



## TERMS AND CONDITIONS FOR ORDERS AND SALES

1. **Sales Agreement.** Each sale of one or more products by Durham Geo Enterprises, Inc. d/b/a Durham Geo Slope Indicator or Slope Indicator (“**DGSi**”) is governed by these Terms and Conditions for Orders and Sales (these “**Terms and Conditions**”) together with any applicable quotations to and orders from the customer (“**Customer**”), any acknowledgment forms, and any other documents authorized by DGSi in writing. These Terms and Conditions and all such other documents together form a binding sales contract between DGSi and Customer and shall hereinafter collectively be referred to as a “**Contract.**” DGSi’s offer to sell products to Customer is expressly limited by Customer’s acceptance of these Terms and Conditions, as evidenced by Customer’s issuance of an order for one or more products, or Customer’s acceptance of any product under the order, or Customer’s payment for any product under the order. No terms, if any, included on any Customer’s orders, acknowledgment forms, or other documents shall apply to DGSi’s sale and Customer’s purchase of DGSi products unless and except to the extent expressly agreed to in writing by DGSi. These Terms and Conditions may only be modified or amended by a writing executed by an authorized officer of DGSi.

### 2. **Orders**

(a) ***General.*** All Customer orders are subject to acceptance by DGSi, which acceptance shall be at DGSi’s sole discretion and, if provided, via order confirmation from DGSi. DGSi shall not be liable for any errors or miscalculations in Customer’s orders. Once an order is accepted by DGSi, Customer may not modify or cancel the order without DGSi’s

prior written approval, such approval at DGSi’s sole discretion. If DGSi expressly agrees in writing to permit Customer to modify or cancel an order, Customer will compensate DGSi for all costs and losses attributable to the modification or cancellation.

(b) ***Catalog Orders.*** Catalog orders should include Customer’s order number (if required by Customer), company name, complete shipping and billing addresses, and name, title and telephone number of person ordering. Catalog orders should state part numbers, descriptions and any applicable options.

3. **Prices.** Published prices are in U.S. Dollars unless otherwise indicated and are subject to change without notice. All invoicing will be made at the price prevailing at DGSi upon receipt of Customer’s order, unless covered by a valid quotation from DGSi. Current prices will be furnished on request.

4. **Quotations.** All proposed prices and anticipated delivery times are valid for 30 days from the date that a valid written quotation is issued, unless otherwise noted in such quotation. Thereafter, they are subject to change by DGSi without notice. Unit prices are based on the quantities quoted and are subject to change if the quantity ordered differs from the quantities quoted. Quotations for custom designs or adaptations will be prepared on Customer’s request.

5. **Time of Delivery.** The estimated date of delivery shall be stated in DGSi’s initial offer to sell products to Customer and DGSi will use commercially reasonable efforts to deliver the products within the

estimated time to the extent possible. Delivery dates are estimates only and DGS does not guarantee delivery of products on or by any estimated delivery date. In no event shall DGS be liable to Customer for any costs, fees, penalties, or price reductions as a result of any failure to deliver products in accordance with any estimated delivery dates.

**6. Delivery.** Delivery shall be made Ex Works (EXW) (Incoterms 2010), DGS's shipping point. Unless otherwise agreed upon by the parties in writing, Customer shall arrange for transportation and transport insurance. If Customer fails to arrange for transportation, DGS will choose a method of transportation that it deems appropriate. In all cases, Customer is responsible for all expenses involved in the shipment and delivery of products (including loading, freight, shipping, insurance, forwarding and handling charges). Partial deliveries by DGS are permitted unless otherwise agreed upon in writing by the parties.

**7. Title Transfer.** Title and risk of loss shall pass to Customer as soon as the products have been made available for a carrier.

**8. Taxes and Surcharges.** No Federal, state, or local excise, sales, use, withholding, value added, occupational or other taxes, surcharges, import or export duties, or other governmental fees (collectively, "**Taxes**") are included in DGS's published prices or quotations except when specifically noted in a quotation (in which case all prices quoted are subject to increase or decrease when such taxes or fees are increased, decreased, or applied). Sales taxes will be added to the invoice where applicable unless Customer provides an appropriate exemption certificate. If DGS is required to pay any Tax, Customer shall reimburse DGS therefor promptly on demand. If Customer is

required to make any withholdings from any sum payable to DGS, then the sum payable by Customer shall be increased to the extent necessary to ensure that DGS receives and retains a net amount equal to the amount DGS would have received and retained in the absence of such required withholding.

## **9. Terms**

**(a) *Domestic.*** On establishing an account with DGS and approval of credit, terms of sale are net 30 days from invoice date. Payment may be made by check, wire transfer, Mastercard, Visa or American Express. All past due balances are subject to a finance charge of the lesser of 1.5% per month, or the maximum allowed by law. Wire transfer information provided on Customer's request.

