

DSW General Terms and Conditions of Purchase

Summary of General Terms and Conditions of Purchase

IMPORTANT NOTICE TO ALL VENDORS: This purchase order ("PO") is subject to Buyer's General Terms and Conditions of Purchase, the Vendor Requirements and Guidelines, and the DSW Domestic Footwear & Accessories Logistics Guide (collectively, the "Terms"). By accepting this PO, the vendor acknowledges receipt and agrees to be bound by the terms and conditions of this PO and the Terms. If you do not agree with the terms of this PO or the Terms, do not accept or fulfill this PO. If this PO is a written confirmation of a verbal order, Vendor agrees that the terms of this PO and the Terms control. Different or additional terms proposed by the vendor are expressly rejected and shall not be part of the transaction. For additional information concerning this PO or logistics compliances, please visit the DSW Vendor website at: <http://www.dswinc.com/vendors.jsp>. PO's can be validated 5 days prior to "Start Ship" date. For validation, please e-mail DSW's Domestic Transportation Department at traffic@dswinc.com or call (614) 872-1558. PO routing requests can be obtained via the vendor website, e-mail, or faxed request. Requests via fax can be sent to (614) 872-1559, Attn: Domestic Transportation.

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. This purchase order ("PO") is an offer by Buyer for the outright purchase of all goods, merchandise, materials, works and services listed on the PO, and all property rights therein including all right, title and interest in foreign and domestic industrial and other rights of any nature whatsoever, including personal rights and the right of Buyer and its successors and assigns, to protect the same by patent, trademark, copyright or otherwise ("Goods"). Acceptance of payment from Buyer will constitute Vendor's transfer of all right, title and interest in Goods. The property rights in Goods extend to all items specially made, prepared, written, designed, or adapted for Buyer's use, including, but not limited to, artwork, drawings, sketches, writings, manuscripts, designs, photographs, and machinery. Vendor warrants to Buyer that Vendor has the full power to transfer to Buyer all such right, title and interest in Goods. Such rights may only be limited or conditioned by express terms on the face of this PO.
2. Vendor's acceptance of this PO is expressly limited to and conditioned upon acceptance of all of the terms and conditions set forth in this PO, which terms cannot be altered or amended without Buyer's express written consent signed by an authorized agent of Buyer. This PO constitutes the complete, exclusive and final agreement between Buyer and Vendor. **ACCEPTANCE OF THIS PO IS EXPRESSLY LIMITED TO THE TERMS HEREIN AND ANY ADDITIONAL OR DIFFERENT TERMS ARE OBJECTED TO WITHOUT FURTHER NOTIFICATION BY BUYER.**
3. All prices are stated in U.S. Dollars. All amounts due will be paid in U.S. Dollars. If prior to shipment of Goods Vendor reduces its price for the same Goods sold to any other customer of Vendor, the price specified in the PO will be reduced to match the lowest price for any customer of Vendor. No increase in the price of Goods shall be effective while there is an open PO unless approved in a writing signed by an authorized agent of Buyer. Vendor agrees that prices quoted and shown on the PO include all applicable federal, state and local taxes. No merchandise from Burma (Myanmar) will be accepted.
4. Unless otherwise agreed by Buyer in writing, all Goods are to be shipped FOB Buyer's distribution center (Incoterms 2000: DDP Destination) or other location specified in this PO. No Goods in excess of quantities ordered shall be shipped by Vendor to Buyer. In the event that excess quantities are shipped, Buyer, in its sole discretion, may accept such additional quantities at a discounted price in an amount determined by Buyer or return the excess Goods to Vendor at Vendor's cost.
5. The "Cancel If Not Shipped Date" on the front hereof shall be determined by the date of receipt set forth on the applicable Forwarder's Cargo Receipt, ocean, truck, or domestic bill of lading or airway bill. Seller shall immediately advise Buyer, identifying the PO number and department number, if any part of this PO cannot be shipped in time to be received by the date specified in this PO. This PO is deemed cancelled if shipment is not made before the Cancel If Not Shipped Date. Seller shall not ship without the written consent of Buyer on or after the Cancel If Not Shipped Date, nor shall Seller ship before the "Start Ship Date" on the front hereof without Buyer's written consent. At Buyer's option, Buyer may accept a late shipment and pay for Goods received which are in conformance with the PO, reject all or part of the shipment, or cancel all or part of this PO. Partial acceptance shall in no way bind Buyer to accept further deliveries on any other part of this PO, nor shall acceptance be construed as waiver of any of Buyer's rights to recover damages for late or partial delivery. Each PO issued by Buyer to Seller will be a separate contract and multiple POs are not intended to be parts of an installment contract.
6. Any of Buyer's equipment, materials or goods which are in the possession or control of Vendor shall be and remain the property of Buyer, and any loss or damage occurring to the same shall be the responsibility of Vendor.
