

1. Definitions

- 1.1 **“Seller”** means DB & PA James Limited T/A Novus New Zealand (**“Novus”**), its successors and assigns or any person acting on behalf of and with the authority of Novus.
- 1.2 **“Conditions”** means these terms and conditions to be read and construed with each Purchase Order and/or Quotation.
- 1.3 **“Customer”** means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.
- 1.4 **“Guarantor”** means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.5 **“Goods”** means all Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer).
- 1.6 **“Price”** means the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 3 of this contract.
- 1.7 **“Purchase Order” and “Quotation”** means any purchase order issued by the Customer or quotation issued by the Seller for the purposes of supplying Goods and/or Services which shall form part of and be read and construed with these Conditions.
- 1.8 **“Services”** means all windscreen repair or replacement services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods).
- 1.9 **“Vehicle”** means the Customer’s vehicle into which Goods and/or Services are supplied.

2. Acceptance

- 2.1 Any Purchase Order or instructions received by the Seller from the Customer for the supply of Goods and/or Services or the Customer’s acceptance of Goods and/or Services supplied by the Seller shall constitute acceptance of these Conditions.
- 2.2 Where more than one Customer has entered into an agreement with the Seller, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these Conditions by the Customer the Conditions are binding and can only be amended with the written consent of the Seller.
- 2.4 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, phone and email, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer’s failure to comply with this clause.
- 2.5 Goods are supplied by the Seller only on these Conditions to the exclusion of anything to the contrary in the terms of the Customer’s order, notwithstanding that any such order is placed on terms that purport to override these Conditions.

3. Price And Payment

- 3.1 At the Seller’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Customer in respect of Goods and/or Services supplied; or
 - (b) the Seller’s current price at the date of delivery of the Goods and/or Services according to the Seller’s current Price list; or
 - (c) the Seller’s quoted Price (subject to clause 3.2).
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Quotation and will be shown as variations on the invoice.
- 3.3 At the Seller’s sole discretion:
 - (a) payment shall be due on delivery of the Goods and/or Services; or
 - (b) payment shall be due before delivery of the Goods and/or Services; or
 - (c) payment for approved Customers shall be due on the 20th day of the month following the date of the invoice.
- 3.4 Payment will be made by cash, credit card (including the Seller’s current surcharge), from the Customer’s insurer, or by any other method as agreed to between the Customer and the Seller.
- 3.5 GST and other taxes and duties that may be applicable shall be added to the Price, except when they are expressly included in the Price.
- 3.6 The Customer shall not be entitled to make any deduction from the Price of the Goods and/or Services in respect of any set-off or counterclaim or withhold any payment by way of retention without the prior written approval of the Seller.

4. Delivery Of Goods

- 4.1 At the Seller’s sole discretion, delivery of the Goods and/or Services shall take place when:
 - (a) the Customer takes possession of the Vehicle at the Seller’s address; or
 - (b) the Customer takes possession of the Vehicle at the Customer’s nominated address (in the event that the Vehicle is delivered by the Seller or the Seller’s nominated carrier); or
 - (c) the Customer’s nominated carrier takes possession of the Vehicle in which event the carrier shall be deemed to be the Customer’s agent.
- 4.2 At the Seller’s sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Customer’s account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Vehicle when the Services are completed. In the event that the Customer is unable to take delivery of the Vehicle as arranged then the Seller shall be entitled to charge a reasonable fee for storage and redelivery.
- 4.4 Delivery of the Vehicle to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Conditions.

- 4.5 The failure of the Seller to deliver shall not entitle either party to treat this agreement as repudiated.
- 4.6 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to complete the Services or deliver the Vehicle.

5. Risk

- 5.1 All risk for the Goods passes to the Customer on delivery.
- 5.2 The Seller shall not be liable for any loss or damage whatsoever to the Vehicle whilst in the possession of the Seller. It shall be the responsibility of the Customer to ensure that the Vehicle is insured at all times whilst the Services are performed.

6. Ownership

- 6.1 The Seller and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
- (a) until such time as ownership of the Goods shall pass from the Seller to the Customer, the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
 - (b) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Vehicle, up to and including the amount the Customer owes to the Seller for the Goods, on trust for the Seller; and
 - (c) until such time as payment for the Goods and/or Services has been made by the Customer, the Seller shall be entitled to retain possession of the Vehicle.

7. Personal Property Securities Act 1999 ("PPSA")

- 7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods supplied by the Seller to the Customer (if any) and any Vehicle into which Goods are installed by the Seller.
- 7.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement

- on the Personal Property Securities Register or releasing any Goods or Vehicle;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Seller.
- 7.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.

8. Security And Charge

- 8.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in such land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these Conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable to the Seller have been met;
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements, including legal costs on a solicitor and own client basis; and
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.

9. Customer's Disclaimer

- 9.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods and/or Services are bought relying solely upon the Customer's skill and judgment.

10. Defects

- 10.1 The Customer shall inspect the Goods and/or completed Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description, Purchase Order or Quotation. The Customer shall afford the Seller an opportunity to inspect the Goods

and Vehicle within a reasonable time following delivery if the Customer believes the Goods and/or Services are defective in any way. If the Customer fails to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods or repeating the Services.

10.2 Under no circumstances will the Seller be liable for any direct or indirect consequential losses or damages or loss of profit incurred by the Customer as a result of defective Goods and/or Services.

11>Returns

11.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 10.1;
- (b) the Seller has agreed in writing to accept the return of the Goods;
- (c) the Goods are returned at the Customer's cost within seven (7) days of delivery;
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

11.2 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.

12.Warranty

12.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

13.Consumer Guarantees Act 1993

13.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Customer.

14.Default & Consequences Of Default

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and, at the Seller's sole discretion, such interest shall compound monthly at such rate) after as well as before any judgment.

14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Seller.

14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt, including legal costs

on a solicitor and own client basis and the Seller's collection agency costs.

14.4 Without prejudice to any other remedies, the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the right to suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the Conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

14.6 Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all or any part of any Purchase Order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Seller becomes overdue, or, in the Seller's opinion, the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15.Cancellation

15.1 The Seller may cancel any contract, Purchase Order or Quotation to which these Conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered or carried out by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.Privacy Act 1993

16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:

- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
- (b) disclose information about the Customer and/or Guarantors, whether collected by the Seller from the Customer and/or Guarantors directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.

16.2 Where the Customer and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.

16.3 The Customer and/or Guarantors shall have the right to request the Seller for a copy of the information about the Customer and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer and/or Guarantors held by the Seller.

17. Unpaid Seller's Rights

17.1 Where the Customer has left any Vehicle with the Seller for repair, modification, exchange or for the Seller to perform any other Services in relation to the Vehicle and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the Vehicle;
- (b) the right to retain the Vehicle for the Price while the Seller is in possession of the Vehicle; and
- (c) a right to sell the Vehicle.

17.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

18. General

18.1 If any provision of these Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 These Conditions, and any contract to which they apply, shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

18.3 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.

18.4 In the event of any breach of these Conditions by the Seller, the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

18.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

18.7 The Seller reserves the right to review these Conditions at any time and publish any changes on its website. If, following any such review, there is to be any change to these Conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.

18.8 Neither party shall be liable for any default due to any force majeure event, such as an act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

18.9 The failure by the Seller to enforce any provision of these Conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

T