

All sales by DSS to Resellers are governed by and subject to the DADP, which includes these terms and conditions, and DSS's MAP Policy. Terms or conditions proposed by Reseller (or offered by any DSS Sales Representative) which add to, vary from, or conflict with any provisions, terms, or conditions within the DADP are expressly rejected and can only be made effective in writing signed and dated by a member of DSS Management specifically referencing this Agreement.

1. **No Reseller Exclusivity.** Nothing in this Agreement obligates DSS to sell any Products to Reseller for any period of time; or restricts DSS from selling any Products to any third-party regardless of their proximity to Reseller.
2. **Reseller Restrictions.** To maintain its rights under the DADP, Reseller shall **not**:
 - (a) Purchase DSS Products other than from DSS, or authorized distribution partner as designated by DSS;
 - (b) Order or purchase Products in excess of the quantities reasonably projected to be sold by Reseller to consumers;
 - (c) Violate in any way DSS's Anti-Diversion Policy (as described below);
 - (d) Sell DSS Products through mail order, catalogs, online auction websites or otherwise on or through the internet, except as specifically authorized by DSS, and in accordance with this Agreement;
 - (e) Resell any Product as "new" that has been returned opened or repackaged;
 - (f) Permit orders for Products to be fulfilled in any way that results in the shipped Product coming from stock other than Reseller's;
 - (g) Use the trademarks, copyrights or logos of DSS other than with materials provided or authorized by DSS;
 - (h) Sell or display any imitation, counterfeit, or gray market DSS Products;
 - (i) Engage in any deceptive, misleading, or unethical practices or advertising at any time.
3. **Reseller Obligations.** To maintain its rights under the DADP, Reseller agrees to the following:
 - (a) To conduct its business in an ethical manner at all times, and comply with all applicable laws, rules, regulations, and policies (i) applicable to Reseller's business and/or (ii) related to the marketing and sale of the Products;
 - (b) To present and display the Products in a professional manner.
 - (c) To ensure that any third-party logistics provider engaged by Reseller to store inventory or fulfill orders for the Products is aware of, and complies with, all Product quality controls and customer service standards described herein or otherwise conveyed to Reseller by DSS. Ensure that any such third-party logistics provider stores Reseller's inventory of Products separately from any Products owned by any third party. Upon request by DSS, disclose its use of third-party logistics providers, including the identity and location of any third-party logistics provider, and cooperate with DSS in investigating any concerns related to the Products that may relate to Reseller's use of a third-party logistics provider. Under no circumstances permit orders to be fulfilled by a third-party logistics provider in any way that results in the shipped Product coming from stock other than Reseller's;
 - (d) To update DSS with Reseller's contact records, as requested by DSS;
 - (e) To place a minimum opening order for Products as required by a DSS Sales Representative, and to maintain an minimum order volume as determined by DSS from time-to-time;
 - (f) DSS shall have the right to inspect the Reseller's premises without notice, and to review the Reseller's selling practices at any time;
 - (g) To cooperate with DSS in the investigation and resolution of any quality or customer service issues related to the sale of the Products, including disclosing information regarding Product sources, shipment, and handling;
 - (h) The completion or submission of an order for DSS Products does not constitute acceptance of the order by DSS. Delivery to Reseller pursuant to an order constitutes acceptance of that order. DSS may accept the order in whole or in part, in its sole discretion;
 - (i) The price is as stated in the delivery note/invoice and not on any order and are F.O.B. the applicable DSS shipping facility. Shipments are C.O.D. unless specific alternative credit terms have been approved by DSS. On approved credit, orders payment is due net thirty (30) days from invoice. Common carrier shipments are on a freight collect basis. Reseller is responsible for all freight, insurance charges and duties, excise, sales, use GST or similar taxes. Payment must be made free of deduction or set-off for any reason. Late payments bear interest at a rate of ten percent (10%) per year or at the maximum rate allowed by law from the date due until paid. Reseller acknowledges that DSS will incur costs and expenses as a result of any failure by Reseller to timely pay monies due DSS which costs are not adequately compensated for by interest, without limitation, additional employee expenses. Therefore, in addition to interest, Reseller will pay DSS a late charge on any unpaid balance at the rate of one and a half percent (1.5%) per month from the due date until paid. Reseller agrees that such a late fee is not penalty, but is a reasonable estimate of the expenses that will be incurred by DSS as a result of Reseller's non-payment or late payment of monies owed DSS. DSS may charge Reseller twenty dollars (\$20.00) for each valid proof of delivery and fifty dollars (\$50.00)

for each returned check. Late payment or partial payment of any invoice voids all discounts, if any, from the wholesale price;

