



## ***Terms and Conditions of Sale***

### **1. Definitions**

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

- (i) **NAGS or National Auto Glass Supplies** means "National Auto Glass Supplies Australasia Pty Ltd" (ABN 36 662 932 747) and its executors, administrators, successors and permitted assigns;
- (ii) **Customer** means the person or entity who purchases Goods from NAGS regardless of the person or entity has completed any account application form with NAGS;
- (iii) **Goods** means the goods and services supplied by NAGS to the Customer;
- (iv) **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;
- (v) **ACL** means the Australian Consumer Law, Competition and Consumer Act 2010 (Cth) formerly the Trade Practices Act 1974 (Cth), and includes any re-enactment of or amendment to that legislation and any legislation passed in substitution of that legislation;
- (vi) **T&Cs** means this Terms and Conditions of Sale and as varied by NAGS from time to time; and
- (vii) The singular includes the plural and vice versa and any gender includes any other gender.

### **2. General**

- (i) NAGS' supply of the Goods to the Customer is conditional on the Customer's acceptance without alteration of the T&Cs. By agreeing to purchase the Goods from NAGS, the Customer agrees to be bound by the T&Cs and accepts the T&Cs to the exclusion of any terms and conditions of the Customer. Modification to the T&Cs expressed in any document of the Customer will not apply. These conditions prevail over the provisions contained in any other document, which may conflict with provisions herein.
- (ii) NAGS reserves the right to change or vary the T&Cs at any time. NAGS may from time to time and in its sole discretion amend, add, or delete any of the T&Cs without giving notice to the Customer. The Customer agrees and accepts the T&Cs as varied or amended. If the Customer does not accept the T&Cs, do not place any orders with NAGS. Each time an order is placed by the Customer, the Customer is deemed to accept and agree the T&Cs in force at the time of order placement. The T&Cs in force are available on the NAGS website, online ordering portal MyNAGS, or can be supplied on request.
- (iii) All Goods descriptive specification, illustration, drawing, data, dimension and weight furnished by NAGS or otherwise contained in the catalogue, price list and other advertising matter are approximate only and are intended to be by way of a general description of the Goods and do not form part of the contract for the sale of Goods.
- (iv) Any advice, recommendation, information, assistance or service given by NAGS in relation to the Goods, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. NAGS does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (v) 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.

### **3. Collection or Delivery of the Goods**

- (i) NAGS has multiple warehouse locations across Australia. When placing the order, the Customer must specify which NAGS warehouse the order is for and pick up the Goods from that warehouse unless otherwise notified by NAGS of the alternate Goods collection address. Should the Customer fail to pick up the Goods from NAGS, NAGS may cancel the order.
- (ii) NAGS may offer delivery services to the Customer and may charge delivery fees for the service provided. The delivery date and time set by NAGS are estimates only and NAGS is not liable for late delivery or non-delivery of the Goods. NAGS has the absolute right to alter, change, adjust the delivery routes, destinations, services, frequencies, and fees. The delivery service (if available) is optional to the Customer and the Customer is at liberty to make alternate pick up or freight/courier arrangement at the Customer's own costs.
- (iii) At the Customer's request and at the Customer's costs, NAGS may supply the Goods through carrier or form of transport NAGS consider to be appropriate without insurance. Notwithstanding NAGS arranging the carrier or 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. The Customer has to arrange their own insurance to cover any transportation risk.
- (iv) The Customer must inspect the Goods immediately upon receipt and notify NAGS of any issue or problem within 7 days.



**4. Title and risk**

- (i) 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 or the Customer's agent or carrier, as the case may be. The Customer agrees to indemnify NAGS absolutely against loss of or damage to the Goods, regardless of how that loss or damage was caused.
- (ii) Until the Customer has paid all money owing to NAGS, the Customer shall store the Goods separately and ensure that the Goods supplied by NAGS, while in the Customer's possession, can be readily identified and distinguished; and/or all proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and traceable.
- (iii) If the Customer breaches the T&Cs, 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.
- (iv) 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's dealing or seeking to deal with those proceeds in any other manner.

**5. Payment and payment term**

- (i) Payment method by EFT is preferred.
- (ii) Payment by way of debit card or credit card (e.g., visa, Master card, American Express) attracts surcharges. The surcharge rate varies depending on the type of debit card or credit card used.
- (iii) For any cash payment, the Customer must retain the payment receipt as proof of payment.
- (iv) The Customer is responsible for any payment dishonour fee. NAGS may refuse to accept cheque or credit card payment from the Customer if the Customer has a history of dishonoured payment or the payment cannot be processed due to insufficient funds.
- (v) 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.
- (vi) Should NAGS agree to supply Goods on credit to the Customer, the following terms will apply:
  - a. NAGS can set and alter the payment term in NAGS' discretion without notice to the Customer;
  - b. NAGS may require satisfactory personal guarantee to be provided by the Customer in favour of NAGS;
  - c. NAGS may in its sole discretion require security to be granted by the Customer and/or Guarantor. Such security may, include and without limitation, be in the form of a security interest charge under the PPSA and/or a mortgage charge under the PLA. The Customer hereby agrees to grant such charges under the PPSA and/or the PLA as required by NAGS from time to time;
- (vii) NAGS may request security or additional security or personal guarantee as NAGS thinks fit and is entitled to withhold supply of any Goods or payment term until such security or additional security is given.
- (viii) Any of the following events is considered to be Customer 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, commit an act of bankruptcy, make any composition or arrangement with any creditor; or
  - c. 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.
- (ix) In the event of Customer 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. The Customer is liable for all expenses, costs and disbursements incurred in recovering any outstanding monies including debt collection fees and solicitor's costs on an indemnity basis; and



## **National Auto Glass Supplies ('NAGS')**

- c. NAGS may without notice cease supply any Goods on credit or NAGS may refuse to supply any Goods despite any agreement to the contrary.

### **6. Customer Specific Stock (e.g., special order, buy in)**

- (i) Should NAGS procure, warehouse and/or distribute Goods specifically for the Customer (e.g., through special order, custom-made, or source from another supplier for the Customer) ('Customer specific stock'), the Customer must pay and take Customer specific stock within the timeframe specified by NAGS. The order cannot be cancelled unless NAGS agree. Should the Customer fail to collect the Customer specific stock, NAGS may dispose the Customer specific stock in its discretion. NAGS shall not be liable to the Customer for any loss or damage suffered by the Customer because of the disposal of the Customer specific stock.
- (ii) The Customer specific stock is not refundable and is not returnable unless agreed by NAGS.

### **7. Return of Goods**

- (i) Please choose carefully. NAGS is not compelled by law to accept return of Goods due to change of mind, wrong order, change of circumstances, or if the Customer finds cheaper products elsewhere. NAGS has the right and discretion to decide whether to accept the return of Goods.
- (ii) The Customer acknowledges and agrees that the Customer must follow the procedures/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.
- (iii) 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. Customer specific stock, discounted, sale and non-standard item cannot be returned for credit; and
  - e. The Customer is responsible for the return freight costs (if any).
- (iv) NAGS may set other rules or procedures in relation to its return handling procedures and process.

### **8. Warranty**

- (i) For any Goods to be considered faulty or defective, the following conditions apply:
  - 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 notifies NAGS in writing within 7 days of the receipt of Goods by the Customer;
  - d. If the defect appeared after fitting, the Customer must notify NAGS immediately in writing with details of the defect;
  - e. The Customer must give NAGS the original invoice number;
  - f. The Goods must be immediately returned to NAGS 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.
- (ii) Further to preceding Clause 8(i), following special requirements applies to any defect or faulty 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 inspect 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 include vehicle details & vehicle registration number);
    - ii. Post-calibration report (the report must include vehicle details & vehicle registration number);
    - iii. Confirmation that the calibration was carried out by properly licensed or trained person;
    - iv. Photos of the vehicle including the vehicle registration 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 or faulty.
- (iii) Further to preceding Clauses 8(i) and 8(ii), 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



## **National Auto Glass Supplies ('NAGS')**

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 needs to supply photos (or video) of the HUD section (from different angles).
- (iv) For faulty or defective Goods accepted by NAGS, NAGS will either:
  - a. Accept the return of the fault or defective Goods and refund the Customer the original purchase price (excluding any freight costs); or
  - b. Supply a replacement to the Customer to the original delivery address of the Goods. If the Customer collected the Goods from NAGS warehouse, then make the replacement at the same NAGS warehouse for the Customer's collection.
- (v) NAGS does not and will not cover any incidental costs or expenses (e.g., re-fitting, re-calibration etc.).
- (vi) Before fitting any vehicle screen, NAGS recommends the Customer check and compare the screen against the OE screen with attention to the bracket and attachment, the position of the bracket and attachment, and any noticeable distortion. Occasionally, some brackets may not be 100% identical to the OE brackets for patent compliance, but nonetheless can be used. If in doubt, do not use the screen and contact the local branch servicing your account for clarification.
- (vii) NAGS reminds the Customer that incorrect use of calibration machine may lead to a faulty report. Many factors may have adverse impact on the calibration, for example: vehicle modification, pre-existing fault, tyres size/condition, vehicle alignment, battery & fuel level, surrounding light, unlevelled surface, and etc. The vehicle should not be loaded with heavy objects. It is important to follow the calibration machine guidelines.

