



## Terms and Conditions of Sale

### 1. DEFINITIONS

In these terms and conditions, unless the subject matter determines otherwise:

**"Agreement"** means the agreement between NAGS and the Customer for the supply of Goods pursuant to an application made by the Customer for a credit account and/or any order placed by the Customer from time to time;

**"Customer"** (or 'Buyer') means the person or company making the credit application and who places an order to purchase Goods from NAGS;

**"CGA"** means the Consumer Guarantees Act 1993 and includes any re-enactment of or amendment to that legislation and any legislation passed in substitution of that legislation;

**"Goods"** means the goods (or any ancillary services) supplied by NAGS to the Customer;

**"Guarantor"** means the person(s) who covenants in favour of NAGS to guarantee the performance of the obligations of the Customer pursuant to a Deed of Guarantee and Indemnity or any other document/agreement;

**"NAGS"** means NAGS (New Zealand) Limited (Company No. 1795419 / GST No. 127-527-475) trading as National Auto Glass Supplies and includes its successors or assigns. NAGS (New Zealand) Limited took over the business from National Auto Glass Supplies Limited (Company No. 1164970 / GST No. 80-265-557) in December 2018;

**"PLA"** means the Property Law Act 2007 and includes any re-enactment of or amendment to that legislation and any legislation passed in substitution of that legislation;

**"PPSA"** means the Personal Property Securities Act 1999 and includes any re-enactment of or amendment to that legislation and any legislation passed in substitution of that legislation.

### 2. GENERAL

2.1 The Customer agree to be bound by the Terms and Conditions of Sales. The Customer accepts these Terms and Conditions of Sales to the exclusion of any other terms and conditions of the Customer. No waiver, alteration or modification of these terms and conditions or of the Agreement expressed in any document of the Customer shall have effect.

2.2 NAGS reserves the right to change or vary these Terms and Conditions of Sale at any time. NAGS may from time to time and in its sole discretion amend, add to or delete any of the terms and conditions without giving notice to the Customer. The Customer agrees and accepts the Terms and Conditions of Sales as varied or amended. If the Customer does not accept the Terms and Conditions of Sale, do not place order with NAGS. Each time an order is placed by the Customer, the Customer is deemed to accept and agree the Terms and Conditions of Sales in force at the time of order placement.

2.3 No order shall be binding on NAGS until accepted by NAGS. NAGS reserves the right to accept/reject any order in whole or in part.

2.4 All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by NAGS or otherwise contained in NAGS' catalogues, price lists and other advertising matter are an approximate only and are intended to be by way of a general description of the Goods and do not form part of the Agreement.

2.5 GST is payable by the Customer for all Goods and any service supplied by NAGS.

### 3. DELIVERY

3.1 The delivery or completion date or times made known by NAGS to the Customer are estimates only and NAGS will not be responsible for any part delivery or delay in delivery of the Goods. NAGS shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.

3.2 At the Customer's request, NAGS may deliver the Goods by such carrier and such form of transport NAGS consider to be appropriate. Notwithstanding NAGS arranging the carrier and form of transport, NAGS shall not be in any way responsible for any loss of or damage caused to the Goods, whether NAGS is legally responsible for the event or person who caused or contributed to that loss or damage, while the Goods are in transit.

3.3 Unless otherwise agreed to by the parties, the Customer must take delivery of the Goods at an address notified by NAGS.

3.4 NAGS reserves the right to charge for delivery of the Products at any time. Administrative fees may also be imposed for orders under certain dollar values. Where NAGS agrees to deliver to the Customer, delivery is to the delivery point specifically accepted by NAGS.

### 4. TITLE AND RISK

4.1 The supply of the Goods by NAGS is made and done on the express condition that ownership of the Goods is reserved to NAGS and that the legal and equitable title of the Goods shall not pass to the Customer unless and until the Customer has paid the purchase price in full to NAGS. NAGS will be entitled to maintain an action against the Customer for the purchase price of the Goods, and the risk in respect of loss or damage to the Goods will pass to the Customer on delivery or collection of the Goods by the Customer's agent or carrier, as the case may be.

