

**Design Make Produce Pty Ltd**  
General Terms and Conditions

Design Make Produce ABN 836 098 249 19  
**General Terms and Conditions**

# General Terms and Conditions

Thank you for visiting our website. This agreement was last modified on the 20<sup>th</sup> March 2016. This website is owned and operated by Design Make Produce Pty Ltd (ABN 836 098 249 19).

By accessing and/or using this website and related services, you agree to these Terms and Conditions, which include our Privacy Policy (**Terms**). You should review our Privacy Policy and these Term carefully and immediately cease using our website and services if you do not agree to these Terms.

We may amend these General Terms and Conditions and any linked information from time to time by posting amended terms on the Website.

The Design Make Produce website is an online venue where users may buy and sell seller services and items in the fashion supply chain industry. Users include buyers and sellers.

Users must register for an account in order to buy services. Sellers can include 3<sup>rd</sup> party consultants, fashion specialists, sourcing agents and manufacturers in the fashion production supply chain. Seller services include all services provided by users that provide services through our website. The website enables users to work together online to complete and pay for fashion projects, buy and sell fashion supply chain services and to use the services that we provide.

In these Terms, 'us', 'we' and 'our' means Design Make Produce Pty Ltd.

## 1 Registration

You must be a registered member to make orders and access services from our website. When you register and activate your account, you will provide us with personal information such as your name, email address, telephone number, address, business name and contact details.

You must ensure that this information is accurate and current. We will handle all personal information we collect in accordance with our Privacy Policy. When you register and activate your account, we will provide you with a user name and password. You are responsible for keeping this user name and password secure and are responsible for all use and activity carried out under this user name.

If you are under the age of 13 years, you may not create an account or register as a member. If you are 13 or older but under the age of 18, you represent that you have reviewed these Terms with your parent or legal guardian to make sure that you and your parent or legal guardian understand these Terms. If you are a parent or guardian permitting a person under the age of 18 (a **Minor**) to create an account, you agree to:

- exercise supervision over the Minor's use of our website and account;
- assume all risks associated with the Minor's use of our website and their account, including the transmission of content or information to and from third parties via the Internet;
- ensure that the content and information that the Minor may encounter on our website are suitable for the Minor;
- assume liabilities resulting from the Minor's use of our website and their account;
- ensure the accuracy and truthfulness of all information submitted by the Minor; and
- provide the consents contained in these Terms on behalf of the Minor.

We may ask you to confirm that you have your parent's or guardian's permission and that they have agreed to these Terms on your behalf, and, even if we do not do this, we will assume that this is the case and will provide access to our website and your account on this basis.

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#### **2 Collection notice**

We collect personal information about you in order to respond to your enquiry, process your registration and provide you with fashion supply chain services and for purposes otherwise set out in our Privacy Policy.

We may disclose that information to third parties that help us deliver our services (including information technology suppliers, communication suppliers and our business partners) or as required by law. If you do not provide this information, we may not be able to provide all of our services to you. We may also disclose your personal information to recipients that are located outside of Australia, including to manufacturing companies located in the Asia-Pacific region.

Our Privacy Policy explains: (i) how we store and use, and how you may access and correct your personal information; (ii) how you can lodge a complaint regarding the handling of your personal information; and (iii) how we will handle any complaint. If you would like any further information about our privacy policies or practices, please contact us at [michelle@designmakeproduce.com](mailto:michelle@designmakeproduce.com) or through our contact details available on our website at [www.designmakeproduce.com](http://www.designmakeproduce.com).

By providing your personal information to us, you consent to the collection, use, storage and disclosure of that information as described in the Privacy Policy and these Terms.