- (j) Each delivery will be deemed to be a separate contract. Delay in delivery or the failure to affect delivery for any reason does not render the contract subject to cancellation or entitle Reseller to damages however arising. Reseller is responsible for risk of loss, deterioration, or damage to the DSS Products from the time they leave DSS's premises. Any refused or returned shipments may be charged a fifteen percent (15%) restocking fee;
- (k) Unless otherwise specified in writing, DSS may partial ship against any single order, reject orders, or withhold shipments as DSS in its discretion may decide. DSS delivery notes signed or countersigned by an employee or agent of DSS will be deemed as accurate for all purposes except fraud on the part of DSS.

4. **DSS Anti-Diversion Policy.** Reseller shall not sell DSS Products other than to consumers at retail through Reseller's authorized outlets and may not divert or sell DSS Products to an entity or person that Reseller knows, or should know, has the intention of reselling such DSS Products. Reseller further understands that DSS intends to hold Reseller liable for any diversion of DSS Products by Reseller in violation of the terms of the DADP, such as diversion of DSS Products to anyone other than Reseller's retail customers (the "Anti-Diversion Policy"). Reseller shall institute procedures and security measures, which DSS may review periodically, to prevent diversion of DSS Products. Reseller shall make reasonable efforts to identify violations or potential violations of the Anti-Diversion Policy. At DSS's option, Reseller agrees to reimburse DSS for the repurchase of DSS Products by DSS from any source to which, or through which, Reseller has diverted DSS Products in violation of the Anti-Diversion Policy. In addition, DSS and Reseller agree that, in the event of any violation of DSS's Anti-Diversion Policy, the damages that DSS would sustain as a result thereof would be difficult to ascertain. Therefore, DSS and Reseller agree that, in the event of a violation of this Anti-Diversion Policy, Reseller shall pay to DSS immediately upon written demand by DSS the Liquidated Damages (as defined below). Notwithstanding the foregoing, in no event shall this Liquidated Damages provision apply to or limit the damages recoverable by DSS with respect to: (1) Reseller's obligation to indemnify DSS in accordance with the DADP; (2) Reseller's failure to perform any obligations which, by the express terms of the DADP, survive the termination of the DADP other than violations noted in this paragraph; or (3) the obligations of the Parties pursuant to any other instrument or agreement executed by the Parties in connection with this Agreement. The "Liquidated Damages" amount for any and each violation of DSS's Anti-Diversion Policy shall be thirty thousand (\$30,000.00) dollars.

5. **DSS Product Returns.** DSS Products returns ("Returns") are approved at the sole discretion of DSS and must include a valid Return Order Authorization ("RA") number. Unauthorized Returns will be refused or disposed of at Reseller expense. Returns must be received within thirty (30) days from the date the authorization is issued. Reseller is responsible for the cost of returning DSS Products. Shipping costs will not be paid, refunded, or credited to Reseller. DSS is not responsible for the coordination, transportation or delivery of DSS Products from Reseller back to DSS.

6. **Claims.** Reseller must notify DSS in writing within seven (7) days after Reseller's receipt of Product, any price or order discrepancies relating to that shipment. Reseller's failure to notify DSS of any such discrepancies within such time frame will bar any claim thereto. All claims are subject to review by DSS, and must be approved before any credit can be issued. Claims determined by DSS to be unauthorized will not be processed. Reseller is responsible for any costs associated with an unauthorized claim, including but not limited to payment of all deductions, charge-backs, late fees and interest incurred due to nonpayment.

7. Termination.

- (a) DSS may terminate this Agreement without cause upon thirty (30) days written notice to Reseller.
- (b) Either Party may terminate this Agreement:
 - i. upon material breach by either Party, and failure of such Party to cure within thirty (30) days written notice of breach; or
 - ii. in the event the other Party (A) terminates or suspends its business; or (B) becomes subject to an insolvency or bankruptcy proceeding; or (C) becomes subject to direct control by a trustee, receiver or similar authority.

