



## A Quick Guide to Your Custom Order

We're thrilled to help you bring your special piece of jewellery to life! Here's a quick, one-page summary to help you understand the custom design process. For more information, read the Custom Order Agreement on the following pages.

### **How does the custom design process work?**

There are three stages to creating your bespoke piece of jewellery.

**DISCUSS:** First, we chat online, over the phone or in person in a way that makes the design process easy, fun and stress-free. We get an idea of your style, personality and preference, which is key to coming up with something you'll love.

**DESIGN:** Based on our discussion, we might go through some examples, sketches and gemstones. Together, we refine the design until you're happy.

**CREATE:** This is the exciting part where the design gets translated into a highly personalised keepsake. While all effort will be taken to produce a final product similar to the sketch, there can be variations in angles, textures, colours and components, and your final design may not be identical to the sketch (see clause 9 (No Guarantees) for more information).

### **How do I confirm my order?**

Once you're happy with the final design, you'll receive an invoice for the initial deposit with payment details. Your order will be confirmed on receipt of the initial deposit, with the remaining amount due prior to pick up or postage of your jewellery.

### **What happens when my order is confirmed?**

Once your payment is received and you have approved the design in writing, the making begins. Throughout the making process, you'll receive updates and work in progress shots as your piece comes to life. Sit back, relax and we'll take it from here.

### **How long does it take to complete an order?**

Most custom orders are completed within an 8-week timeframe from receipt of your deposit (excluding delivery). Timeframes can vary depending on the piece, and we'll discuss this with you during the design process. If you have a specific deadline, let us know and we'll try to meet it as best we can (see clause 9 (No Guarantees) for more information).

### **Can you work with my gemstones and old jewellery?**

While we're happy to work with materials you provide (for example gold and gemstones), it is not guaranteed that these components will be able to be worked into a new piece. If a component is found to be unusable, new materials may need to be purchased and quoted for (see clause 9.3 for more information). Although reasonable precautions are taken, responsibility is not taken for customer-provided components, including gemstones, that are lost, stolen or damaged while in our custody (see clauses 15 (Disclaimer) and 16 (Limitation of Liability) for more information).

**Have questions? Email [fairina@fairinachengjewellery.com](mailto:fairina@fairinachengjewellery.com).**



## Custom Order Agreement

This agreement is between Fairina Cheng (ABN 27 414 861 847) (“**we**” “**us**”) and customers placing orders for custom jewellery (“**you**”). This agreement incorporates any Invoice, as amended by us from time to time. The date of this agreement will be the date that you are taken to have accepted our offer contained in these terms (see clause 24 (Acceptance) for more information).

### 1. Placing an Order

- 1.1 Our first step is to work with you to sketch out your piece of jewellery (**Piece**). Once you’re happy with the sketch, we’ll ask you to approve the final design in writing and pay a deposit (see clause 2 (Payment Terms) below).
- 1.2 From time to time, we may need to make minor changes to the design for practicality. If we do so, we’ll let you know. Each time you approve such a change, either in writing or by conduct (such as payment of a deposit), the approved design is taken to include the variation.
- 1.3 We require you to pay an initial deposit (which will be set out in our Invoice) before we purchase materials and start work.

### 2. Payment Terms

- 2.1 We’ll discuss and agree our Fee with you prior to starting work. For most orders, we require 50% of our Fee to be paid in advance, with the remaining 50% to be paid on completion, prior to pick up or delivery. If we require different payment terms, we’ll set that out in our Invoice. For payments over fourteen (14) days overdue (other than a deposit payment), we reserve the right to charge interest at the general interest rate charge applied by the Australian Taxation Office.
- 2.2 This agreement includes the terms of any Invoice. Where there is an inconsistency between these payment terms and an Invoice, the Invoice terms prevail.
- 2.3 We require payment of your deposit to confirm your order. Orders will not be accepted until we receive payment of your deposit into our bank account or via credit card and your approval of the design in writing. Quotes are valid for thirty (30) days. We may decline to accept an order where our estimated costs of producing your Piece have increased since the date of the quote. If we do so, we’ll provide you with an updated quote as soon as possible.
- 2.4 We reserve the right to increase our Fee if you change your instructions or if further materials are required (see clause 9.3 for an instance where this might occur). If our Fee changes, we will seek your written approval of the change. Any additions to the Fee must be paid prior to collection or delivery of your order. If you do not approve the Fee increase within fourteen (14) days of our notifying you of the increase, you will be deemed to have cancelled your order and clauses 11.2 - 11.4 (Cancellation of Orders) will apply.

### 3. Collection

If you want to collect your Piece and/or Components from us and are entitled to do so under this agreement, we’ll let you know when they’re ready and make an appointment for you to collect them. Items must be collected within six (6) weeks, unless otherwise agreed in writing. Any items not collected within this timeframe will be disposed of in accordance with the *Uncollected Goods Act 1995* (NSW).