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#### **3 Using Design Make Produce**

While using the Design Make Produce website, you will not:

- a) post content or items in inappropriate categories or areas on our websites and services;
- b) infringe any laws, third party rights or our policies,
- c) fail to deliver payment for services delivered to you, unless the seller has materially changed the seller service provided from the bid or a clear typographical error is made;
- d) fail to deliver seller services purchased from you, unless the buyer fails to meet the terms, materially alters the terms of the seller's services from the listing;
- e) circumvent or manipulate our fee structure, the billing process, or fees owed to Design Make Produce;
- f) post false, inaccurate, misleading, defamatory or offensive content (including personal information);
- g) take any action that may undermine the feedback or reputation systems (such as displaying, importing or exporting feedback information or using it for purposes unrelated to the Design Make Produce website);
- h) transfer your Design Make Produce account to another party without our consent;
- i) distribute or post spam, unsolicited, or bulk electronic communications, chain letters, or pyramid schemes;
- j) distribute viruses or any other technologies that may harm Design Make Produce, or the interests or property of Design Make Produce users (including their Intellectual Property Rights, privacy and publicity rights) or is unlawful, threatening, abusive, defamatory, invasive of privacy, vulgar, obscene, profane or which may harass or cause distress or inconvenience to, or incite hatred of, any person;
- k) download and aggregate listings from our website for display with listings from other websites without our express written permission, "frame", "mirror" or otherwise incorporate any part of the Website into any other website without our prior written authorisation;
- l) attempt to modify, translate, adapt, edit, decompile, disassemble, or reverse engineer any software programs used by us in connection with the Design Make Produce website;
- m) copy, modify or distribute rights or content from the Design Make Produce website or Design Make Produce's copyrights and trademarks; or
- n) harvest or otherwise collect information about users, including email addresses, without their consent.

#### **4 Accuracy, completeness and timeliness of information**

The information on our website is not comprehensive and is intended to provide a summary of the subject matter covered. While we use all reasonable attempts to ensure the accuracy and completeness of the information on our website, to the extent permitted by law, including the Australian Consumer Law, we make no warranty regarding the information on this website. You should monitor any changes to the information contained on this website.

We are not liable to you or anyone else if interference with or damage to your computer systems occurs in connection with the use of this website or a linked website. You must take your own precautions to ensure that whatever you select for your use from our website is free of viruses or anything else (such as worms or Trojan horses) that may interfere with or damage the operations of your computer systems.

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We may, from time to time and without notice, change or add to the website (including the Terms) or the information, products or services described in it. However, we do not undertake to keep the website updated. We are not liable to you or anyone else if errors occur in the information on the website or if that information is not up-to-date.

### 5 Promotions and competitions

For certain campaigns, promotions or contests, additional terms and conditions may apply. If you want to participate in such a campaign, promotion or contest, you need to agree to the relevant terms and conditions applicable to that campaign, promotion or contest. In case of any inconsistency between such terms and conditions and these Terms, those terms and conditions will prevail.

### 6 Purchases

#### 6.1 Services

We charge fees for certain services including facilitating and coordinating the use of seller consultation services and fees to sellers such as 3<sup>rd</sup> party consultants and sourcing agents.

We do not take responsibility for seller services. We do not endorse and are not responsible for the services of 3<sup>rd</sup> party consultants, agents, content on linked websites of seller services and have no control over or rights in those linked websites. The service for membership access to our manufacturer directory are stated on our website [www.designmakeproduce.com](http://www.designmakeproduce.com) and can be changed without prior notice.

We do not take responsibility for the advice, content and services of sellers through consultations services that they provide and have no control over the consultation services provided by sellers.

#### 6.2 Prices

The price terms offered are stated in AUD, unless specified in USD.

For membership access to our manufacturer directory, all prices are expressly stated on our website and can be changed without prior notice.

For our consultancy services, our price quotes are valid for 3 days, after 3 days the prices may be changed without prior notice. If quotes are stated as an estimate, prices may be changed without prior notice.

Import duties, export duties, shipping, insurance, taxes and other charges that may occur in the country of destination for fashion supply chain services and the country of production for fashion supply chain services are not included in the price of the items. These charges are the buyer's responsibility.

You are responsible for paying any taxes including goods and services or value added taxes which may be applicable depending on the jurisdiction of the service provided. These taxes will be added to fees billed to you if applicable.

As a company incorporated in Australia, Australian users may be subject to a 10% Goods and Services Tax (GST) on all fees which will be shown separately on all invoices. You must also comply with your obligations under income tax provisions in your jurisdiction.

