the Goods as per the Invoice, however dk active does not take any liability (direct, indirect, consequential or otherwise) for the delay in the delivery of the Goods provided the Goods have been submitted to the delivery provider within a reasonable time prior to the proposed date of delivery. Unfortunately, as dk active outsources the delivery of the Goods, it is unable to provide actual delivery dates. Therefore dk active will only give an estimated delivery time. DplusK Australia reserves the right to deliver the Goods subject to a Purchase Order in instalments.
- 6.8 The Goods will be considered to have been delivered in good and merchantable condition unless the Customer gives dk active written notice within 14 Business Days after delivery (if within Australia) or 21 Business Days after delivery (if from outside of Australia).
- 6.9 Dk active will not take responsibility for defective Goods if it is defective due to the Customer's neglect, misuse, accident or omission to store or deal with such Goods.
- 6.10 If the Customer gives dk active written notice of damaged Goods under this clause it must:
- (a) preserve the Goods in the state in which it was delivered; and

- (b) return the Goods, at dk active's cost after providing dk active written notice as per clause 6.8
- 6.11 All returns of Goods must include the following:
 - (a) Invoice and/or purchase order initially issued for the Goods;
 - (b) the specific Goods in their original state, packaging and undamaged (third party alterations or repairs will void any return policy); and
 - (c) written confirmation either by email or letter that the Goods have not been washed and worn (multiple times) and the reasons why they are being returned.
- 6.12 Dk active will investigate and determine, in its discretion, whether the Goods are defective. Should the Goods be defective in dk active's reasonable opinion, dk active's liability in respect of Goods or for breach of a condition, warranty or Consumer Guarantee in relation to the provision of Goods are limited to any one of the following options as determined by the Customer:
 - (a) replacement of the Goods.
 - (b) issuing a credit of the cost of replacing the Goods or of acquiring equivalent Goods, and
bearing the cost of the delivery fees associated with sending out replacement Goods.
- 6.13 Should dk active determine that the Goods are conforming, then the Customer acknowledges and agrees to pay for any further delivery charges associated with the return of the Goods to the Customer.
- 6.14 Should an item under a purchase order not be delivered in accordance with a purchase order, the Customer, will in writing, as soon as possible after delivery of the Goods, and nonetheless within 2 Business Days from delivery, advise dk active of the failure to provide the requested Goods. Dk active will then endeavour to investigate the Customer's notice.

7. TITLE IN AND RISK TO GOODS

- 7.1 Title in the Goods passes to the Customer upon payment for the Goods. Dk active's insurance will cover the Goods until received from the delivery partner. Risk in the Goods will pass to the Customer when the Goods are signed for or delivered by dk active's delivery partner.

INVOICING AND PAYMENT

7.2 Payment of any invoice will be made in such currency as noted on the invoice, and in such methods as prescribed by such invoice. Cheques are not acceptable.

7.3 Dk active will not dispatch the Goods to the Customer until full payment of the Invoice is received and cleared, unless otherwise agreed in writing between dk active and the Customer.

8. RETURNS

8.1 Returns are accepted on Goods within 14 days for domestic and 21 days for international from the date you received the item and only **IF THEY ARE DAMAGED, UNSELLABLE OR THE INCORRECT PRODUCT ONLY**. Items received or requests to return items outside of this period or for any reason other than what is stated in this clause will **NOT** be accepted. We recommend that all items are inspected as soon as they are received to ensure you are able to return items within this timeframe.

8.2 To be eligible for a return, please make sure that:

- (a) The product was received in the last 14 (domestic)/ 21 (international) days
- (b) The product is in its original packaging
- (c) You have the receipt or proof of purchase
- (d) All merchandise **MUST** be unwashed and unworn.
- (e) All original tags **MUST** still be attached to the merchandise.
- (f) Products that do not meet these criteria will not be considered for return.

9. WARRANTIES AND ACKNOWLEDGEMENTS

9.1 Dk active warrants to the Customer that:

- (a) The Goods are new when delivered to the Customer;
- (b) are fit for the purpose stated in the specification or elsewhere in the Purchase Order (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
- (c) are of merchantable quality and comply with all applicable Laws and standards; and
- (d) it will replace faulty Goods delivered to the Delivery Point specified by the Customer.

9.2 The Customer warrants, acknowledges and agrees as follows, that:

- (a) If any Goods delivered to the Consumer by the Customer or its agent, which is alleged to be faulty or defective by the Consumer, the Customer will be responsible for, including but not limited to:
 - (i) receiving the alleged defective Goods by the Consumer; and

- (ii) returning such alleged defective Goods to dk active at the Customer's cost; and
- (iii) will pay for all freight involved in returning the Goods to the Consumer once replaced by dk active.

10. FORCE MAJEURE

10.1 Definitions: For the purposes of this clause, Force Majeure Event means:

- (a) an act of God, lightning, fire, flood, explosion;
- (b) strike, lock-out or other labour difficulty;
- (c) breakage, accident or other damage to or failure of machinery or equipment
- (d) unavailability or shortage of raw materials, labour, power supplies or transport facilities; or
- (e) failure or inability to obtain licences or the effect of any applicable laws; and
- (f) any other event which is not within the reasonable control of dk active.

10.2 Where a Force Majeure Event prevents or delays dk active from performing any obligation under this Agreement, that obligation is suspended as long as the Force Majeure Event continues.

11. SUSPENSION AND TERMINATION

11.1 Dk active may suspend completing a Purchase Order should the Customer be

- (a) any breach, default or repudiation of this Agreement; and
- (b) the exercise, or attempted exercise of any right, power, privilege or authority or remedy of dk active under or by virtue of this Agreement, including all amounts incurred in recovering amounts outstanding.

11.2 Dk active may terminate this Agreement and any or all Purchase Order Contracts by giving a minimum of 30 days notice in writing.

12. INTELLECTUAL PROPERTY

12.1 All intellectual property in the Goods, associated trademarks, designs, marketing and advertising material vest in dk active. This Agreement does not authorise or licence the Customer to use the name, trademark or other symbols or marks of dk active without its prior written consent. The Customer agrees to cease using such name, marks or symbols of dk active upon written notice.

13. GST

13.1 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

- 13.2 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the Customer an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- 13.3 If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.