

**CONFIDENTIAL CREDIT APPLICATION / CONTRACT**

Thank you for applying for a credit facility with Carglass NZ Ltd, T/A Smith & Smith Glass. To enable prompt processing of your application please complete and return the signed original documents to the attention of the **Credit Department, Smith & Smith Glass, PO Box 17307, Greenlane, Auckland**

TYPE OF BUSINESS     Ltd Company     Partnership     Sole Trader     Trust\*     Other \_\_\_\_\_

**NAME OF APPLICANT** \_\_\_\_\_  
(FULL LEGAL NAME)

**TRADING NAME** \_\_\_\_\_ CO REGISTRATION No. \_\_\_\_\_  
(IF DIFFERENT FROM ABOVE)

POSTAL ADDRESS \_\_\_\_\_ POST CODE \_\_\_\_\_

PHYSICAL ADDRESS \_\_\_\_\_ POST CODE \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

TELEPHONE BUS ( ) \_\_\_\_\_ MOB \_\_\_\_\_ AH ( ) \_\_\_\_\_ FAX ( ) \_\_\_\_\_

\* NAME OF TRUST \_\_\_\_\_ .if yes please provide a copy of the Trust Deed

YEAR BUSINESS COMMENCED \_\_\_\_\_ NATURE OF BUSINESS \_\_\_\_\_ EST MONTHLY SPEND \_\_\_\_\_

**APPROXIMATE FLEET SIZE**    10-40    41-200    201-500    501-1000    1001+

ACCOUNTANT \_\_\_\_\_ TELEPHONE \_\_\_\_\_

LANDLORD \_\_\_\_\_ TELEPHONE \_\_\_\_\_

ACCOUNTS PAYABLE CONTACT \_\_\_\_\_ TELEPHONE \_\_\_\_\_

EMAIL \_\_\_\_\_ BANK \_\_\_\_\_ BRANCH \_\_\_\_\_

**DETAILS OF OWNERS / PARTNERS / DIRECTORS / TRUSTEES**

LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_ MIDDLE NAME \_\_\_\_\_ DOB \_\_\_\_\_

HOME TELEPHONE \_\_\_\_\_ #DRIVERS LICENCE \_\_\_\_\_ EXP DATE \_\_\_\_\_ TYPE \_\_\_\_\_  
# DRIVERS LICENCE DETAILS NOT REQUIRED FOR LTD COMPANIES

HOME ADDRESS \_\_\_\_\_ POST CODE \_\_\_\_\_

LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_ MIDDLE NAME \_\_\_\_\_ DOB \_\_\_\_\_

HOME TELEPHONE \_\_\_\_\_ #DRIVERS LICENCE \_\_\_\_\_ EXP DATE \_\_\_\_\_ TYPE \_\_\_\_\_  
# DRIVERS LICENCE DETAILS NOT REQUIRED FOR LTD COMPANIES

HOME ADDRESS \_\_\_\_\_ POST CODE \_\_\_\_\_

LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_ MIDDLE NAME \_\_\_\_\_ DOB \_\_\_\_\_

HOME TELEPHONE \_\_\_\_\_ #DRIVERS LICENCE \_\_\_\_\_ EXP DATE \_\_\_\_\_ TYPE \_\_\_\_\_  
# DRIVERS LICENCE DETAILS NOT REQUIRED FOR LTD COMPANIES

HOME ADDRESS \_\_\_\_\_ POST CODE \_\_\_\_\_

HAS THE APPLICANT OR GUARANTOR EVER BEEN THE SUBJECT OF ANY LEGAL ACTION INCLUDING, SUMMONS, JUDGEMENT, WRIT ETC YES NO if yes please provide detail \_\_\_\_\_

**PLEASE PROVIDE THREE TRADE REFERENCES**

	NAME:	ADDRESS:	PHONE No.	FAX No.
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

**Privacy Act 1993 Disclosure**

This statement relates to the Customer's personal information provided to or obtained by the Supplier and which the Supplier may hold about the Customer now or in the future (*Information*)

This information will be used by the Supplier, and the Supplier's Insurers in deciding whether to establish a trading account with the Customer and/or provide credit to the Customer. If the Customer does not provide all of the required information its application may be declined. The Supplier may also from time to time provide the Customer with details of its products and services and generally further its relationship with the Customer (unless it ticks the box below.