#### 6.3 Payment administration agent

You acknowledge and agree that we may in our sole discretion, from time to time, appoint our related bodies corporate or a third party as our agent to accept or make payments (including merchant facilities) from or to users on our behalf. Such a third party will have the same rights, powers and privileges that we have under this agreement and will be entitled to exercise or enforce their rights, powers and privileges as our agent or in their

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own name. In no event shall we be liable to any user for any loss, damage or liability resulting from the payment administration agent's negligence and/or acts beyond the authority given by Design Make Produce.

### **6.4 Order processing**

For consultancy services and subscription services, we require all payments to be made upfront.

### **6.5 Promotion**

We may display your company or business name, logo, images or other media, as part of the Design Make Produce services and/or other marketing materials relating to the Design Make Produce website, except where you have explicitly requested that we do not do this and we have agreed to such request.

### **6.6 Production**

The buyer who is requesting for samples will be charged for both the samples and freight cost in addition to our consultancy fees.

We do not take responsibility for the cost of the sample or the freight cost as that is provided by 3rd party services such as sourcing agents or manufacturers.

We do not take responsibility for production, delivery times or services quoted or provided by 3<sup>rd</sup> party manufacturers.

### **6.7 Payment terms**

For consultancy services and subscription services, we require all payments to be made upfront.

Payment methods available: Online through our website or direct bank transfer.

### **6.8 User services**

Upon a buyer purchasing services with a seller and a seller's acceptance using Design Make Produce, the buyer and seller will be deemed to have entered into a contract. You are solely responsible for ensuring you comply to your obligations to other users. If you do not, you become liable to that user. You must ensure you are aware of any domestic laws, international laws, statutes, ordinances and regulations relevant to you as a buyer or seller or in any uses you make of the website.

If another user breaches any obligation to you, you are solely responsible for enforcing any rights you may have. We have no responsibility for enforcing any rights under a buyer and seller contract.

Each user acknowledges and agrees that the relationship between buyers and sellers is that of an independent contractor. Nothing in this agreement creates a partnership, joint venture, agency or employment relationship between users. Nothing in this agreement shall in any way be construed as forming a joint venture, partnership or an employer-employee relationship between users themselves.

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### **6.9 Cancellation**

Cancellations can occur anytime by the buyer, but buyer will incur the cost of the month in which they cancel their subscription, in the case of monthly payment plans. All payments are non-refundable.

No cancellations are accepted for consultancy services once payment has been made and are non-refundable.

### **6.10 Communications**

You consent to receive notices and information from us in respect of the Design Make Produce website and services by electronic communication. You may withdraw this consent at any time, but if you do so we may choose to suspend or close your membership account.

### **6.11 Australian consumer law**

In Australia, our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these terms and conditions purports to modify or exclude the conditions, warranties and undertakings, and other legal rights under the Australian competition and consumer act and other laws. Any and all other warranties or conditions which are not guaranteed by the Australian consumer law or the competition and consumer regulation 2010 are expressly excluded where permitted, including liability for incidental or consequential damages caused by breach of any express or implied warranty or condition.

### **6.12 Concept design and technical packs**

We do not use concept design or technical pack material or any other uses as otherwise expressly stated by the client. We do not disclose concept design or technical pack material to anyone except for 3<sup>rd</sup> party consultants or manufacturers.

## **7 Linked sites**

Our website contains links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, we do not endorse the content, products, services, practices, policies or performance of the websites we link to from Design Make Produce. We are not responsible for the content on those linked websites and have no control over or rights in those linked websites. Use of 3<sup>rd</sup> party content, links to 3<sup>rd</sup> party content and/or websites is at your risk.

We provide unmonitored access to 3<sup>rd</sup> party content including user articles, consultation, content and opinions (with links to such 3<sup>rd</sup> party content). We only act as a portal and have no liability based on, or related to, 3<sup>rd</sup> party content on Design Make Produce, whether arising under the laws of copyright or other intellectual property, defamation, libel, privacy, obscenity or any other discipline.

## **8 Intellectual property rights**

Unless otherwise indicated, we own or license from third parties all rights, title and interest (including copyright, designs, patents, trademarks and other intellectual property rights) in this website and in all of the material (including all text, graphics, logos, audio and software) made available on this website.

