

## ***TERMS AND CONDITIONS***

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### **1. TERMS APPLICABLE TO ANY SALE:**

These Terms and Conditions of Sale (these “Terms”) are the exclusive terms under which Diamond Sea Glaze (“DSG”) will agree to sell or supply any goods now or in any future transaction. DSG hereby gives notice that it rejects any additional, supplemental or conflicting terms proposed by Buyer, including any contained in any form or correspondence sent to DSG by Buyer. Accordingly, Buyer is advised that any bid, quote or other offer to supply goods by DSG, and any confirmation or other communication by DSG that it will fulfill a customer’s purchase order, is expressly limited by the condition that Buyer accepts only these Terms for the sale and no other terms whatsoever. At the time of any sale, these Terms (together with the agreed upon price and product specifications) will constitute an integrated sales agreement and will be deemed to supersede any other oral or written agreements between the parties regarding the subject matter of the sale. As applied to any particular sales agreement between DSG and Buyer, these Terms can be modified or cancelled only in writing signed by a duly authorized corporate officer of Buyer and the General Manager, Controller, or Chief Financial Officer of DSG.

### **2. RISKS ASSOCIATED WITH DESIGN, INSPECTION, AND INSTALLATION:**

To the extent that Buyer provides custom specifications for any aspect of the materials, dimensions, and/or design of any goods sold by DSG, Buyer acknowledges that it will be solely responsible for ensuring proper engineering, adequacy and safety of design, and suitability for Buyer’s intended application of such goods. Accordingly, Buyer shall be solely responsible for the product’s fitness for Buyer’s particular purpose, proper installation, maintenance and use and all related health and safety considerations, including without limitation, strength and fire-rating, and DSG accepts all risks associated therewith. Buyer is likewise solely responsible for engineering, design, and suitability of application with respect to any drawings approved by Buyer even if such drawings are initially drafted for Buyer’s review by DSG. Buyer is solely responsible for ensuring that goods manufactured or sold hereunder meet all required insurance, government and regulatory approvals

Buyer agrees to have the installation, maintenance and use of all goods manufactured or sold hereunder, whether custom or standard, inspected, supervised and approved by knowledgeable experts, including the appropriate authority having jurisdiction. In the event that Buyer or any other party other than DSG performs installation of the goods, Buyer agrees to defend, indemnify and hold DSG affiliates, contractors, agents, and suppliers harmless from and against any third party claim, suit or demand arising from or related to any improper installation of the goods.



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### **3. PATENTS, INTELLECTUAL AND PROPERTY RIGHTS:**

To the extent goods manufactured or sold hereunder are produced, in whole or in part, pursuant to Buyer's designs, specifications, processes, or formulas, Buyer shall defend, indemnify and hold DSG and its affiliates, contractors, agents, and suppliers harmless from and against any third party claim, suit, or demand arising from or related to allegations that any goods manufactured or sold hereunder infringe on any patent, intellectual or other property rights of such third party.

### **4. PRICE, TAXES, TERMS OF PAYMENT:**

All prices are quoted F.O.B. at DSG's plant in Langley, BC, Canada. Upon receipt of a credit application an evaluation of customer's credit worthiness will determine payment terms and credit limits. Unless otherwise specified, quoted prices do not include any applicable sales, use, excise or any other tax, fee or duty which may be imposed by any governmental authority. Buyer shall likewise pay all shipping and delivery costs and associated insurance costs. All such charges shall be paid by Buyer. In the event DSG advances such charges for Buyer, Buyer agrees to reimburse DSG within 30 days.

DSG shall have the continuing right to approve Buyer's credit and may, at any time, demand a) full payment in advance, b) a bond, letter of credit or other commercial security, or c) a guarantee of prompt payment by a creditworthy affiliate. If DSG has accepted an order but Buyer does not authorized production or fails to pay the first installment within 90 days after the order is accepted, DSG is entitled to increase the agreed price by giving notice to Buyer of such price increase. Thereafter, if Buyer does not authorize production and make the initial deposit (including any increase to the deposit due to price increase) within an additional 90 days, at its option may give written notice to Buyer that the order is deemed cancelled by Buyer's inaction. Upon such cancellation DSG shall be entitled to an order cancellation fee of 15% of the purchase price which Buyer agrees to pay within 30 days.

A service charge of 1.0% per month (or, if less, the highest interest rate permitted by applicable law) will be imposed on all overdue amounts. Buyer agrees to pay all of DSG's costs of collection of overdue invoices, including but not limited to attorney's fees.

### **5. TITLE AND RISK OF LOSS:**

Title, risk of loss or damage, and other incidents of ownership shall pass to Buyer upon tender of goods for delivery F.O.B. at DSG's plant in Langley, BC, Canada or its designated supplier's or partner's plant. Buyer agrees to inspect the goods immediately at the time of delivery by the carrier and report any apparent non-conformity, defect or damage to DSG, the carrier, and as applicable the insurer, in writing. In the event Buyer fails to inspect or fails to give notice, it will be deemed to have waived any claims which could have been discovered upon immediate inspection.



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## **6. LIMITED WARRANTY AND DISCLAIMER OF OTHER WARRANTIES:**

DSG PROVIDES NO WARRANTIES WITH RESPECT TO THIRD PARTY GOODS THAT ARE PROVIDED BY BUYER TO BE INCORPORATED INTO GOODS SOLD BY DSG, INCLUDING THE WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY FITNESS FOR BUYER'S PARTICULAR PURPOSE.