**(b) *International.*** Export shipments will be made only after DGS's receipt of a confirmed irrevocable letter of credit allowing shipment from any U.S. port, advance payment, or by special terms arranged with DGS. Customer shall pay all fees and costs charged by Customer's or DGS's banks or finance companies related to procuring or drawing against letters of credit or other Customer related services unless DGS agrees otherwise in writing. Unless otherwise indicated, amounts for all export shipments are payable in U.S. Dollars. Additionally, Customer will be assessed (i) a letter of credit fee for use of letter of credit, (ii) a legalization fee if Customer's order requires legalization, and (iii) all charges for any pre-shipment inspection (PSI) or third-party inspection if Customer's order requires or requests such an inspection, whether at point of origin or point of delivery. None of the foregoing additional charges is included in a quotation and will be payable by Customer if incurred. Inspection requirements may

create shipment delays beyond DGS's control.

(c) **No Set-Off.** Customer may not withhold or set off any payment as a consequence of any counterclaim of Customer.

**10. Damage in Transit.** When shipments leave DGS's facility, they are in good condition or the carrier will not accept them. Damage in shipping is rare but Customer should always check for evidence of damage or loss before signing for any shipment. Customer should not accept any shipment that has apparent damage until the carrier notes and acknowledges such damage in writing. Customer should keep original packing materials until equipment has been fully examined in operation. Customer is responsible for filing all claims for damages directly with the carrier.

**11. Errors and Shortages.** DGS shall use commercially reasonable efforts to ensure that no items are omitted from a shipment and that all items are properly packed for transportation. Customer is responsible for opening and examining each shipment upon receipt and for notifying DGS immediately upon discovery of errors or shortages in the shipment. DGS assumes no responsibility or liability for errors or shortages discovered or reported by Customer later than 10 days after receipt of shipment from the carrier.

**12. Force Majeure.** DGS shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, other labor difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities from usual sources, or due to any cause beyond DGS's reasonable control. In the

event of a delay in performance due to any such cause, the estimated date of delivery or time for completion of performance will be extended by a period of time reasonably necessary to overcome the effect of such delay. If DGS reasonably determines that any such delay in performance is likely to extend for a period of 90 days or more, DGS shall have the right to cancel the applicable order upon notice to Customer with no liability or further obligation to Customer with respect to such order.

**13. Return of Goods.** Specially designed or adapted products are not returnable. DGS will not accept any standard purchased goods returned for credit or refund after 45 days from date of invoice. Customer shall not ship goods back to DGS for any reason without DGS's prior written consent and returned goods must include a Returned Materials Authorization number issued by DGS visible on the outside of the shipping container. Notwithstanding such consent, DGS reserves the right to inspect the goods at its factory and to refuse at its discretion to accept the return of any item. Customer agrees to pay a 25% restocking charge on all returned items (unless the items are accepted by DGS as non-conforming and covered by the limited warranty set forth in Section 14 below). Any use or damage by Customer, or damage due to Customer's improper repackaging, may result in further charges as necessary to place the returned items in a condition that will allow the items to be resold, or in the rejection of the returned goods by DGS. Freight on returned items shall be prepaid by Customer.

**14. Limited Warranty**

(a) **DGS Manufactured Products.** Unless otherwise agreed to in writing by DGS, DGS warrants that all new products that are both manufactured by DGS and

purchased directly from DGS (or an authorized distributor of DGS) shall be free of material defects of workmanship and material for a period of one (1) year from the date of delivery to DGS's direct customer or, if the customer is an authorized distributor of DGS's products, the warranty shall be for a period of one (1) year from the date of delivery to such authorized distributor ("**Product Warranty**"). DGS's sole and exclusive obligation, and Customer's sole and exclusive remedy for a breach of the Product Warranty is limited to replacement or repair, free of charge, or credit of non-conforming products returned to DGS, at DGS's option, should DGS's examination disclose to its satisfaction that such products were in fact in breach of the Product Warranty. Products repaired or serviced by DGS or replaced by DGS with replacement products are warranted against material defects in workmanship and materials in connection with such repair, service, or replacement for a period of 90 days from shipment back to Customer, or the remainder of the original Product Warranty period, whichever is greater. Any third-party components of products or accessories supplied along with products are not within the scope of the Product Warranty and may be subject to their respective manufacturers' warranties. In no event shall DGS be liable for ordinary wear and tear on the products. ALL PRODUCT WARRANTIES SHALL BE VOID IF ANY NON-CONFORMANCE TO ANY SUCH WARRANTY RESULTS IN WHOLE OR PART FROM ABUSE TO OR MISUSE OF THE PRODUCTS, INCLUDING BUT NOT LIMITED TO IMPROPER INSTALLATION, OPERATION, MAINTENANCE, OR SERVICING OF THE PRODUCTS, OR ATTEMPTS BY CUSTOMER TO SERVICE, REPAIR OR MODIFY THE PRODUCTS.

(b) **Procedure.** To receive the benefit of the warranties in this Section 14, Customer must immediately inspect the

products upon receipt and notify DGS in writing immediately after discovering any defect, and return all defective products or parts to DGS in accordance with Section 13 above. Customer must clearly indicate the nature of the defect or shortcoming.