The Supplier will hold the information at its business premises and will only use or disclose the information for the purposes detailed here or if required or authorised by law. The Privacy Act 1993 gives the Customer rights to access and/or correct the Information (if the Customer is a natural person).

**Privacy Act 1993 Declaration**

The information contained in this application is true and complete.

The Customer authorises the Supplier and the Supplier's insurer's to make any inquiries the Supplier considers appropriate relating to the information or this application, and for the operation of a trading account, and for the purposes to disclose to and seek from any financial institution, credit reporting or credit rating agency of other party, any additional information including information about the Customer's financial affairs. The Customer authorises any party approached to provide this information to the Supplier and the Supplier's Insurers.

The Customer authorises the Supplier and the Suppliers Insurers to disclose the Information to each other and to the Supplier's related companies, potential assignees, credit rating and credit reporting agencies and (if necessary) for debt collection purposes.

**Sole Trader:** \_\_\_\_\_ (signed by the applicant) Date: \_\_\_\_\_

**Partnership / Trustee / Company**

I/We warrant that I/We are duly authorised to sign this application and to bind the applicant to this agreement with the members of the group

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Minimum of **two** partners must sign (Partnerships)

**Guarantee**

In CONSIDERATION of the supplier at my request extending supply and credit to the applicant named herein (called "the customer") and forbearing for one day from the date of hereof to press for payment of any monies owing by the customer.

I, \_\_\_\_\_ (full name)

Of \_\_\_\_\_ (address)

(:the Guarantor") agree, declare and undertake as follows:

1. I unconditionally guarantee the due and punctual payment of all monies (including interest) now or at any time hereafter due and owing by the customer to any the supplier (such amounts incurred with or without my knowledge). I acknowledge that this guarantee is a continuing guarantee and shall be irrevocable and shall remain in force and effect until the whole of the monies for which the customer may be or become liable shall have been paid or satisfied and I accept that I have the liability of a principal debtor for all monies and all indebtedness due by the customer.
2. I accept that my guarantee is unaffected by the unenforceability of payment of any amount referred to in paragraph 1 of this guarantee, by liquidation or bankruptcy of the customer, by the giving of time or any indulgence by the supplier to the customer or otherwise and if any payment made to the supplier by or on behalf of the customer or me be avoided by law, such payment shall be deemed not to have discharged or affected my liability hereunder and in that event the supplier and me shall be restored to the position in which each would have been if such payment had not been made.
3. I will upon demand pay all the expenses and legal costs (on a solicitor/ agent / client basis ) incurred by the supplier in the collection of all or any monies due and owing by me pursuant to the guarantee.

Signature of Guarantor: \_\_\_\_\_ Date: \_\_\_\_\_

In the presence of witness: Name: Occupation: \_\_\_\_\_

Witness address: \_\_\_\_\_

Signature of witness: \_\_\_\_\_

I Do Not wished to be informed of Smith & Smith's products & services

**HEAD OFFICE USE ONLY:**

Account Numer: \_\_\_\_\_ Date Opened: \_\_\_\_\_ Approved: \_\_\_\_\_

## TERMS AND CONDITIONS

### ***Terms and conditions prevail***

1. Any goods or repair or replacement services supplied to the Customer by the Supplier will be supplied on these terms and conditions. The only circumstances where any variation to these terms and conditions will apply is where the Supplier has expressly agreed to that variation in writing.

### ***Authority to drive vehicles***

2. The Customer's motor vehicle may be driven by staff and/or agents of the Supplier for the purpose of collection or delivery of the vehicle and in connection with the performance of the work itself whether within its premises or on a public road or elsewhere. The Supplier will not be liable for any loss or damage to the Customer's vehicle or its contents.