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Your use of this website and use of and access to any Content does not grant or transfer any rights, title or interest to you in relation to this website or the Content. However, we do grant you a licence to access the website and view the Content on the terms and conditions set out in this Agreement and, where applicable, as expressly authorised by us and/or our third party licensors.

Any reproduction or redistribution of this website or the Content is prohibited and may result in civil and criminal penalties. In addition, you must not copy the Content to any other server, location or support for publication, reproduction or distribution is expressly prohibited. All other use, copying or reproduction of this website, the Content or any part of it is prohibited, except to the extent permitted by law. However, you are permitted to share site Content if it is for social media purposes or other digital advertising means.

### 9 Right to review

We may read all correspondence posted to the Design Make Produce website and download or access, and test (if necessary) all uploaded files, programs and websites related to your use of the website for the purpose of investigating fraud and for risk management and related purposes.

### 10 Unacceptable activity

You must not do any act that we would deem to be inappropriate, is unlawful or is prohibited by any laws applicable to our website, including but not limited to:

- any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals;
- using this website to defame or libel us, our employees or other individuals;
- uploading files that contain viruses that may cause damage to our property or the property of other individuals;
- posting or transmitting to this website any non-authorised material including, but not limited to, material that is, in our opinion, likely to cause annoyance, or which is defamatory, racist, obscene, threatening, pornographic or otherwise or which is detrimental to or in violation of our systems or a third party's systems or network security.

If we allow you to post any information to our website, we have the right to take down this information at our sole discretion and without notice.

### 11 Warranties and disclaimers

To the maximum extent permitted by law, including the Australian Consumer Law, we make no warranties or representations about this website or the Content, including but not limited to warranties or representations that they will be complete, accurate or up-to-date, that access will be uninterrupted or error-free or free from viruses, or that this website will be secure.

We reserve the right to restrict, suspend or terminate without notice your access to this website, any Content, or any feature of this website at any time without notice and we will not be responsible for any loss, cost, damage or liability that may arise as a result.

We do not offer any form of insurance for users or sellers.

### 12 Indemnity

You will indemnify us (and our agents, employees, agents) against any claim or demand including legal fees and costs made against us by any 3<sup>rd</sup> party due to or arising out of your breach of this agreement or your infringement of any law or the rights of a 3<sup>rd</sup> party in the course of using the Design Make Produce website and Design Make Produce services.



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#### **13 Liability**

In no event shall we, our related entities, our affiliates or staff be liable, whether in contract, warranty, tort (including negligence), or any other form of liability, for:

- a). any indirect, special, incidental or consequential damages that may be incurred by you;
- b). any loss of income, business or profits (whether direct or indirect) that may be incurred by you;
- c). any claim, damage, or loss which may be incurred by you as a result of any of your transactions involving the Website.

The limitations on our liability to you above shall apply whether or not we, our related entities, our affiliates or staff have been advised of the possibility of such losses or damages arising.

To the maximum extent permitted by law, including the Australian Consumer Law, in no event shall we be liable for any direct and indirect loss, damage or expense – irrespective of the manner in which it occurs – which may be suffered due to your use of our services, our website and/or the information or materials contained on it, or as a result of the inaccessibility of this website and/or the fact that certain information or materials contained on it are incorrect, incomplete or not up-to-date.

To the extent that we are able to limit the remedies available under this agreement, we expressly limit our liability for breach of a non-excludable condition or warranty implied by virtue of any legislation to the following remedies (the choice of which is to be at our sole discretion) to the supply of the Design Make Produce services again or the payment of the cost of having the Design Make Produce services supplied again.

#### **14 No class actions**

You and we agree that you and we will only be permitted to bring claims against the other only on an individual basis and not as a plaintiff or class member in any purported class or representative action or proceeding. Unless both you and we agree otherwise, the arbitrator may not consolidate or join more than one person's or party's claims and may not otherwise preside over any form of a consolidated, representative, or class proceeding. In addition, the arbitrator may award relief (including monetary, injunctive, and declaratory relief) only in favour, of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual claim(s). Any relief awarded cannot affect other Users.

#### **15 Jurisdiction and governing law**

Your use of the website and these Terms are governed by the law of Western Australia and you submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia.