



Terms and Conditions of Sale

1. Definitions

In these terms and conditions, unless the subject matter determines otherwise, **NAGS** means National Auto Glass Supplies (Australia) Pty Ltd & A Auto Glass (Pacific) Pty Ltd Limited Partnership (ABN 81 484 098 249) trading as **National Auto Glass Supplies** of 1A Jindalee Place Riverwood NSW 2210; **Buyer** means the person or entity who places an order to purchase Goods from NAGS; and **Goods** means the goods supplied by NAGS to the Buyer.

2. General

NAGS' supply of the Goods to the Buyer is conditional on the Buyer's acceptance, without alteration, of these terms and conditions. By agreeing to purchase the Goods from Supplier, the Buyer accepts these terms and conditions to the exclusion of any terms and conditions of the Buyer. Modification to these terms and conditions expressed in any document of the Buyer will not apply.

These conditions prevail over the provisions contained in any other document, which may conflict with provisions herein.

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 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.

3. Delivery

The delivery or completion date or times made known by NAGS to the Buyer are estimates only and NAGS is not liable for late delivery or non-delivery.

Unless otherwise agreed in writing by NAGS, the Buyer must take delivery of the Goods at NAGS address notified by NAGS. NAGS is not responsible for any loss or damage to Goods after they have been provided to a carrier despite NAGS arranging the carrier.

NAGS is not responsible to the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not NAGS is legally responsible for the event or person who caused or contributed to that loss or damage).

4. Passing of title and risk

Until all monies owed by the Buyer to NAGS have been paid to and received by NAGS, NAGS retains property and title in all Goods. The Buyer agrees to hold all Goods as bailee for NAGS and ownership and title to all the Goods will not pass to the Buyer until full payment of the Goods. The Buyer must at all times store the Goods separately and in such a way that they remain identifiable. The Buyer agrees to indemnify NAGS absolutely against loss of or damage to the Goods, regardless of how that loss or damage was caused.

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

- (i) NAGS may at any time, without notice to the Buyer, terminate any contract relating to the Goods and the bailment and may then take possession of the Goods or may assume the Buyer's interests and rights under any contract in relation to the Goods with a third party; and/or
- (ii) NAGS and its servants or agents may enter any premises owned, leased or otherwise controlled or occupied by the Buyer or the Buyer'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 Buyer indemnifies NAGS against the use of reasonable force to obtain such possession.

If the Buyer sells the Goods, the Buyer acknowledges that such sale is by the Buyer as bailee for and on behalf of NAGS. The Buyer 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 Buyer 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 Buyer 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 to such goods and orders as NAGS thinks fit, despite the Buyer dealing or seeking to deal with those proceeds in any other manner.

Despite the provisions above, NAGS will be entitled to maintain an action against the Buyer for the purchase price of the Goods and the risk in respect of loss or damage to the Goods will pass to the Buyer on delivery or collection of the Goods by the Buyer's agent or courier, as the case may be.

5. Warranty

NAGS will supply replacement Goods for Goods, which are defective, provided that:

- (i) the defects arose solely as a result of faulty design, workmanship or materials supplied by NAGS;
- (ii) the Goods have been used properly and the defect has not arisen as a result of excessive wear, misuse, neglect or accident;
- (iii) the Buyer makes the claim to NAGS in writing within 7 days of delivery to the Buyer.
- (iv) the Buyer must quote the original invoice or delivery docket number; and
- (v) the Goods are promptly returned to NAGS or the place NAGS delivered the Goods at the Buyer's cost.

NAGS will supply replacement Goods, at NAGS cost, to the original delivery address of the Goods.

6. Goods Returned For Credit.

- (i) NAGS will not accept goods for credit after 30 days from date of invoice.
- (ii) Non-standard items will not be returned for credit.
- (iii) In all cases the original delivery docket or invoice number must be quoted and return freight must be prepaid by you.
- (iv) Used product will not be credited under any circumstances.
- (v) Returns for credit may incur a 20% administration & restocking fee



7. Payment and Granting of credit facilities

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 Buyer, a credit will be issued to the Buyer.

In the event that NAGS grants a credit facility to the Buyer the following terms will apply:

- (i) the invoiced amount is payable in line with the approved payment terms, and is based on a number of days following the end of the month in which the Goods were purchased (**Payment Date**);
- (ii) in the event of any default in NAGS payment terms:
 - a. all monies owing by the Buyer 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 Buyer 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; and
- (iii) NAGS is 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.

NAGS may require personal Guarantor(s) to be provided by the Buyer in favour of NAGS before the supply of Goods by NAGS.

8. General exclusions and limitations of liability

To the full extent permitted by the law, NAGS liability in respect of a claim under clause 5 or pursuant to any statutory remedy available to the Buyer for defective Goods is limited to, at NAGS discretion:

- (i) The replacement of the Goods or the supply of equivalent goods, or the repair of the Goods; or
- (ii) The payment of the cost of replacing the Goods or supplying equivalent Goods or repairing the Goods.

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 (including the Competition and Consumer Act 2010 (Cth) formerly the Trade Practices Act 1974 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.

To the maximum extent permitted by the law, NAGS excludes all liability to the Buyer:

- (i) 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
- (ii) 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,

But where such exclusion would contravene the provision of any statute (including the Competition and Consumer Act 2010 (Cth)) or cause any part of this clause to be void, NAGS limits its liability to the Buyer to the maximum extent permitted by the law.

9. Change in control or financial status

The Buyer must advise NAGS of all material changes in its name and/or financial status and/or ownership or management, within 30 days after they occur. The Buyer 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 Buyer and the Guarantor being liable for all purchases of goods post changes to ownership name and/or financial status and/or ownership or management.

10. Buyer selling business, ceasing to trade, or vacating the premises

If the Buyer sells the business, cease to trade or trade or vacate the premises, the Buyer must notify NAGS in writing **prior to the settlement, or immediately** upon ceasing to trade or vacating the premises. The Buyer will also advise NAGS of forwarding addresses and contact phone numbers. The Buyer agrees that if the Buyer does not notify NAGS in writing, and the Buyer does not have NAGS' acknowledgment in writing, the Buyer will become personally liable for all outstanding monies owed to NAGS by the company/business. The Buyer understands that NAGS requires this information so that it may take possession of its stock under Retention of Title.

11. 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 law of New South Wales governs these terms and conditions.

12. Variation

NAGS reserve the right to vary these terms and conditions without notice to the Buyer.

13. Bankruptcy Declaration

The Buyer declares that the Buyer is not a Bankrupt and has not been a Director/s of a company that has been declared Bankrupt and has had no Judgement against the Buyer.

14. Privacy Agreement

The Buyer agrees that NAGS may seek from or give to other credit providers details about the Buyer's credit worthiness (Section s18N(1)(b) Privacy Act 1988).

15. Account form

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