4.2 Until the Customer has paid all money owing to NAGS the Customer shall at all times store the Goods separately and ensure that:

- (a) the Goods supplied by NAGS, while in the Customer's possession, can be readily identified and distinguished; and/or
- (b) all proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and traceable.

4.3 If the Customer breaches these terms and conditions, then without prejudice to any rights NAGS may have at law:

- (a) NAGS may at any time, without notice to the Customer, terminate any agreement relating to the Goods and may then take possession of the Goods or may assume the Customer's interests and rights under any agreement in relation to the Goods with a third party; and/or
- (b) NAGS and its servants or agents may enter any premises owned, leased or otherwise controlled or occupied by the Customer or the Customer's agent at any time without prior notice in order to recover all and/or any Goods to offset any monies owing to NAGS and the Customer indemnifies NAGS against the use of reasonable force to obtain such possession.



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- 4.4 If the Customer sells the Goods, the Customer acknowledges that such sale is by the Customer as bailee for and on behalf of NAGS. The Customer agrees to hold the proceeds of such sale in trust for NAGS until payment is made in full to NAGS for all the Goods and the Customer will maintain separate records in that respect and to that account and those records may be inspected on demand by NAGS. NAGS will be entitled to maintain a claim against the Customer for the proceeds of the sale of any other goods into which the Goods have been manufactured. NAGS will be entitled to take the proceeds of such sale of such goods and orders as NAGS thinks fit, despite the Customer dealing or seeking to deal with those proceeds in any other manner.
- 5. PAYMENT AND CREDIT TERM**
- 5.1 At all times, payment must be made in full without set off or deduction. NAGS will investigate any disputed amounts, and if resolved in favour of the Customer, a credit will be issued to the Customer. NAGS has the absolute right to set the payment term and alter the payment term as it sees fit.
- 5.2 The Customer warrants to NAGS that the Customer is not a Bankrupt (if an individual) or in liquidation (if a company) and are not in the at the risk or in the process of becoming a bankrupt or subject to any winding up proceedings.
- 5.3 In the event that NAGS grants a credit facility to the Customer the following terms and conditions will apply:
- (a) Any credit is granted on the basis of the information provided in the credit application being true valid and correct at all times;
  - (b) NAGS may in its sole discretion require security to be granted by the Customer and/or the Guarantors. Such security may include, without limitation, be in the form of a security interest charge under the PPSA and/or a mortgage charge under the PLA. The Customer, its officers, proprietors, the Guarantors hereby agree to grant such charges under the PPSA and/or the PLA as required by NAGS from time to time;
  - (c) The continuation of any credit facility is based on the Customer and all its Guarantors being solvent and based on the security being valid enforceable and sufficient (as determined in NAGS' sole discretion from time to time);
  - (d) The invoiced amount is payable in line with the payment term set by NAGS; and
  - (e) Credit approval once granted may be withdrawn at any time by NAGS. NAGS is not required to give reason about its decision.
- 5.4 Any of the following events is considered to be Customer in default:
- (a) failing to make any payment due or commit any other breach of the any of the Customer's obligations;
  - (b) suffer execution under any judgment;
  - (c) commit an act of bankruptcy;
  - (d) make any composition or arrangement with any creditor; or
  - (e) being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it.
- 5.5 In the event of any default:
- (a) All monies owing by the Customer will become immediately due and payable and NAGS reserves the right to charge interest daily at a rate of 2% per month on all monies and costs due or overdue up to the date of payment;
  - (b) All expenses, costs and disbursements incurred in recovering any outstanding monies including debt collection fees and solicitor's costs will be paid by the Customer on an indemnity basis;
  - (c) NAGS may refuse to supply any Goods despite any agreement to the contrary;
  - (d) NAGS may, without notice, terminate any credit facility;
  - (e) NAGS is entitled at any time to request security or additional security or personal guarantee as NAGS thinks fit and is entitled to withhold supply of any Goods or credit facility until such security or additional security is given.
- 5.6 NAGS may charge card surcharges in the event payments are made using a credit, debit or charge card including Visa, MasterCard, American Express or Diners Club.
- 6. Customer Specific Stock (e.g., special order, buy in)**
- 6.1 Where NAGS has agreed to procure, warehouse and/or distribute Goods specifically for the Customer, the Customer must pay and take the Goods within the timeframe specified by NAGS. Where the Customer does not do so, NAGS may dispose of the affected Goods without liability for any loss or damage suffered by the Customer as a result. All Customer specific stock are non-refundable and non-returnable unless agreed by NAGS.
- 7. PPSA SECURITY INTEREST**
- 7.1 In consideration of NAGS supplying the Goods in accordance with these terms and conditions, the Customer shall grant at the request of NAGS, a security interest to all the Customer's present and after acquired property to secure the obligation of the Customer to pay the price in full of the Goods and the performance by the Customer of any other obligations of the Customer under the Agreement. The Customer shall not change its name without first seeking NAGS' approval in writing.
- 7.2 The Customer, its officers, proprietors, and the Guarantors hereby agree to grant such charges under the PPSA as requested by NAGS from time to time. As and when required by NAGS the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable NAGS to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce NAGS' security interest in respect of the Goods supplied, in accordance with the PPSA.
- 7.3 The parties agree to contract-out of the PPSA in accordance with section 107 of the PPSA to the extent that section 107 applies for the benefit of the, and does not impose a burden on, NAGS. The Customer further acknowledges that, to the extent permitted by law, the Customer shall have no right under the following provisions of the PPSA to:
- (a) receive a notice of sale of collateral under section 114(1)(a);
  - (b) receive a statement of account under section 116;
  - (c) receive surplus distributed under section 117(1)(c);
  - (d) recover any surplus under section 119;
  - (e) receive notice of any proposal to retain collateral under section 120(2);
  - (f) object to any proposal to retain collateral under section 121;