8. Rights Upon Termination. Upon termination of this Agreement for any reason:

- (a) all rights of Reseller granted hereunder shall cease.
- (b) if there is any existing Products in inventory with Reseller, Reseller shall have the right to sell-off such Products for up to sixty (60) days following termination, provided Reseller continues to comply with the terms and conditions of the DADP.

9. **Injunction: Specific Performance.** Reseller hereby acknowledges that any breach of the DADP will cause DSS substantial damage, although difficult to ascertain, and that money damages will not afford DSS an adequate remedy. Accordingly, in the addition to all other rights and remedies as may be provided by law, should Reseller breach or threaten to breach any provision of this Agreement, DSS will be entitled to specific performances, liquidated damages, injunctive, and other equitable relief without the necessity of post a bond; and reimbursement for the purchase price and other costs, including attorneys' fees, incurred by DSS to repurchase DSS Products, at DSS's option, sold by Reseller in violation of the DADP.

10. **Insurance.** Reseller agrees to maintain appropriate insurance (including, any insurance coverage required by law) to cover its respective risks under this relationship with coverage amounts commensurate with levels in its respective markets.

11. License To DSS Trademarks / Use of DSS Trademarks.

- (a) DSS hereby grants to Reseller, a non-exclusive, non-transferable, royalty-free, license (without the right to sub-license) to use the DSS name, logos, and any registered or unregistered trademarks (collectively, the "DSS Marks") solely in connection with the marketing, advertising, promotion and sale of the DSS Products, as allowed under the DADP.
- (b) Reseller agrees and acknowledges that the presentation and image of the DSS Marks should be uniform and consistent, including but not limited to, use in advertising, on the internet and in social media (if permitted by DSS), at tradeshow and promotional events, and on Products bearing the DSS Marks. Accordingly, Reseller agrees to use the DSS Marks solely in the manner which DSS shall specify, from time to time, in its sole discretion.
- (c) Reseller agrees to use the proper trademark notices in connection with the DSS Marks, and any associated copyrightable works, which notices DSS shall specify from time to time, in its sole discretion.
- (d) Reseller shall not create, register, or use any domain name, social media screenname, or mobile application name that contains any DSS product name or trademark, nor a misspelling or confusingly similar variation of any DSS product name or trademark.
- (e) Other than the express licenses granted herein, nothing herein will grant to Reseller any other right, title or interest in the DSS Marks. All goodwill resulting from Reseller's use of the DSS Marks will inure solely to DSS.

12. Intellectual Property.

- (a) DSS shall retain all intellectual property rights relating to the DSS Products.
- (b) DSS will have the exclusive right and option, but not the obligation, to prepare, file, prosecute, maintain and defend at its sole expense, any copyright, or other intellectual property rights that claim and/or cover the DSS Products. If necessary, Reseller shall reasonably cooperate with DSS to secure any intellectual property rights relating to the DSS Products throughout the world, including without limitation executing any and all documents reasonably needed to vest in DSS ownership of any intellectual property rights relating to the DSS Products. DSS shall bear all costs and expenses associated with obtaining any intellectual property, and shall reimburse Reseller for its expenses associated with reasonable cooperation pursuant to this provision.
- (c) If DSS seeks to enforce any ip rights relating to the DSS Products, Reseller will reasonably cooperate with DSS.

13. Representations and Warranties. Each Party represents and warrants to the other that:

- (a) it has the full power to enter into this Agreement and to perform its obligations hereunder;
- (b) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and
- (c) this Agreement does not contravene, violate or conflict with any other agreement of such Party.

14. Indemnification: Warranty Disclaimer; Limitation of Liability.

- (a) Each Party hereby agrees to defend, indemnify, and hold the other Party, and its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third-parties against such Party based on: (i) a breach of any representation or warranty set forth herein; (ii) any willful misconduct by the indemnifying Party; or (iii) alleged infringement of a third-party's intellectual property rights from use of the DSS Marks licensed herein.
- (b) Each Party's right to indemnification is conditioned upon the indemnified party: (i) promptly notifying the indemnifying party of any claim, suit, or proceeding for which indemnity is claimed; (ii) cooperating reasonably with

the indemnifying party at the latter's expense; and (iii) allowing the indemnifying party to control the defense or settlement thereof. The indemnified party will have the right to participate in any defense of a claim and/or to be represented by counsel of its own choosing at its own expense.