7. Buyer may revoke, amend, or modify this PO at any time before acceptance. **UNDER NO CIRCUMSTANCES WILL BUYER BE LIABLE TO VENDOR AS A RESULT OF ANY CANCELLATION AFTER ACCEPTANCE FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE SET FORTH IN THIS PO. BUYER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHETHER BASED UPON THEORIES OF CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS PO.**
8. Either party shall be excused from performance of its obligations under this PO if such party suffers a force majeure event, which shall mean and be limited to an event caused by an act of God, epidemic, earthquake, fire, flood, riot, civil disorder, terrorism, government regulation or action, or other substantially similar cause, and which could not have been prevented or circumvented by reasonable precautions or commercially accepted processes of the party experiencing the force majeure event; provided that a party that suffers a force majeure event shall immediately inform the other party upon the occurrence of such event and shall take all reasonable steps to remedy the situation so that it is again able to perform its obligations under this PO. A force majeure event does not include labor disputes or shortages of raw materials, transportation, fuel or supplies. Buyer may immediately terminate this PO without liability upon notice of any such force majeure event.
9. Buyer has the right to impose chargebacks on Vendor or recover or set-off damages caused to Buyer, both as against this PO and any other PO, in the event of (i) any variation from the terms and conditions of this PO, (ii) shipment of defective Goods or breach of any warranties hereunder, (iii) any failure by Vendor to comply with the DSW Domestic Footwear & Accessories Logistics Guide (as amended from time to time, the "Logistics Guide"), the terms of which are incorporated herein, or (iv) any other policies communicated to Vendor by Buyer from time to time. Buyer may communicate policies or procedures or publish the Logistics Guide on a website maintained by Buyer and upon publication on such website, Vendor will be deemed to have notice of any additions, deletions or modifications thereto.
10. Vendor shall prepare a separate invoice for each department and each PO within a shipment. All invoices, bills of lading, packing slips, customs documents (i.e., origin declarations, quota statements, footwear forms, APHIS certifications, etc.) and correspondence must be in English and show the: PO number, number of cartons, shipment weight, shipper's name, Vendor's name, full name and address of the actual manufacturer of the Goods, routing information, date shipped, and Accounts Payable vendor number. Invoices must provide a complete description of the Goods by style, style number, color, size, and unit cost, and the technical and commercial description and composition of the Goods. Invoice line detail must be individually extended and all line totals must be extended to total invoice amount stated in U.S. Dollars. The invoice shall state the full FOB or DDP price per unit and in total, including all prepayments. No charges are allowed for any additional costs including boxing, crating, drayage, or storage unless specifically stated on the PO. If any quota charges, materials, components, packing, tools, dies, molds or similar items are supplied free of charge or at a reduced cost by Buyer or a third party and not reflected in the unit price, the invoice shall separately state these values and describe their nature. If this PO provides a single shipping date, Vendor shall pay all transportation, freight, and insurance charges on all additional shipments. If merchandise is sold on a DDP or CIF basis (as defined under Incoterms 2000), Vendor agrees to provide an invoice or similar document from the shipper evidencing all freight insurance costs. Failure to comply with the above billing terms may result in a delay in invoice processing and chargebacks to Vendor.
11. All documents shall accurately reflect the actual quantities shipped. All quantities received are subject to verification by Buyer. Differences between the quantity invoiced and the quantity received will be charged back to Vendor. Each shipment shall be individually manifested. Original invoices are to be mailed on the day of shipment to DSW Inc., 810 DSW Drive, Columbus, Ohio 43219, U.S.A. Attn: Accounts Payable. Invoices, packing lists and related documents must be mailed or electronically transmitted and must not be within the shipment. No invoices will be honored or accepted by Buyer if submitted later than 30 days after receipt by Buyer of the Goods.
12. All rejected or cancelled Goods shall be returned at Vendor's expense. If Vendor rejects the return, Buyer shall have the right to dispose of the Goods in any commercially reasonable manner and obtain damages from Vendor. Vendor may not resell any Goods, including cancelled product, overstocks, overruns, defectives, and irregulars, which incorporate Buyer's intellectual property, labels or marks without (i) prior written approval of Buyer and (ii) removal of all such intellectual property, marks and labels.
13. Vendor shall clearly indicate Vendor's name, PO number, location name and number, department number, and number of cartons, including style, style number, color, size and quantity of contents contained therein, on the outside of each carton and on each bill of lading or manifest tendered to the shipper. Unless otherwise stated in this PO, all Goods shall be packed for shipment and stored in full compliance with Vendor's standard commercial practices and with the Logistics Guide. Vendor may obtain a copy of the Logistics Guide free of charge by making a written request to Buyer at DSW Inc., 4150 East Fifth Avenue, Columbus, Ohio