### **9. General exclusions and limitations of liability**

- (i) NAGS is a supplier of business use Goods and sells the Goods to business, therefore the supply is not subject to the general ACL covering personal, domestic or household transactions.
- (ii) 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 or faulty Goods is limited to, at NAGS discretion:
  - a. The replacement of the Goods;
  - b. The supply of equivalent Goods; or
  - c. The refund of the Goods.
- (iii) To the full extent permitted by the law, 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 ACL where to do so would contravene that statute or cause any part of this clause to be void.
- (iv) To the maximum extent permitted by the law, NAGS excludes all liability to the Customer:
  - a. in contract for consequential or indirect damages arising out of or in connection with the T&Cs 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 the T&Cs.
- (v) To the fullest extent permissible at law, NAGS is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to supply Goods, or otherwise arising out of the provision of Goods, whether based on T&Cs, negligence, strict liability or otherwise, even if NAGS has been advised of the possibility of damages.
- (vi) The total liability for loss or damage of every kind is limited to an amount equivalent to the sum paid by you to us for the Goods.

### **10. Change in control or financial status, sale of business, cease trading or vacating premises**

- (i) The Customer warrants to NAGS that the Customer is not a bankrupt (if an individual) or in liquidation (if a company) and is not in the at the risk or in the process of becoming a bankrupt or subject to any winding up proceedings.
- (ii) The Customer must advise NAGS of all material changes in its name and/or financial status, ownership or 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.
- (iii) Should the Customer sell its 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



## **National Auto Glass Supplies ('NAGS')**

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.

### **11. Assignment**

NAGS may in its absolute discretion assign, transfer, novate, and deal in any manner with, all or any part of the right, benefit and obligation under this Deed without the consent of the T&Cs; whereas the Customer cannot assign, transfer, novate, and deal in any manner with, all or any part of the right and obligation under this T&Cs without the written consent of NAGS.

### **12. Severability and jurisdiction**

Each provision of these terms and conditions is separate from the other and if any provision is found to be avoidable or unenforceable for any reason the remaining provisions will continue to be of full force and effect. The failure by NAGS to exercise, or any delay in exercising, any right, power or privilege available to it under the T&Cs will not operate as a waiver or preclude any other or further exercise or the exercise of any other right or power. The law of New South Wales governs these terms and conditions.

### **13. Privacy**

- (i) The Customer authorises 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.
- (ii) The Customer acknowledges and agrees that NAGS collects information through its online ordering portal (e.g., MyNAGS) and NAGS may use the information as set out in Clause 13(i).

### **14. Account form**

NAGS may in its discretion deactivate the Customer's account. NAGS may request the Customer to complete a new Account Application form (or other account 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.

### **15. Entity restructure**

- (i) Prior to 3 April 2023, the NAGS business is owned by the original trading entity (National Auto Glass Supplies (Australia) Pty Ltd & A Auto Glass (Pacific) Pty Ltd Limited Partnership, (ABN 81 484 098 249)). As part of the entity restructure project, effective from 3 April 2023, everything owned by the original trading entity is assigned and transferred to the new trading entity, which is National Auto Glass Supplies Australasia Pty Ltd (ABN 36 662 932 747) named in this T&Cs.
- (ii) This means, everything the Customer is liable and owed to the original trading entity (including and not limited to Customer's account, all monies owed, debt and any other monies or liabilities owed) becomes liable and owed to the new trading entity from 3 April 2023. The Customer acknowledges, accepts, and consents to such change. The Customer agrees and covenants to pay everything the Customer is liable and owed to the original trading entity (including and not limited to Customer's account, all monies owed, debt and any other monies or liabilities owed) to the new trading entity National Auto Glass Supplies Australasia Pty Ltd (ABN 36 662 932 747).