- (c) Except as herein specifically provided, DSS makes no warranties, express or implied, of merchantability, fitness for purpose, or on the sale of the DSS Products, and profits earned by Reseller for the same. DSS's liability for breach of any warranty or contract is limited solely to refund of the purchase price or replacement of Product, at DSS's option.
- (d) NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS OR WILLFUL MISCONDUCT, NEITHER PARTY'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL EXCEED THE AMOUNT PAID OR PAYABLE BY RESELLER TO DSS DURING THE SIX MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

15. **Relationship of Parties.** Neither Party, its agents or employees shall, under any circumstances, be considered to be an agent, partner, joint venturer or representative of the other Party, or anything other than an independent contractor for all purposes of this Agreement. Neither Party shall be liable for the debts and obligations of the other Party, except as may be authorized specifically in writing. Neither Party has the express or implied authority to bind the other in any manner whatsoever by virtue of this Agreement, and neither shall hold itself out as having such authority.

16. **Force Majeure.** No failure or omission by DSS or Reseller in performance of any obligation under this Agreement shall be deemed a breach or create any liability if the same arises on account of force majeure, which term shall include any event or cause beyond the control of DSS or Reseller, as the case may be, including but not restricted to acts of God, acts or omissions of any government, or agency thereof, rebellion, insurrection, riot, sabotage, invasion, quarantine, restrictions, strike, lock out and transportation embargoes, provided that the Party relying on this section shall forthwith after any such event give written notice to the other Party of its inability to perform such obligation and the reasons therefore. If force majeure continues for a period of more than three (3) months, without the Parties hereto being able to develop an alternative satisfactory arrangement, then either Party has the option of immediately terminating this Agreement.

17. General Provisions.

- (a) DSS is not responsible for any delayed shipment, partial shipment, or non-shipment caused for any reason.
- (b) Reseller will reimburse DSS for any fees, costs, and expenses, including, without limitation, attorneys' fees or the costs of a repossession or collection agency, to collect any amounts owing by Reseller to DSS or to enforce DSS's rights under this agreement, regardless of whether any lawsuit or court action had been filed by DSS. Except as stated herein, the Parties will bear their own attorneys' fees and costs resulting from another dispute between the parties.
- (c) The terms and provisions within this Agreement (including all exhibits) embody the entire agreement and understanding of the Parties hereto and supersede any prior agreement or understanding between them with respect to the purchase of DSS Products. In addition, nothing represented orally or in writing to Reseller by a DSS Sales Representative, shall bind DSS or govern the relationship of the parties hereunder, if such representation contravenes or is inconsistent with, any provision in this Agreement (including all exhibits).
- (d) If any provision of this Agreement is invalid under the law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions hereof.
- (e) This Agreement will be governed by, construed, and interpreted in accordance with the laws of the State of California, including, without limitation, the Uniform Commercial Code as adopted by the State of California, with the same full force and effect as if this agreement was entered into and carried out entirely within such state.
- (f) Reseller agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of DSS. Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
- (g) Actions or proceedings brought to enforce, or which otherwise arise out of or relates to, the DADP, must be brought and maintained only in a court of competent jurisdiction in San Diego County, California. Reseller acknowledges that this Agreement is entered into and is to be performed in San Diego County, California, and Reseller hereby submits to jurisdiction and venue in such State and County.
- (h) Reseller agrees to notify DSS in the event of a sale of the stock or otherwise ownership interests of Reseller or a sale of more than fifty percent (50%) of the assets of Reseller.

- (i) Waiver by DSS of any term of this Agreement will not be deemed to be a waiver of any other term, provision or condition of this Agreement. Waiver by DSS of any term, provision or condition of this Agreement on any particular order or orders will not be deemed to be a waiver of the same terms, provision or condition on any other orders.
- (j) DSS reserves the right to update, amend, or modify these terms (and DADP) at any time. Unless otherwise provided, such amendments will take effect immediately, and Reseller's continued use, advertising, offering for sale, or sale of the Products, use of the DSS Marks, or use of any other information or materials provided by DSS to Reseller's will be deemed Reseller's acceptance of the amendments.