43219, U.S.A. Attn: Transportation Manager, by contacting (614) 872-1558, by e-mail at traffic@dswinc.com, or by accessing Buyer's website. FAILURE TO COMPLY WITH ANY REQUIREMENTS OF THIS PO OR THE LOGISTICS GUIDE MAY RESULT IN A CHARGEBACK OR CANCELLATION OF THIS PO. To the extent the terms of this PO conflict with the terms of the Logistics Guide, the Logistics Guide shall control.

14. By accepting this PO, Vendor represents and warrants to Buyer that the Goods furnished hereunder: (a) are (i) free from defects in materials, workmanship, and fabrication, (ii) of the quality, quantity, size, description, color and dimensions specified by Buyer, (iii) affixed with all required tags, labels and other printed materials, which are true and correct in all respects; (iv) contained in packaging with tags, labels and other printed materials, which are true and correct in all respects; (v) can be resold without restriction and no labels attached thereto need to be removed prior to any such resale; (vi) may be handled, worn and/or used without causing harm to any person or damage to property; (vii) fit for such particular purpose and uses, if any, specified by Buyer or otherwise known to Vendor, and (viii) in strict accordance with Buyer's specifications, descriptions and approved samples or prototypes; (b) are in compliance with normal retailing standards with respect to colorfastness, wash fastness and light fastness; (c) will pass without objection in the trade, are of first quality and conform to the promises or affirmations of fact made by Vendor or its agents; (d) are delivered to Buyer free from any security interest or other lien or encumbrance of any person and Buyer shall have good title thereto; (e) do not and will not infringe on any foreign or domestic patent, trademark, trade name, copyright or other similar intellectual property interest of any person, arising out of or relating to the sale or use of such Goods; (f) are new and unused; (g) comply with all applicable foreign, and U.S. federal, state and local laws, ordinances, orders, standards, rules, regulations, including all country of origin requirements established by the U.S. Customs Service; (h) where applicable, comply with the standards of Underwriters Laboratories, Inc. ("ULI") and bear the ULI stamp of approval; and (i) were manufactured in accordance with U.S. and local labor laws and that no Goods were produced using child, forced, indentured or convict labor contrary to local and/or U.S. legal requirements. The representations and warranties set forth in this Section shall survive shipment, inspection, testing, acceptance and payment for or use of the Goods delivered hereunder or termination of this PO. Statements of Vendor made by its sales agents or in its advertising or promotional materials as to the quality, grade, performance and use of the Goods shall be express warranties of Vendor made to Buyer in connection with this PO.

15. Buyer is not under any duty to inspect Goods before resale and all warranties shall survive inspection, acceptance, and payment by Buyer. Defects are not waived by failure to notify Vendor after receipt or inspection by Buyer. Resale, repackaging, repacking, dividing for the purpose of resale, or otherwise disposing of the Goods by Buyer shall not be considered an acceptance of the Goods so as to bar Buyer's right to reject the Goods and/or recover damages from Vendor.

16. Buyer shall have the right to inspect Vendor's, and Vendor's supplier's facilities, warehouses and manufacturing plants. Vendor shall provide Buyer all information relating to the origin and location of manufacture of Goods, including compliance with all workplace laws. Vendor further agrees to: (i) keep books and records (including without limitation all original documents) regarding the site of manufacture, inspection reports, fabric content and any agency relationships with respect to such Goods; (ii) maintain such books and records for a minimum of 6 years after the sale of such Goods to Buyer; and (iii) make such books and records available to Buyer for inspection, immediately upon Buyer's request.

17. Vendor acknowledges that all specifications, descriptions, drawings, blueprints, nomenclature, samples, models, designs, patterns and other information furnished to Vendor by Buyer pursuant to this PO constitute the confidential information and trade secrets of Buyer. Vendor agrees that it will not use, copy, reproduce or disclose to any person any such confidential information or trade secrets except upon the express written consent of Buyer, which may be withheld for any reason. Vendor also acknowledges and agrees that, in the event of a breach of this Section, monetary damages may not be an adequate remedy and that Buyer shall be entitled to such other remedies as may be available in law or equity. Vendor acknowledges that the confidential information or trade secrets disclosed by Buyer represents its valuable property, which is intended to be maintained in perpetuity as trade secret property. Accordingly, the confidentiality and non-use obligations hereunder shall be continuing in nature and shall survive termination of this PO.

