



# Terms of Sale

These Terms of Sale constitute a contract between you and DZ Grinders LLC ("DZ"). Please carefully review these Terms of Sale because the Terms of Sale set forth the rights, obligations, limitations and exclusions that apply to you.

**1. AGREEMENT.** By purchasing or guarantying the purchase of the products from DZ, you agree with these Terms of Sale. Except as specifically provided herein, these Terms of Sale prevail over any terms or conditions contained in any other documentation and expressly exclude any general terms and conditions of sale or any other document or purchase order. This Agreement is intended by the parties as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein. Notwithstanding the foregoing, in the event the parties have entered and signed a separate, written agreement, which contain terms of sale which conflict with the terms of sale provided herein, the terms of the written agreement shall prevail with respect to any contradictory statements.

**2. CASH SALE.** All domestic purchases will be paid by cash, check or credit card in the net amount of the invoice on or before the time of delivery unless DZ agrees in DZ's sole discretion to extend to you an open account or other credit. All international purchases will be paid by wire or credit card in the net amount of the invoice on or before the time of delivery. DZ may, in its sole and absolute discretion, allow you to pay by electronic deposit.

**3. OPEN ACCOUNT SALE.** All purchases on open account are due and payable within thirty (30) days of receipt of the invoice unless you and DZ agree in writing to a different payment plan. Amounts unpaid by the 30th day of your receipt of the invoice incur interest of 1.50% PER MONTH (an ANNUAL PERCENTAGE RATE OF 18%), or the maximum amount allowed by the applicable state law, whichever is less. Interest is compounded monthly. If you become insolvent, are named in any legal, arbitration or other proceeding to collect money, or file bankruptcy, then all amounts owed to DZ become immediately due and payable. Credit card payments are acceptable at the time of ordering; however, credit cards cannot be used to pay for products purchased through delayed billing. A surcharge may be imposed on all statement balances paid by credit card. You shall have no right to offset any amounts against obligations owed to DZ.

**4. ERRORS.** DZ may correct at any time all extension, price, description and other errors on any invoices, statements or other documents. The document, as corrected, will be the effective document.

**5. PAYMENTS.** All payments will apply first to attorney fees and collection costs, then to accrued interest on oldest unpaid invoices, and then to principal due on oldest unpaid invoices, unless otherwise indicated by your remittance advice. You will pay DZ a \$25.00 service fee on all returned checks.

**6. SECURITY INTEREST.** To secure all obligations owed by you to DZ, you grant DZ a first priority security interest in any products purchased from DZ, including without limitation all goods, equipment, and inventory, and all proceeds, renewals, substitutions, replacements, additions and accessions thereto, until all obligations to DZ are paid in full. You agree that DZ may (but is not obligated to) take appropriate actions to evidence and perfect such interest, and that you will cooperate with DZ with such actions. The security interest granted under this provision constitutes a purchase money security interest under the Idaho Uniform Commercial Code.

**7. DEFAULT.** If your account is not paid when due, or if you have not complied with any other term or condition of your application for credit, these Terms of Sale, or any other agreement with DZ, then you are immediately in default without further notice to you.

**8. DZ's REMEDIES ON DEFAULT.** If you are in default, then DZ may, in DZ's sole discretion and without further notice to you, exercise any one or more of the following actions and remedies: (a) temporarily or permanently suspend any further shipments to you, (b) temporarily or permanently suspend your credit, (c) temporarily or permanently ship to you only if you pay cash on delivery ("COD") or if you pay in advance, (d) temporarily or permanently close your account with DZ and terminate any further transactions with you, (e) exercise DZ's rights as a secured creditor under applicable law, (f) collect the amounts owed to DZ, including without limitation initiating a lawsuit, and (g) take any other action or pursue any other remedies which DZ deems appropriate. Once DZ takes any action or remedy because of your default, including without limitation the remedies listed in this Section 8, DZ is not obligated to (a) restore your account and credit or (b) provide you with any other account or credit terms even if you pay the past due amounts in full and satisfy any other requirements of DZ. Upon the occurrence of any default herein by you, you agree to promptly pay to DZ all attorneys' fees, court costs, and expenses incurred by DZ in connection therewith.

**9. TITLE AND RISK OF LOSS.** Delivery shall be made FOB DZ's facility. Title and risk of loss to the goods and products shall transfer from DZ to you upon the earlier of (i) the departure of the shipment from DZ's facility or (ii) delivery and/or tender of the products to the carrier.

