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 or conditions of delivery of any other document. These Terms of Sale are 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 of these Terms of Sale. In the event of any conflict in the terms of this document, the dates on the order form, the enclosed and signed separate, written agreement, which contains 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 terms and provisions.

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 in 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 goods 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 purchased, hereafter purchased, represented as yours, and all proceeds or 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 and the secured party in taking such actions.

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 in default and DZ shall have all the rights of a secured party, and you agree that DZ or any, are the only parties to this agreement, and there are no intended or incidental third-party beneficiaries.

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 close your account, (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 purchases, (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 you are in default, including without limitation the limitations 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 (c) continue to accept returns of goods. In the event of 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 are transferred from DZ to you, and both title and risk of loss shall pass to you upon 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 affected 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 of the carrier and your 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 all excise and sales taxes, you agree to file a tax return showing the tax due and, if applicable, your address 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 shipping. Any claims for damage or lost goods in transit must be filed against the carrier and not against DZ. Use the documentation included with the products to file the claim. Contact Customer Relations at (208) 585-2959 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 specifications, as agreed upon by the parties; or (ii) materially exceed the quantity ordered pursuant to the purchase order or other written sale of goods agreement. If you fail to inspect the products and/or fail to set forth the defects you have observed, you will lose your right to reject 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 nonconformance claims.

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 goods and products, excluding any 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, durability, or functionality, (ii) has been subject to misuse, neglect, accident or abnormal use or storage, or (iii) has been used with any third-party products or products that has not been previously approved in writing by DZ.

14. GENERAL INDEMNITY. You will be responsible for all acts and omissions of your employees, agents or agents, whoever occurring, and you agree to indemnify and hold DZ harmless from and against any liability for any claims or damages to property, or injuries to 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, defend, and hold DZ harmless from all liability for any claims or damages arising out of: (a) any warranty, condition, representation, indemnity, or guarantee made by you to any end user or third party purchaser in connection with or in lieu of the limited warranties specified in Section 13 hereof, (b) any, or omissions or inaccuracy in your advertisements and promotional materials related to the products purchased from DZ, or (c) in any manner which is inconsistent with this Agreement or the product, more than once after the effective date of the accrual of the action or claim.

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 of the courts in Boise, Idaho, and waive any one or more of the objections to venue set forth in Section 13 hereof, and agree to the terms of this arbitration provision. In any dispute the prevailing party will recover from the other party reasonable attorney fees and costs.

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 of goods and products made after the 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, or on after the effective date of the change. If you disagree with the changes in the Terms of Sale, you will stop all transactions and will repay any money owed to 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.diamondbz.com.

Terms of Sale

DZ Spinners LLC, Revised September 2019