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- (g) not to have equipment damaged in the event that NAGS were to remove an accession under section 125;
- (h) be reimbursed for damage caused when NAGS removes an accession under section 126;
- (i) refuse permission to remove an accession under section 127;
- (j) receive notice of the removal of an accession under section 129;
- (k) apply to the Court for an order concerning the removal of an accession under section 131;
- (l) redeem collateral under section 132;
- (m) reinstate the contract under section 133; and
- (n) receive a verification statement confirming registration under section 148.

7.4 In the event that the Customer fails to perform the obligations contained or implied in the Agreement and/or it is necessary for NAGS to take steps or incur any expense to protect its interests under the Agreement, including the registration and maintenance of NAGS' security interests or repossession of the Goods, then NAGS may perform such obligations, pay such money, or incur such expense, and the Customer shall indemnify and reimburse NAGS for all monies paid or expenses incurred (including all legal and associated costs) by NAGS (inclusive of any Goods and Services Tax).

### 8. RETURN OF GOODS

- 8.1 NAGS is not compelled by law to accept return of Goods due to change of mind, wrong order, change of circumstances, or if you find cheaper products elsewhere. NAGS has the right and discretion to decide whether to accept the return of Goods.
- 8.2 The Customer acknowledges and agrees that the Customer must follow the requirements set by NAGS and NAGS may impose return fees/restocking fees as it sees fit. The Customer covenants and agrees to pay any return fees/restocking fees imposed by NAGS.
- 8.3 If NAGS agrees to accept the returns, when returning un-used Goods for credit, following are required:
  - a) The Goods must be un-used and in the original condition supplied;
  - b) The Goods must be returned within 30 days from the date of invoice;
  - c) The original delivery docket or invoice number must be quoted with the Goods;
  - d) Non-standard items cannot be returned for credit (e.g. special-order items, buy in, special sale items, etc); and
  - e) The Customer is responsible for the return freight costs (if any).
- 8.4 NAGS may set other rules or procedures in relation to its return handling procedures and process.