**10. DELAYS.** DZ is not responsible for the inability to provide goods purchased or delay in providing goods purchased caused or effected by accidents, strikes, weather, war, riots, terrorism, shortage of products or labor by manufacturers, interference or obstruction of transportation routes, carrier shortages, damage to carrier, damage to goods by carrier, any act of God, failure of utilities or telecommunications, or other causes beyond DZ's control. DZ will perform as soon as practicable after the cause of the delay is removed.

**11. TAXES AND SHIPPING CHARGES.** You will pay all applicable shipping charges and taxes that arise because of the sale and delivery of the products to you. Shipping and delivery charges are dependent on the location, and will be disclosed upon request. The taxes and shipping and delivery charges will appear on the invoice, or you will directly pay the shipper and tax authority. DZ will charge and collect from you all federal excise and state sales taxes that DZ is required to collect. If DZ does not collect sales or use tax from you, you are solely responsible for complying with your state's sales and use tax. DZ will collect the applicable federal excise tax.

**12. RETURNS, REFUNDS, AND CREDITS.** Carefully read your invoice and check the status of information on backorders, partial shipments, etc. Check the carton for any damage that may have occurred during shipment. If the package was damaged in shipment, please call Customer Relations at [(208) 585-2929 before returning. Additionally, you must inspect the products within three (3) days of receipt and notify DZ in writing of any products which (i) do not conform to the make, model number, UPC or SKU listed in the applicable purchase order; (ii) do not materially conform to the specifications, as agreed upon by the parties; or (iii) materially exceed the quantity of goods ordered pursuant to the purchase order or other written sale of goods agreement. If you fail to inspect the product or notify DZ as set forth above, you will be deemed to have accepted the product and waived your right of rejection or revocation with respect thereto. You agree to afford DZ prompt and reasonable opportunity to inspect all damage, defect or non-conformance claims.

If you have received merchandise in error, Customer Relations will make immediate arrangement to correct your order and your return surface shipping will be reimbursed. You must call Customer Relations at (208) 585-2929 for a return authorization number and return mailing address. All returns must be in salable condition and made within thirty (30) days of invoice date - no exceptions. Upon inspection, you will receive credit or refund (in DZ's sole discretion), on merchandise only; we will not refund or provide a credit for shipping and handling fees or return postage. Any credit issued by DZ will not exceed the product's actual purchase price and must be

used within one (1) year from the date of issuance. A 15% restocking fee will apply to all returns. For your protection, please insure the package for its full value. CODs are not accepted.

Upon receipt of products, it is your responsibility to carefully inspect and properly remove road grime, abrasives, chemicals, dust, or other residues from all surfaces that may have been deposited during the manufacture or shipment of the goods and products. Use or storage of the goods and products without properly removing residues may result in rust or corrosion. Failure to promptly and properly remove adhesive film from any protective sheeting and other wrappers may cause difficulty in subsequently removing these materials and leave residues. You shall assume total responsibility for any damage to the goods resulting from the failure to promptly and properly remove residues, wrappers or adhesive film.

## 13. DISCLAIMER AND LIMITATION OF WARRANTIES AND REMEDIES.

**A. LIMITED WARRANTY.** For the period of one (1) year from the date of shipment, DZ warrants that the products delivered will be free from any material defects in workmanship or materials. This nontransferable limited warranty does not apply to any DZ product (i) which has been reconstructed, repaired or altered by persons or entities other than DZ or its authorized representative, which (in DZ's sole judgment) affects the product's structure, stability, or reliability, (ii) which was subjected to misuse, neglect, accident or abnormal use or storage, or (iii) has been used with any third-party products or product that has not been previously approved in writing by DZ.

ORAL STATEMENTS BY DZ's EMPLOYEES OR REPRESENTATIVES DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED UPON BY PURCHASER, AND ARE NOT PART OF THE CONTRACT FOR SALE. NO OTHER WARRANTIES ARE GIVEN BEYOND THOSE SPECIFICALLY SET FORTH IN THESE TERMS OF SALE.

THIS WARRANTY DOES NOT EXTEND TO PRODUCTS MANUFACTURED BY THIRD PARTY ENTITIES ("Third Party Product"). With respect to Third Party Products, DZ shall convey, to the extent transferable, the warranty, if any, of the Third Party Product manufacturer or producer.