### 4. Delivery

- 4.1 If you want your Piece and/or Components delivered to you and are entitled to have them delivered to you under this agreement, we’ll pack and dispatch the items to a Delivery Service Provider for delivery to you at the delivery address you give us at the time of placing your order, or another address as nominated by you in writing.
- 4.2 Where tracking facilities are provided by the Delivery Service Provider, the tracking number will be supplied to you with our confirmation of dispatch email.
- 4.3 We may charge a fee to deliver your items to you. If so, the delivery charge will be in addition to our Fee, and will need to be paid prior to your item being dispatched. If you fail to pay the delivery charge within fourteen (14) days of our request for payment, you will be deemed to have cancelled your order and clauses 11.2 - 11.4 (Cancellation of Orders) will apply. Additional customs, GST and duty fees may apply to orders shipped overseas, which are payable by you.

**5. Risk**

- 5.1 Subject to this agreement (including all disclaimers and limitations of liability), risk in your Piece lies with us until it is delivered to you or you collect it from us.
- 5.2 You are responsible for the Piece from that point onwards, and we won't be responsible for any loss, damage, wear or tear to the Piece.
- 5.3 For delivered items, you agree that our liability for any item lost or damaged while in the possession of the Delivery Service Provider is limited to the amount that we recover from the Delivery Service Provider, less our reasonable administration costs.
- 5.4 We don't offer delivery insurance as standard with custom orders, however we recommend that you insure your order. Please contact us for pricing.

**6. Returns**

- 6.1 Our custom orders are created through extensive consultation. As they are made specifically to your requirements, refunds, returns or exchanges are not accepted, except where you're entitled to a refund or exchange under the Australian Consumer Law, set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**).
- 6.2 We're highly committed to ensuring that each Piece that leaves our studio is produced to a high standard, so if you're not satisfied, get in touch with us to discuss how we can resolve the issue.

**7. Australian Consumer Law**

Our goods and services come with rights and guarantees under the ACL. Nothing in this agreement varies or limits your rights under that law.

**8. Intellectual Property**

We own and retain all Intellectual Property Rights in our custom pieces, including all rights of reproduction. Nothing in this agreement will cause any transfer of our Intellectual Property Rights.

**9. No Guarantees**

- 9.1 The process of making a three-dimensional product out of a two-dimensional sketch is inherently complex. While we endeavour to create a Piece that matches the approved sketch as closely as possible, we can't guarantee that your Piece will look identical to the sketch and we won't accept liability for any variation.
- 9.2 While we estimate that your Piece will be ready for dispatch or collection within eight (8) weeks of receipt of your deposit (or such other time frame as we discuss with you), we don't guarantee that your Piece will be ready in that time. We won't be liable for loss or damage arising out of a failure to meet the specified timeframe.
- 9.3 Where you provide us with Components to include in your Piece, we don't guarantee that we will be able to successfully include them. If we find that the Components are not suitable for any reason, we may need to adjust our Fee and will do so in accordance with clause 2.4 above. We will return unsuitable Components in accordance with this agreement or arrange for them to be exchanged for a credit against your final Invoice at our discretion.

**10. Bailment of Components**

- 10.1 Any Components you supply to us for an order will be held by us as bailee and as security for amounts you owe us. We will change, modify or destroy (for example, melting down metals) the Components to fulfil your order and as set out in this agreement.
- 10.2 We'll hold all Components until we receive payment in full of all amounts you owe us under this agreement or dispose of Components in accordance with this agreement.

**11. Cancellation of Orders**

- 11.1 Cancellation requests must be sent to us in writing and receipt confirmed by us.
- 11.2 If an order is cancelled, you agree to pay us a proportional amount of our Fee to compensate us for our work and costs incurred by us up to the date that we confirm your order cancellation. We will issue an Invoice to you for the proportional Fee.



- 11.3 If an order is cancelled, you are not permitted under any circumstances to use or reproduce our design in any way for any reason.
- 11.4 Once you've paid all amounts owed to us under this agreement, we'll make any Components you've provided to us available for pick up. Please note that Components may have been altered or destroyed by the time of cancellation (for example, if you've asked us to melt down a ring to create a new one or remove a gemstone from an existing piece), and will be made available in the form which they were in as at the date that we confirmed your order cancellation. We won't be liable for any change or destruction of Components as contemplated by this clause and agreement.