18. Vendor shall obtain and maintain, at Vendor's expense, commercial general liability insurance including coverage for products liability/completed operations, with an insurance company satisfactory to Buyer. Such insurance shall have a broad form vendor's endorsement naming Buyer and its subsidiaries and affiliates and its officers, directors, employees and agents as additional insureds in the minimum combined single limit of \$1,000,000 for bodily injury and property damage. Coverage shall not be terminated or changed without at least 30 days prior written notice to Buyer. Vendor shall furnish Buyer with certificates of insurance at the time of the first purchase by Buyer and evidence of all renewals, listing the coverages and amounts therein. The purchase of such insurance and furnishing of such certificates shall not satisfy any of Vendor's obligations hereunder or in any way modify Vendor's agreement to indemnify Buyer as provided herein.

19. Vendor agrees to defend, protect and save harmless, Buyer, its subsidiaries, successors, assigns, customers and users of its Goods against any suit, damage, claim, demand, or expense (including attorneys' fees): (a) from actual or alleged infringements of any foreign or domestic patent, trademark, trade name, copyright or other industrial, personal and intellectual property rights of any nature whatsoever; (b) arising out of any claim for damages from, defects in the Goods, whether latent or patent, in material or workmanship, defective design, defective warnings or instructions; (c) arising out of Vendor's negligence; or (d) upon any other breach by Vendor of any representation or warranty made herein. Buyer shall have the right to appoint counsel for and defend itself against civil, administrative or criminal actions, suits, or proceedings arising out of the foregoing even if any of the allegations thereof are groundless, false or fraudulent. Amounts owing to Buyer by Vendor as a result of this Section shall be paid to Buyer by Vendor immediately following written notice by Buyer. Buyer shall have the absolute right to control the conduct of any threatened litigation or litigation instituted against it and to settle and compromise any claims made against it without notice or approval of Vendor, without affecting or reducing Buyer's right to be indemnified by Vendor hereunder.

20. All indemnities, warranties, guarantees and representations shall survive shipment of Goods or termination of this PO, are for the benefit of and shall be enforceable by Buyer, any party to whom Buyer resells the Goods, and the officers, directors, employees, affiliates, subsidiaries, heirs, successors and assigns of each of them and shall not be exclusive of any other representatives and warranties made by Vendor, whether express or implied.

21. This PO, and the rights and obligations of the parties hereto, shall be governed construed and enforced in accordance with the laws of the State of Ohio, without regard to principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall have no application to this PO, or any actions hereunder or contemplated hereby. The parties agree that any litigation relating directly or indirectly to this PO shall be brought before and determined by a court of competent jurisdiction in Franklin County, Ohio. Vendor may not assign all or any part of this PO. Buyer may freely assign this PO.

22. Buyer reserves the right to an anticipation discount for early payment of invoices at an annual rate of interest equal to the sum of four basis points plus the prime rate of interest as announced by Chase, NA from time to time as its prime rate.

23. Vendor Compliance First Cost and Landed/Branded Special Make Up Purchases. With respect to purchase involving make up samples created by or on behalf of Vendor ("Makeup Samples"), confirmation Makeup Samples must be sent from Vendor to Buyer for all styles, in all color-ways within **4 weeks** after a PO is received by Vendor. Vendor shall be responsible for any and all costs involved in making Makeup Samples, and no cost in connection therewith shall be passed on to Buyer. Buyer shall have the free right, in its sole discretion, to cancel the PO for any reason whatsoever (inclusive of all components of the product such as color, material, and construction) within **10 business days** following receipt of the Makeup Sample from Vendor. Notwithstanding the foregoing, Buyer's 10 day termination period shall not serve to toll or extend the Delivery Date or Cancel if Not Shipped Date set forth on the PO. Buyer shall have absolutely no liability to Vendor whatsoever in the event Buyer exercises such termination right. Vendor specifically acknowledges that it shall not purchase any materials or components necessary to manufacture the product specified under the PO prior to receipt of Buyer's written approval of the Makeup Sample. With respect to landed purchases, (i) written documentation must be received from Vendor regarding the cost and duty that will be charged for all merchandise purchased by Buyer, and (ii) Buyer will not be responsible for any duty charges over and above what was originally quoted and reserves the right to cancel an order if Vendor does not agree to cover the additional up charges.