**B. DISCLAIMER OF WARRANTIES.** DZ makes no warranties that extend beyond the description on the face of this limited warranty. DZ makes no other express or implied warranties, including without limitation, NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NON-INFRINGEMENT OR PERFORMANCE OF PRODUCTS, AND NO IMPLIED WARRANTY ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR ADVERTISING. This limited warranty is the full and complete statement of DZ's limited warranty of the DZ products, constitutes the entire and completely integrated limited warranty of DZ, supersedes all other statements, and cannot be varied by any oral or other written statement.

DZ IS NOT RESPONSIBLE FOR CORROSION OR SUITABILITY OF USE FOR ANY MATERIAL IN ANY PARTICULAR APPLICATION. THE CORROSION RESISTANCE AND SUITABILITY OF USE FOR A MATERIAL IS DEPENDENT ON OPERATING ENVIRONMENT, CONDITIONS, CLEANING PRACTICES, AND MANY OTHER FACTORS BEYOND THE CONTROL OF DZ. THE PURCHASER OF THE PRODUCT/EQUIPMENT BEARS TOTAL RESPONSIBILITY FOR CORROSION OR SUITABILITY FOR USE OF ALL MATERIALS IN THEIR PARTICULAR APPLICATION.

**C. REMEDIES.** Your exclusive remedy for breach of the limited warranty is to return the products for refund of the purchase price, or repair and replacement of the nonconforming products. DZ has the exclusive right to select the remedy. IN NO EVENT SHALL DZ BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, CLAIMS BY PURCHASER'S CUSTOMERS, OR DAMAGE OR LOSS TO OTHER PROPERTY OR EQUIPMENT ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS OF SALE. The remedies of the purchaser, and any other party, arising out of or related to the goods, set forth herein are exclusive, and the liability of DZ with respect to the goods, or anything done in connection therewith, or from the manufacture, sale, delivery, resale, installation or use of any of the goods sold hereunder, whether arising out of contract, negligence, strict liability, tort, or under any warranty, or otherwise, SHALL NOT EXCEED THE PRICE YOU PAID FOR THE SPECIFIC PORTION OF THE GOODS/PRODUCT UPON WHICH THE LIABILITY IS BASED. You may not bring any action or claim against DZ, on any theory whatsoever, related to this Agreement or the product, more than one (1) year following the accrual of the action or claim.

**D. PAYMENT REQUIRED.** DZ's limited warranties, as set forth in this Section 13, are effective only if DZ has received payment in full for the products.

**14. GENERAL INDEMNITY.** You will be responsible for all acts and omissions of your employees, associates or agents, wherever occurring, and you agree to indemnify and hold DZ harmless from all liability of any nature for any claims or damages to property, or injuries or death to persons, arising out of their acts or omissions, including without limitation: (a) any claims arising from their operation of the product in a manner inconsistent with any applicable operator's manuals or manufacturer guidelines or from their failure to comply with industry safety standards, and (b) any claims against DZ by or on behalf of any of them for injury or otherwise. In addition, if you are purchasing products for resale to an end user or third party purchaser, you further agree to indemnify and hold DZ harmless from all liability of any nature for any claims or damages arising out of: (x) any warranty, condition, representation, indemnity, or guarantee made by you to any end user or third party purchaser in addition to or in lieu of the limited warranties specified in Section 13 hereof, (y) any omission or inaccuracy in your advertisements and promotional materials related to the products, and (z) any modification of or addition to the products not provided or approved by DZ.

**15. DISPUTES, AUTHORIZATION FOR VENUE AND JURISDICTION.** All disputes between you and DZ, including without limitation, actions to obtain payment, will be governed by Idaho law and the venue will be located in Boise, Idaho. You expressly submit to the personal and subject matter jurisdiction and venue of the state and federal courts in Boise, Idaho. You, DZ, and the guarantor, if any, are the only parties to this agreement, and there are no intended or incidental third-party beneficiaries. In any dispute the prevailing party will recover from the other party reasonable attorney fees and costs, collection agency fees, and any other costs incurred.

**16. CHANGES IN TERMS.** At DZ's sole discretion, the Terms of Sale may be modified, amended, or otherwise revised, at any time by notifying you at your statement address at least thirty (30) days in advance of the effective date of the change. All changes to the Terms of Sale will apply to all purchases, returns or other transactions that occur on or after the effective date of the change. You agree with the Terms of Sale by making purchases, returns or other transactions, or by continuing to owe money to DZ, on or after the effective date of the change. If you disagree with the changes in the Terms of Sale, you will stop any further transactions and will repay any money you owe DZ, before the effective date of the change. The Terms of Sale, and all updates to the same, are located on our website at [www.diamondz.com](http://www.diamondz.com).