(c) **DISCLAIMER.** OTHER THAN THE WARRANTIES SET FORTH IN THIS SECTION 14, DGS DISCLAIMS ALL WARRANTIES WITH RESPECT TO DGS'S PRODUCTS, INCLUDING THE PERFORMANCE THEREOF AND THE ACCURACY OF DATA GENERATED FROM THE USE THEREOF, AND ANY SERVICES PROVIDED TO CUSTOMER, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, NON-INFRINGEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

**15. LIMITATION ON LIABILITY.** DGS SHALL NOT BE LIABLE UNDER ANY CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE CLAIM OR THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOST REVENUE, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR FOR ANY AND ALL OTHER EXEMPLARY OR PUNITIVE DAMAGES ARISING HEREUNDER OR FROM THE USE OF PRODUCTS, INCLUDING ANY SUCH LOSS OR DAMAGE RELATING TO PERSONAL INJURY OR PROPERTY DAMAGE, EVEN IF DGS HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL DGS'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES, LOSSES, OR LIABILITIES ARISING UNDER ANY CONTRACT OR FROM THE PRODUCTS SOLD THEREUNDER EXCEED THE AMOUNTS ACTUALLY RECEIVED BY DGS FROM CUSTOMER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO THE LIABILITY. CUSTOMER ACKNOWLEDGES THAT DGS HAS SET ITS PRICES AND



AGREED TO SELL PRODUCTS TO CUSTOMER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY IN THIS SECTION 15 AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN SECTION 14 ABOVE, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CUSTOMER AND DGSi. CUSTOMER AND DGSi AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS AND CONDITIONS WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. ADDITIONALLY, CUSTOMER HEREBY AGREES TO INDEMNIFY DGSi FOR ANY LIABILITY ARISING FROM CUSTOMER'S (INCLUDING ITS EMPLOYEES' AND AGENTS') USE OF THE PRODUCTS SOLD (DIRECTLY OR INDIRECTLY) BY DGSi.

**16. Drawings, Descriptive Documents, etc.** DGSi reserves the right to alter measurements and dimensions as well as the design and description of any products. All data included in catalogues, prospects, circulars, advertisements, illustrated matter, and price lists are approximate and shall not be binding unless otherwise agreed upon in writing by the parties. Drawings, descriptive documents, parts lists and other documentation (collectively, "**Documentation**") provided or made available to Customer by DGSi are confidential information of DGSi and may be used by Customer only in connection with the use of the products. Customer may not copy Documentation or disclose Documentation to any third party.

**17. Use of DGSi's Products.** Customer acknowledges and agrees that the products must be used in accordance with all instructions provided by DGSi and, where stated, products must be operated only by personnel who have received the appropriate training. Any DGSi products that are to be connected to an electricity supply must be

operated only by appropriately trained and qualified personnel, and must not be made available to any personnel without the proper training and qualifications.

**18. Rights and Software.** Customer shall not copy DGSi's software or any related Documentation, other than as is necessary for back-up copies. Customer shall not assign any rights in the software. DGSi grants to Customer a limited, non-exclusive license to use the software provided with the products solely for the purpose of operating the products in accordance with DGSi's written documentation.

**19. Intellectual Property.** Notwithstanding that title to the products may pass to Customer, DGSi shall remain the exclusive owner of all intellectual property rights of any nature, including copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the products (including any software contained therein). Other than as permitted by applicable law, Customer shall not reverse engineer the products or any part thereof, including software. Customer shall not remove any proprietary notices or branding contained in or otherwise affixed to the products.

**20. Export Restrictions.** Customer acknowledges that DGSi products and any related software and technology, including technical information supplied by DGSi or contained in documents (collectively, "**Items**"), may be subject to export controls of the U.S. government. The export controls may include those of the Export Administration Regulations of the U.S. Department of Commerce (the "**ERA**"), which may restrict or require licenses for the

export of Items from the U.S. and their re-export from other countries. Customer shall comply with the EAR and all other applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. Customer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency, export or re-export any Item, or export, re-export, distribute, or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Customer shall cooperate fully with DGS in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify, defend, and hold DGS harmless from, or in connection with, any violation of this Section 20 by Customer or its employees, consultants, agents, or customers.

**21. Governing Law.** Each Contract shall be governed by and construed in accordance with the laws of the U.S. State of Georgia without regard to its principles of conflicts of laws. Each party hereby consents to personal jurisdiction in any action brought in the state and federal courts located in Atlanta, Georgia, U.S.A. and arising out of or in connection with any Contract and waives any objection to venue in any such court or to any claim that any such court is an inconvenient forum. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract.

**22. Entire Agreement.** The Contract constitutes the entire agreement between DGS and Customer with respect to its subject matter and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Customer's

request for quotation and DGS's quotation unless specifically incorporated in the Contract.

**23. Severability.** A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.