### 9. WARRANTY

- 9.1 For faulty or defective Goods, NAGS will either provide a credit for the Goods or supply replacement Goods, at NAGS' cost, to the original delivery address of the Goods, provided that:
  - (a) The defects arose solely as a result of faulty design, workmanship or materials supplied by NAGS;
  - (b) The Goods have been used properly and the defect has not arisen as a result of poor installation, excessive wear, misuse, mishandling, neglect or accident;
  - (c) The Customer makes the claim to NAGS in writing within 7 days of delivery to the Customer;
  - (d) If the defect appeared after fitting, Customer is required to notify NAGS immediately in writing with details of the defect;
  - (e) The Customer quotes the original invoice or delivery docket number;
  - (f) The Goods are promptly returned to NAGS or the place NAGS delivered the Goods at the Customer's cost; and
  - (g) If the government law/rule requires the Customer to be licensed or certified to carry out the windscreens installation/repair/calibration jobs, NAGS may require evidence from the Customer of such compliance to verify the warranty/defect was not as the result of faulty workmanship.
- 9.2 Special requirements in relation to any defect/warranty claim for Advanced Drive-Assistance Systems (ADAS) (or similar) screens:
  - (a) As soon as the Customer becomes aware of the defect in ADAS screen, the Customer must notify NAGS immediately and NAGS may request to see the screen in the vehicle as fitted before it is removed and returned to NAGS;
  - (b) Supply NAGS with the following:
    - (i) Pre-calibration report (the report must show the details of the vehicle including the rego number);
    - (ii) Post-calibration report (the report must show the details of the vehicle including the rego number);
    - (iii) Incorrect use of calibration machine may lead to faulty report. Calibration can only be carried by the properly licenses/trained personnel;
    - (iv) Photos of the vehicle. The rego number and vehicle plate (showing the make, model, vin number, year);
    - (v) Supply the removed OE screen (if possible) or photos of the OE screen – full view, and close-up view of the label, photo of the brackets and attachments;
    - (vi) Photo of the NAGS screen fitted in the vehicle – full view and close-up view including the label on the screen;
    - (vii) If the issue is about the brackets/holder different from the OE screen, photos comparing NAGS screen and OE screen (or supply the OE screen for us to compare); and
  - (c) NAGS may request further information prior to determining whether a screen is defective.
- 9.3 Further Special reminders/requirements about HUD screens:
  - (a) Check the HUD projection is working on the original screen;
  - (b) Do a dry fit of the screen. If any concern of blurry/double vision or the projection is not as crisp clear as the OE screen, do not fit the screen. It is important to note that although the manufacturer supplies NAGS with high quality aftermarket screen, the HUD may not be as crisp/sharp as the OE screen. If the aftermarket HUD screen is blurry/double visions, then that is a defect; and
  - (c) For HUD screen defect (blurry/double vision) – the Customer has to notify NAGS immediately and NAGS may request to see the screen before it's removed from the vehicle. The customer is also required to supply photos (or video) of the HUD section (from different angles).



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- 9.4 For all NAGS accepted warranty or defective claims, NAGS will either provide credit for the Goods or send a replacement at NAGS' costs. NAGS does not and will not cover any incidental costs or expenses (e.g. re-fitting, re-calibration etc).