### ***Price and Payment***

3. By authorising the Supplier to proceed with the work as shown under *Customer Instruction* on the face of any invoice, the Customer accepts the price set out in that invoice, and is bound to pay that price from time that the Supplier is authorised to proceed.
4. List prices may be altered from time to time without notice and goods will be charged at those prices applicable at the date of dispatch.
5. Payment will be due on delivery of the goods unless a supply account has been opened in accordance with the Supplier's policy, in which case payment is due 30 days from date of invoice. Payment for any parts purchased in advance in connection with the above quote work is required whether or not the Customer's authorisation to proceed with the work is given.
6. Each Customer Instruction accepted by the Supplier shall constitute a separate contract for the supply of the particular goods on these terms and conditions. A quotation does not give rise to a binding contract in respect of particular goods until the Customer places an order which is subsequently accepted by the Supplier.
7. The Supplier is entitled to charge default interest on all amounts not paid by the due date for payment. Default interest will be calculated on a daily basis from the due date for payment until the date the Supplier receives payment at such rate (plus GST) as may be determined by it but not exceeding the rate charged to the Supplier by its principal banker from time to time on overdrafts. The charging of interest does not imply the granting or extension of credit.
8. Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding moneys from the Customer, including debt collection agency fees and commission, and all legal costs (on a full indemnity basis), are to be paid by the Customer.
9. The Customer may not deduct or withhold any amount (whether by way of set-off counterclaim or otherwise) from any money owing to the Supplier.

***[The following sections apply to wholesale supplies and retail supplies for vehicles used for business purposes. They do not apply to retail supplies for private motor vehicles.]***

### ***Title***

10. Title in goods supplied by the Supplier will not pass to the Customer until the Amount Owing has been paid in full.
11. The Customer confirms that until title in the goods supplied passes to it, the Customer will hold the goods for and on behalf of the Supplier as bailee and will store them in a way that makes it clear that they are the property of the Supplier. The Customer must not remove or destroy any means of identification of the goods.
12. Unless the Supplier advises the Customer otherwise, the Customer may resell the goods before title to them passes to the Customer, but only by way of genuine sale in the ordinary course of its business. This authority is revoked immediately if:
  - (a) an Event of Default occurs; or
  - (b) the Supplier notifies the Customer in writing that this authority is revoked.
13. The Supplier will be legally and beneficially entitled to the proceeds from the resale of any goods (less the Customer's profit margin or commission on the resale) by the Customer and the Customer must account to the Supplier for those amounts. The Customer must, if requested by the Supplier, pay the proceeds into a separate bank account established for this purpose, but the Customer must never pay the proceeds into a bank account which is overdrawn. The Customer must account to the Supplier for the full price of the goods from this account.
14. Until title in all the goods supplied by the Supplier passes to the Customer, the Supplier reserves the right to enter the Customer's premises (or the premises of any associated company or agent where the goods are located) at any time, without notice or liability for trespass or any resulting damage, and retake possession of the goods.

15. The Supplier may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as the Supplier thinks fit (despite any direction to the contrary and whether before or after the occurrence of an Event of Default).

16. Metal stillages in which the goods the subject of these terms and conditions are delivered remain the property of the Supplier and must be returned within [ ] days/weeks following receipt of those goods.

***Transport and Risk***

17. All risk in relation to the goods will pass to the Customer when the goods are delivered to the vehicle which is to effect delivery from the Supplier's premises.

18. The Supplier will provide transport and insurance for the goods on the Customer's behalf unless the Customer elects to provide these services. Freight and insurance charges will be to the Customer's account.

19. If the Customer uses common carriers or rail transport the Customer will bear all risks in relation to transportation unless the Customer has specifically instructed the Supplier to arrange for insurance on the Customer's behalf and payment has been received by the Supplier for that insurance.

***Personal Property Securities Act 1999***

20. Without limiting anything else in these terms and conditions, the Customer acknowledges that:

- (a) these terms and conditions create, in favour of the Supplier, a security interest in all present and after acquired goods (being, for the avoidance of doubt, all the Customer's present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Supplier to (or for the account of) the Customer) to secure the payment by the Customer to the Supplier of the Amount Owing;
- (b) these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
- (c) the Security Interest shall continue until the Supplier gives the Customer a final release.

21. The Customer undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any information which the Supplier may reasonably require to enable the Supplier to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
- (b) give the Supplier (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed 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, facsimile number, trading name or business practice).

22. The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.

23. To the extent permitted by law, the Customer and the Supplier contract out of:

- (a) section 114(1)(a) of the PPSA; and
- (b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

24. The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

***Default***

25. If an Event of Default occurs:

- (a) the Supplier may suspend or terminate any contract;
- (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
- (c) the Supplier may enforce the Security Interest; and
- (d) the Supplier may (without the consent of the Customer) appoint a receiver in respect of any goods and any receiver is authorised to do anything referred to in these terms and conditions and otherwise to exercise all rights and powers conferred on a receiver by law.

