



Terms and Conditions of Sale

1. DEFINITIONS

"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 other orders placed by the Customer from time to time.

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

"Goods" means the goods supplied by NAGS to the Customer from time to time pursuant to the Agreement.

"Guarantor" means the person(s) who guarantee the performance of the obligations of the Customer under the Agreement pursuant to a Deed(s) of Guarantee and Indemnity.

"NAGS" means National Auto Glass Supplies Ltd / company number 1164970.

"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 By entering into the Agreement, the Customer accepts these terms and conditions 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 The signatories appearing on the credit application on behalf of the Customer are duly authorized to apply for the credit account and agree to be bound by the terms and conditions set out herein.

2.3 The terms and conditions contained herein shall prevail over conflicting terms and conditions contained in any other documents.

2.4 All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by NAGS or otherwise contained in NAGS's 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.

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 NAGS shall 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.

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 notwithstanding any such Goods having been affixed to any other land or to any other property or attached to any fixture or structure forming part of any land or any property and notwithstanding any removal or recovery of such unpaid Goods may cause damage to other fixture, chattel or structure on any property. Alternatively, NAGS shall have a lien over any unpaid Goods notwithstanding that such unpaid Goods may or may not be affixed to any fixture or structure forming part of any property.

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.

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.

4.5 Despite the terms and conditions above, 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.

4.6 The Customer shall be responsible for any loss, damage or deterioration of the Goods due to any cause whatsoever from the time NAGS delivers the Goods to the Customer.



5. GRANTING OF CREDIT FACILITIES

- 5.1 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's sole discretion from time to time); and
 - (d) The invoiced amount is payable in line with the approved payment terms, and is based on the number of days noted in the credit application following the end of the month in which the Goods were purchased.

6. PPSA SECURITY INTEREST

- 6.1 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.
- 6.2 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.
- 6.3 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's security interest in respect of the Goods supplied, in accordance with the PPSA.
- 6.4 The Customer shall not change its name without first seeking NAGS's approval in writing.
- 6.5 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;
 - (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.
- 6.6 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's 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).

7. WARRANTY

NAGS will supply replacement Goods, at NAGS's cost, to the original delivery address of the Goods, for Goods which are defective, 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 excessive wear, misuse, neglect or accident; and
- (c) the Customer makes the claim to NAGS in writing within 7 days of delivery to the Customer
- (d) the Customer quotes the original invoice or delivery docket number; and
- (e) the Goods are promptly returned to NAGS or the place NAGS delivered the Goods at the Customer's cost.

8. RETURN OF GOODS.

- 8.1 Return of Goods will only be accepted for credit within 30 days from the date of the invoice.
- 8.2 No return of Goods shall be accepted by NAGS if they have been used in any way for any purpose, or if they are non-standard Goods sold on a non-return basis.
- 8.3 When returning Goods to NAGS for credit, the original delivery docket or invoice number must be quoted and return freight must be prepaid by the Customer. Returns for credit may incur a 20% administration and restocking fee.

9. CUSTOMER'S LIABILITY AND DEFAULT

- 9.1 If the Customer shall:
- (a) fail to make any payment due under the Agreement or commit any other breach of the any of the Customer's obligations under the Agreement;
 - (b) suffer execution under any judgment;
 - (c) commit an act of bankruptcy;
 - (d) make any composition or arrangement with any creditor; or



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(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,

NAGS may, without notice, treat the Agreement as being terminated and any part of the purchase price then unpaid, together with any monies owing hereunder, whether or not due under the terms of the Agreement shall 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 actual date of payment.

- 9.2 The Customer shall additionally be liable on an indemnity basis for all expenses, costs and disbursements incurred in recovering any outstanding monies including debt collection fees and solicitor's costs.
- 9.3 Upon default by the Customer in any payment due under the Agreement, NAGS may:
- (a) refuse to supply any Goods despite any agreement to the contrary; and
 - (b) terminate any credit facility without notice.
- 9.4 NAGS are entitled at any time to request security or additional security as NAGS thinks fit and is entitled to withhold supply of any Goods or credit facility until such security or additional security is given.

10. GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 10.1 To the full extent permitted by the law, NAGS liability in respect of a claim under clause 8 or pursuant to any statutory remedy available to the Customer for defective Goods is limited to, at NAGS's discretion:
- (a) the replacement of the Goods;
 - (b) the payment of the cost of replacing the Goods;
 - (c) the supply of products equivalent to the Goods; or
 - (d) the repair 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

- 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.

12. GOVERNING LAW

- 12.1 These terms of trade are governed by the laws of New Zealand.
- 12.2 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.
- 12.3 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.

13. VARIATIONS TO TERMS AND CONDITIONS

- 13.1 NAGS may from time to time and in its sole discretion amend, add to or delete any of the terms and conditions of trade without giving notice to the Customer provided that NAGS shall not make any variation to the nature or extent of the security interest granted by the Customer in clauses 6 and 7 without the prior written agreement of the Customer.

14. SALE OF BUSINESS, CEASING TO TRADE, OR VACATING PREMISES

- 14.1 The signatories overleaf of this Agreement agree that if they sell the business, cease to trade or vacate the premises, they will notify NAGS in writing prior to the settlement, or immediately upon ceasing to trade or vacating the premises. The signatories will also advise NAGS of forwarding addresses and contact phone numbers. Receipt of this information is to be confirmed in writing by NAGS. The signatories agree that if they do not notify NAGS in writing, and they do not have NAGS's acknowledgment in writing, they shall be personally liable for all outstanding monies owed to NAGS by the company/business. The signatories understand that NAGS requires this information so that it may take possession of its security under the PPSA and under the PLA.

15. BANKRUPTCY DECLARATION

- 15.1 The signatories overleaf declare that the Customer is solvent/not bankrupt, and that they have not been a Director(s) of a company that has been declared insolvent, and have not had any judgments made against us by the courts.

16. PRIVACY ACT 1993

- 16.1 The Customer authorizes NAGS to collect, retain, and use personal information about the Customer (including information collected in this document) for the following purposes only:
- (a) assessing the Customer's credit worthiness; and
 - (b) disclosing to a 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.
- 16.2 The Customer, if an individual, has a right of access to information about the Customer held by NAGS. The Customer may request correction of that information and may require that request be stored with that information.