### 10. GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 10.1 NAGS is a supplier of business use goods and sells the goods to businesses, therefore the supply is not subject to the CGA and is expressly excluded. The Customer acknowledges and agrees the CGA does not apply and is excluded. To the full extent permitted by the law, NAGS liability in respect of any claim or pursuant to any statutory remedy available to the Customer for defective Goods is limited to, at NAGS' discretion:
- (a) The replacement of the Goods;
  - (b) The supply of equivalent Goods;
  - (c) The repair of the Goods; or
  - (d) The refund of the Goods.
- 10.2 Except as provided in these terms and conditions, all express and implied warranties, guarantees and conditions under statute or general laws as to merchantability, description, quality, suitability or fitness for purpose or as to the design are expressly excluded. NAGS does not exclude or limit the application of any provision of any statute of New Zealand where to do so would contravene that statute or cause any part of this clause to be void.
- 10.3 To the full extent permitted by the law, NAGS excludes liability to the Customer:
- (a) in contract for consequential or indirect damages arising out of or in connection with these terms and conditions even if NAGS knew they were possible or they were otherwise foreseeable, including without limitation, loss of profits and damage suffered as a result of claims by any third party; and
  - (b) in negligence and other non-contractual causes of action for acts or omissions of NAGS, its employees, agents and contractors arising out of or in connection with these terms and conditions.

### 11. CHANGE IN CONTROL OR FINANCIAL STATUS, SALE OF BUSINESS, CEASING TO TRADE, OR VACATING PREMISES

- 11.1 The Customer must advise NAGS of all material changes in its name, financial status, ownership, management and/or change of address, as soon as reasonably practicable when they occur. The Customer and the Guarantor remain to be liable to NAGS for all monies owed until release of liability by NAGS in writing. Failure to notify NAGS will result in the Customer and the Guarantor being liable for all purchases of goods post changes to ownership name and/or financial status and/or ownership or management.
- 11.2 Should the Customer sell the business, ceases to trade or vacates the premises, the Customer must notify NAGS in writing prior to the settlement, or immediately upon ceasing to trade or vacating the premises. The Customer will also advise NAGS of forwarding addresses and contact phone numbers. The Customer agrees that if the Customer does not notify NAGS in writing, and the Customer does not have NAGS' acknowledgment in writing, the Customer will become personally liable for all outstanding monies owed to NAGS by the company/business. The Customer understands that NAGS requires this information immediate arrangement be made in relation to any outstanding payment or Goods in the Customer's possession.

### 12. GOVERNING LAW

- 12.1 These terms of trade are governed by the laws of New Zealand. NAGS and the Customer shall submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade under this Agreement.
- 12.2 Each provision of the terms and conditions are separate from the other and if any provision is found to be avoidable or unenforceable for any reason the remaining provisions shall continue to have full force and effect.
- 12.3 The failure by NAGS to exercise, or any delay in exercising, any right, power or privilege available to it under these terms and conditions will not operate as a waiver or preclude any other or further exercise or the exercise of any other right or power.

### 13. PRIVACY

- 13.1 The Customer authorizes NAGS to collect, retain, and use personal information about the Customer (including information collected in this document) for the purposes of:
- (a) assessing the Customer's credit worthiness;
  - (b) disclosing to third-party details of this application and any subsequent dealings it may have with NAGS for the purpose of recovering amounts payable by the Customer and providing credit references;
  - (c) sending marketing communication (which the Customer may opt out);
  - (d) sending to the Customer non-commercial administrative emails. These include, for example, messages relating to the Customer's account, transactions or important information relating to products the Customer has purchased, such as recall notices; or
  - (e) using the information to improve and/or adjust the products and services of NAGS.
- 13.2 The Customer acknowledges and agrees that NAGS collects information through its online ordering portal (e.g. MyNAGS) and the Customer accepts and agrees that NAGS may use the information as set out in Clause 13.1.

### 14. ACCOUNT FORM

- 14.1 NAGS may in its discretion deactivate the Customer's account.
- 14.2 NAGS may request the Customer to complete a new Credit account application form (or account opening form used by NAGS) to update the Customer's details or add/change guarantor(s). For any deactivated account, NAGS may request the Customer to sign a new account opening form before NAGS reopens the account.