## **12. Termination**

- 12.1 We can terminate this agreement:
  - 12.1.1 without cause, immediately on giving written notice to you; or
  - 12.1.2 if any amount you owe us remains outstanding for more than fourteen (14) days after we send you a notice requiring payment.
- 12.2 Any party can terminate this agreement immediately by giving written notice to the other party if any of the following events occur:
  - 12.2.1 a party commits a material breach of any term of this agreement that is not able to be remedied;
  - 12.2.2 a party commits a material breach of any term of this agreement that is not remedied within thirty (30) days after written notice being given by the other party;
  - 12.2.3 a party repeatedly breaches any of the terms of this agreement, evidencing that they no longer intend to be bound by the agreement, or that they can no longer comply with it; or
  - 12.2.4 a party becomes insolvent, states that it is insolvent or is presumed to be insolvent under an applicable law.

## **13. Consequences of Termination**

- 13.1 Subject to this agreement, on termination or expiry of this agreement, we each agree to promptly deliver, pay or transfer (as the case may be) to the other party any sums or materials which are in our possession or control that are outstanding or to be accounted for under this agreement.
- 13.2 If we terminate this agreement for non-payment, you forfeit all amounts paid to us up to and including the date of termination and any rights in your Piece. If the amounts owed to us remain outstanding for a further fourteen (14) days from the date of termination, we will dispose of the Piece (including a Piece containing Components) within our discretion. We will apply the proceeds of the sale of the Piece to amounts owed to us (including our reasonable costs of disposing of the Piece) and remit any remaining proceeds to you. If the proceeds of sale are insufficient to cover the amounts owed to us, we may pursue you for recovery of debt (subject to clause 18 (Dispute Resolution)).
- 13.3 This and the following clauses will survive termination: clauses 5 (Risk), 6 (Returns), 9 (No Guarantees), 10 (Bailment of Components), 14 (Confidentiality), 15 (Disclaimer), 16 (Limitation of Liability), 17 (Warranty and Indemnity), 18 (Dispute Resolution), 22 (Governing Law and Jurisdiction) and 23 (Definitions and Interpretation), as well as any other term which by its nature is intended to survive termination.
- 13.4 Termination or expiry of this agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **14. Confidentiality**

- 14.1 All parties to this agreement undertake to keep any information about the other party or its business (which is or has been disclosed by that party, its representatives or advisers) and the terms of this agreement secret and confidential and not disclose any of that information, except with the consent of the other party, where necessary for efficient business operations or where required by law.
- 14.2 All parties agree to ensure that their directors, officers, employees, agents, and representatives comply with this clause.

**15. Disclaimer**

- 15.1 We expressly disclaim any liability for any Components you provide to us. We agree to hold the Components subject to the terms of this agreement and to store the Components at our premises clearly marked as belonging to you. You agree that we won't be liable for any loss or damage that occurs to any Components whilst in our possession.
- 15.2 If your order is cancelled or this agreement is terminated, we'll make the Components available for collection only as set out in this agreement.

**16. Limitation of Liability**

- 16.1 Nothing in this agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of the ACL, or your exercise of a right conferred by the ACL, or any liability we may have in relation to a failure to comply with a consumer guarantee under the ACL.
- 16.2 Notwithstanding, we exclude our liability to you and to any other person for any loss, damage or cost arising out of or related to this agreement to the maximum extent permissible by law, including for loss or damage to Components that you give to us to fulfil an order. Any rights, guarantees or warranties that may be implied by any other law, agreement or custom are expressly excluded.
- 16.3 Subject to the above, we each exclude liability to the other for any special, indirect or consequential loss (such as loss of business profits or reputation), whether in contract, tort (including negligence) or otherwise.
- 16.4 Nothing in this agreement limits or excludes our liability:
  - 16.4.1 for death or personal injury caused by our negligence or wilful misconduct or that of our employees;
  - 16.4.2 for fraud or fraudulent misrepresentation by us or our employees; or
  - 16.4.3 where liability cannot be limited or excluded by applicable law.

**17. Warranty and Indemnity**

- 17.1 You warrant that all information you give us is true, current and correct. You also warrant that you have full legal and equitable title to any information, Components or other property (such as designs or artwork) that you supply to us.
- 17.2 You agree to indemnify us fully for any and all loss, damage and costs arising as a result of any of the warranties given by you under this agreement being untrue, incorrect or out of date.