The above limited warranty is conditioned on normal use, proper storage, and proper service of the goods. The limited warranty is accepted by Buyer in lieu of any and all other warranties. Buyer acknowledges that Buyer is responsible to ensure final specification drawings are accurate and it is buyer's sole judgment to select goods or merchandise that is suitable for any particular purpose. DSG warrants their manufactured product against defects in materials and craftsmanship for a period of 12 months from the date of shipment from our facility in Langley, British Columbia.

At its discretion, DSG will repair or replace any defective product with the same or equivalent product within the warranty period. This warranty is limited to DSG product only and does not include any installation or removal costs, shipping expenses, or other associated costs with the product. Furthermore, this warranty only applies where DSG product is used strictly for its intended purpose.

Regarding any claim pertaining to DSG manufactured product, DSG liability shall be limited to the cost of said product to the respective customer.



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### **Exclusions from Warranty:**

- Failure to perform reasonable or necessary maintenance.
- Product that is altered in any way or installed incorrectly.
- Failure of performance due to improper application.
- Discoloration and general “weathering” of the product due to exposure any of the following elements: Wind, Salt, UV light, erosion, snow, hail, rain or ice.
- Breakage of laminated or tempered glass.
- Negligence or exposure to harmful chemicals or pollutants.
- Any interior damage caused by condensation on the windows.
- Improperly grounded electrical and/or RF systems.
- Insulated glass units, ballistic glass, smart glass and heated glass are not covered under warranty from delamination where glass is not installed by DSG or one of its affiliates.
- Customer supplied glass or other components are not covered under DSG’s warranty when incorporated into any DSG product.

Upon receipt of DSG product it is the customer’s responsibility to inspect the packaging and report any defects thereto prior to signing any shipping documentation that releases the carrier of liability. DSG will not be held responsible for damages during shipping if they are not reported upon receipt of the product.

In the event the Customer wishes to make a warranty claim on DSG manufactured product, the customer must first notify DSG by filling out a Warranty Claim Form. Notification must include the name and address of the owner, the product involved as well as a brief description of the defect. The Customer must receive authorization and a claim number from DSG prior to returning the product. The freight costs to return the product must be borne by the customer. If, upon inspection by DSG, the product is deemed defective then repair or replacement will be carried out and the product returned to the customer at DSG’s expense.

The limited warranties set out above are the only expressed warranties applicable to DSG manufactured product. No other warranties, expressed or implied, are provided.

### **7. TEMPLATE RETURNS:**

Requests for template returns must be indicated by BUYER on all templates sent to DSG **AND** on purchase orders (prior to BUYER’S approval). DSG reserves the right to destroy templates left at our facility for a period longer than 6 months.

### **8. ADDITIONAL DOCUMENTATION:**

Should BUYER require additional documentation such as conformance reports, testing information or other, BUYER must request it prior to placing an order with DSG. Documentation charges may apply where necessary.

## **9. LIMITATION OF REMEDIES:**

In the event of DSG's failure to deliver conforming goods on all or part of an order or breach of the limited warranty by DSG, Buyer's remedies shall be limited to the following. DSG shall, at its option either (i) replace or repair the missing, defective or non-conforming goods upon return of the goods at Buyer's cost to DSG's plant in Langley, BC, Canada, or (ii) refund the purchase price for the missing, defective or nonconforming goods upon return of the goods to DSG's plant Langley, BC, Canada. Buyer shall not return any incomplete, defective or nonconforming goods to DSG until DSG has had a commercially reasonable opportunity to investigate Buyer's complaint and then only upon receipt of DSG's written shipping instructions. THE FOREGOING SHALL BE BUYER'S EXCLUSIVE REMEDY.

## **10. LIMITATION OF DAMAGES:**

EXCEPT AS SET FORTH HEREIN, DSG SHALL NOT BE LIABLE FOR INJURIES TO PERSONS OR PROPERTY AND IN NO EVENT SHALL DSG BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL OR COMMERCIAL DAMAGES INCLUDING WITHOUT LIMITATION DAMAGES OR LOSSES SUFFERED ON ACCOUNT OF DELAY OR LATE DELIVERY. DSG'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS SOLD, WHETHER LIABILITY RESULTS FROM BREACH OF WARRANTY, CONTRACT, TORT, OR ANY OTHER CAUSE WHATSOEVER.

## **11. DELIVERY DELAYS / FORCE MAJEURE:**

Delivery dates are approximate and DSG shall not be liable for any loss, damage or delay in shipment, including such as may be caused in whole or in part by fire, flood, windstorm, earthquake, other acts of God, strikes, labor troubles, civil commotion, riot, war, civil or military authority, priorities, epidemics, quarantine restrictions, failure to receive components or materials from suppliers, changes required by engineering, unavailability or shortage of power, labor, transportation, and raw materials or usual source of supply. Delay resulting from any such cause shall extend shipping dates for a commercially reasonable period of time. DSG shall in no event be liable for any special, indirect or consequential damages arising from delay, irrespective of the reasons for delay.

## **12. WAIVER; SUCCESSORS AND ASSIGNS; SEPARABILITY OF CLAUSES:**

Neither party shall be deemed to have waived any of its rights, powers or remedies under this Agreement or at law or equity unless such waiver is in writing and executed by it. No waiver of any default shall operate as a waiver of any other default or the same default on another occasion. No rights, agreements or obligations hereunder may be assigned or transferred by Buyer without the prior written consent of DSG. The obligations and conditions hereof will be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Any provision



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hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions.

**13. CHOICE OF LAW; ARBITRATION:**

The laws applicable to these Terms or any other aspect of the sales agreement between Buyer and DSG shall be the applicable laws of British Columbia and Canada.

Any controversy or claim arising out of or relating to these Terms or any other aspect of the sales agreement with DSG, or the breach thereof, shall be determined by an arbitrator