26. The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any goods are at risk, the Supplier may:
- (a) take possession of any goods; and/or
  - (b) sell or otherwise dispose of any goods,
- in each case in such manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer could do in relation to those goods. The Supplier and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if, and only for so long as, the Supplier is not the secured party with priority over all other secured parties in respect of those goods. As the Customer's agent, the Supplier (and its employees and agents) may, without prior notice, enter any land or premises where the goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Supplier (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Supplier may resell any of the goods and apply the proceeds of sale in reduction of the Amount Owing.

***Warranties and Limitations***

27. Except to the extent of any rights the Customer may have under the Consumer Guarantees Act 1993 and without limiting those rights:
- (a) all warranties, descriptions, representations or conditions whether implied by statute or otherwise by law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law;
  - (b) the Customer agrees that the Supplier and anyone that the Supplier is responsible for, is not liable to the Customer at law, by statute, in equity or otherwise arising from the relationship between the Customer and the Supplier for any loss, damage or injury arising directly or indirectly for the supply or non-supply of goods for any breach of the Supplier's obligations under these terms or for any other reason which relates to these terms or the goods or services supplied;
  - (c) if, despite that the other provisions of these terms, the Supplier is found to be liable to the Customer in law, by statute, in equity or otherwise arising from the relationship between the Customer and the Supplier then, without limiting the Customer's obligation to indemnify the Supplier in accordance with these terms, the Supplier's liability for any single event or series of related events is limited to \$1,000.00.

***Consumer Guarantees Act 1993***

28. If the vehicle in which the glass is being repaired or replaced is used for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the purchase of goods and services by the Customer. If the Customer re-supplies any goods supplied to the Customer by the Supplier to a person acquiring them for installation in a vehicle used for the purposes of a business or who on-supplies them in trade, the Customer must have a written term in the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply to that person's acquisition of the goods and requiring that person to have in its terms of supply to its customers a condition similar to this clause.

***General***

29. If the Supplier exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Supplier's rights in exercising that or any other right or remedy. A waiver of any of these terms and conditions must be specified in writing and signed by an authorised officer of the Supplier.
30. The Supplier is entitled at any time to assign to any other person all or part of any debt owing by the Customer to the Supplier.
31. The Supplier reserves the right to review any of these terms and conditions at any time and from time to time. If, following any such review, there is any change to these terms and conditions that change will take effect from the date on which the Supplier gives notice to the Customer of such change.
32. The rights, powers and remedies provided for in these terms and conditions are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Supplier by law.
33. These terms and conditions are governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

***Interpretation***

**"Amount Owing"** means, at any time, the unpaid price charged by the Supplier for the goods, and any other sums which the Supplier is entitled to charge under these terms and conditions or which are otherwise owing by the Customer to the Supplier (in whatever capacity).

An **"Event of Default"** means an event where:

- (a) the Customer fails to comply with these terms and conditions or any other agreement with the Supplier; or
- (b) the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event; or
- (c) an event occurs or information becomes known to the Supplier, which in the Supplier's opinion, might materially affect the Customer's creditworthiness, the value of the goods the subject of the Security Interest, or the Customer's ability or willingness to comply with its obligations under these terms and conditions or any other agreement with the Supplier; or
- (d) any guarantor of the Customer's obligations under these terms and conditions is in default under any agreement with the Supplier (in any capacity).

**"goods"** means all goods supplied from time to time by the Supplier to the Customer, provided that:

- (a) (but solely for the purpose of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to goods in these terms and conditions shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
  - (b) where the goods supplied are not inventory of the Customer, then all references to goods in these terms and conditions shall, in respect of those goods, mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Supplier and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Customer, incorporated in, and form part of, these terms and conditions,
- and (unless the context requires otherwise) includes all proceeds of such goods and any product or mass which the goods subsequently become part of.

**"PPSA"** means the Personal Property Securities Act 1999.

**"Security Interest"** means the security interest provided for by these terms and conditions.

In these terms and conditions:

- (a) a reference to a contract, these terms and conditions or any other document includes any variation or replacement of them;
- (b) a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (c) unless the context otherwise requires, words and phrases shall have the meaning given to them in, or by virtue of, the PPSA.