**18. Dispute Resolution**

- 18.1 Satisfied customers are the reason we're in business, and we pride ourselves on excellent customer service. If for any reason you're unsatisfied with your Piece, we ask that you get in touch with us as soon as possible before taking any further action. We'll try our best to resolve any issue to our mutual satisfaction quickly and efficiently. If we're not able to find a solution within twenty (20) business days of you getting in touch with us, then the balance of this clause will apply.
- 18.2 For dissatisfaction claims unable to be resolved as set out above, and all other disputes arising out of this agreement or any order to which it applies, all parties agree not to commence any Tribunal or Court proceedings in relation to the dispute (excluding injunctive relief) until this clause has been complied with.
- 18.3 A party to this agreement claiming a dispute (**Dispute**) has arisen under the agreement must give written notice to the other party detailing the nature of the Dispute, the desired outcome and the action required to settle the Dispute.
- 18.4 On receipt of that notice (**Notice**) by the other party, the parties to the agreement must:
  - 18.4.1 Within thirty (30) days of the Notice, make best efforts in good faith to resolve the Dispute expeditiously by negotiation or such other mutually agreed upon means;
  - 18.4.2 If for any reason, thirty (30) days after the date of the Notice, the Dispute has not been resolved, the parties must agree on selection of a mediator (if the parties are unable to agree, they agree to request that the President of the Law Society of New South Wales appoint a mediator);
  - 18.4.3 The parties are equally liable for the fees and reasonable expenses of the mediator and the cost of the venue of the mediation and, without limiting the foregoing, undertake to pay any amounts requested by

the mediator as a pre-condition to the mediation commencing. The parties must each pay their own costs associated with the mediation;

18.4.4 The mediation will be held in Sydney, New South Wales, Australia.

18.5 All communications made by the parties arising out of this dispute resolution clause are confidential and to the maximum extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

18.6 If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.

## 19. Events Beyond Control

- 19.1 Subject to the rest of this agreement, neither of us will be in breach of this agreement or liable to the other party for any loss incurred by that other party as a direct result of a party (**Impacted Party**) being prevented, hindered or delayed or failing to perform their obligations under this agreement where the cause is an Uncontrollable Event.
- 19.2 If an Uncontrollable Event occurs, the Impacted Party must notify the other party (**Non-Impacted Party**) in writing as soon as practicable.
- 19.3 On giving notice under this clause, the Impacted Party will be entitled to a reasonable extension of time for performing its obligations under the agreement, however, they must continue to use all reasonable endeavours to perform those obligations and performance must be resumed as soon as practicable after such Uncontrollable Event has ceased.
- 19.4 If the delay continues for more than a reasonable period (having regard to the scope of the order and the estimated timeframe for completion), the Non-Impacted Party may terminate this agreement immediately on providing notice to the Impacted Party. For the avoidance of doubt, a reasonable period for the purposes of this clause is to be decided by us, within our absolute discretion.

## 20. Term

This agreement will continue unless or until terminated in accordance with this agreement. All orders placed with us during the term will incorporate the terms of this agreement.

## 21. Notices

A notice or other communication to a party under this agreement must be:

- a) in writing and in English;
- b) signed by the sender or a person authorised to sign on behalf of the sender;
- c) addressed to that party in accordance with the details given in writing to the sending party; and
- d) given by hand, pre-paid post or email.

## 22. Governing Law and Jurisdiction

- 22.1 This agreement is governed by the laws of New South Wales. If any proceedings arise out of this agreement, you agree and submit to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them.
- 22.2 You irrevocably waive any right to object to the venue of any legal process in the courts described in this clause on the basis of it being an inconvenient forum or that the courts of New South Wales do not have jurisdiction.
- 22.3 For the avoidance of doubt, for custom orders placed by international customers, the Convention on the International Sale of Goods does not apply to this agreement.

## 23. Definitions and Interpretation

- 23.1 In this agreement, unless the context requires otherwise, these words have the corresponding definitions:



**“Components”** means anything to be incorporated into a Piece, such as metal, gemstones, clasps or chains, which have been provided by you for the purpose of this agreement.

**“Convention on the International Sale of Goods”** means the *United Nations Convention on Contracts for the International Sale of Goods* 1980.

**“Delivery Service Provider”** means a third-party service provider who we contract to deliver goods to you.

**“Fee”** means the amount (in AUD\$) that you agree to pay us in exchange for your Piece.

**“Intellectual Property Rights”** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**“Invoice”** means an invoice rendered by us to you in relation to a custom order.

**“Piece”** means the custom piece of jewellery you commission us to create.

**“Uncontrollable Event”** means any of the following events, circumstances or causes, provided that they are outside the reasonable control of the Impacted Party and could not have been prevented or avoided by that party taking all reasonable steps:

- a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or military usurped power;
- c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
- e) industrial action;
- f) accident, injury or illness to key personnel.

23.2 Where the words “including”, “such as” or similar are used, these are not intended to be exclusive.

23.3 The reference to insolvency in clause 12 (Termination) is intended to refer to insolvency of both companies and individuals.

23.4 References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation.

## 24. Acceptance

You will be deemed to have accepted this agreement on the happening of one of the following events (whichever occurs first):

- a) you return a signed copy of this agreement to us;
- b) you pay your deposit; or,
- c) you instruct us to commence work on your order after being provided with this agreement.