



## Terms and Conditions 2018 - 1

These terms and conditions apply, unless varied in the quotation

- 1) **Definitions:**
  - a) "Agreement" the acceptance by You of this Quotation and these terms and conditions, in writing or by conduct.
  - b) "Force Majeure Event" means any event outside Sachr Signage's reasonable control including acts of God; declared or undeclared war; fire; flood; storm; earthquake; hurricane; cyclone; riot; power failure; industrial action; defaults of manufacturers or suppliers; the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay; labour disputes; theft; any criminal act or other similar events beyond Sachr Signage's control that may prevent or delay Sachr Signage's supply of the Goods, Product and/or Services to You.
  - c) "Goods" means any components or materials which Sachr Signage uses to manufacture or which forms part of the Product.
  - d) "IP" means copyright, concepts, designs, methods of working, artistic works, documents, trademarks, software, knowhow and/or inventions, specifications and/or any other intellectual property, and rights to the same.
  - e) "Normal Working Hours" means Monday to Friday between 8.00am and 4.30pm.
  - f) "Practical Completion" the sign/s is/are functional and can be used (subject to electricity connection).
  - g) "Product" means anything which Sachr Signage manufactures for you and/or provides to You, in performing the Work.
  - h) "Quotation" means the accompanying offer. If you accept this Quotation (which includes acceptance in writing, by conduct or verbal confirmation), you also accept these terms and conditions, unless otherwise agreed in writing by the Sachr Signage Managing Director.
  - i) "Sachr Signage" means Sachr Pty Limited ABN 63 103 925 462 t/as Sachr Signage.
  - j) "Services" means and includes delivery and installation, technical advice or maintenance services (if any) given or provided by or on behalf of Sachr Signage in connection with the Goods and Product.
  - k) "Site" means the site/s identified in the Quotation.
  - l) "You" and "Your" means the person or company or entity who has requested / agreed to this Quotation.
- 2) **Quotation / Agreement:**
  - a) These Terms and Conditions apply to any Quotation issued by Sachr Signage for the provision of Product, Goods and/or Services.
  - b) You, acting as the customer, acknowledge that you have read and understood the above Quotation and these Terms and Conditions ("**Terms**") and accepted these Terms before proceeding with approval and authorisation of this Quotation with Sachr Signage.
  - c) Sachr Signage may vary or withdraw a Quotation at any time prior to it being accepted by You. This Quotation is subject to final Site details, including but not limited to dimensions, conditions and restrictions.
  - d) Acceptance by You may be in writing (by email, letter or facsimile) or by conduct (you instruct Sachr Signage to proceed).
  - e) If a change in a legislative requirement or the requirements of any authority necessitates a change to the Product, Goods and/or Services and causes Sachr Signage to incur more cost than would otherwise have been incurred, the additional cost shall be added to the Quotation.
- 3) **Payment terms:**
  - a) A 50% deposit with this completed form or your official company order, is required to commence the works. The 50% balance is due on earlier of: delivery or Practical Completion, except that pre-approved account clients are strictly 30 days on the earlier of: delivery or Practical Completion.
  - b) Once commenced, all work must be paid for by You, in full or part thereof as estimated by Sachr Signage.
  - c) Sachr Signage reserves the right to charge You progress claims during the course of this Agreement.
  - d) Interest is charged at 3% per month (calculated daily) on any outstanding amount owed to Sachr Signage, from the date due until paid.
  - e) Payment to Sachr Signage must be made in full without any deductions or restrictions for any set offs or counter claims by You on the due date advised.
- 4) **Title:**
  - a) Sachr Signage will retain title to Goods / Product supplied to You until Sachr Signage has received payment in full for the Goods / Product and all other Goods / Product and Services supplied by Sachr Signage to You.
  - b) Until title passes in accordance with this clause, You will:
    - i) hold the Goods / Product as fiduciary for Sachr Signage (in which full title to such Goods / Product will remain);
    - ii) keep the Goods / Product insured against all usual risks to full replacement value and account to Sachr Signage any insurance monies received by You for Goods / Product owned by Sachr Signage;
    - iii) store each delivery of Goods / Product separately, clearly identified as Sachr Signage's property;
    - iv) not encumber or allow any lien, charge or other security interest to be created over the Goods / Product.
  - c) Nothing in this clause will affect Sachr Signage's right to be paid by You in accordance with this Agreement.
  - d) Sachr Signage will be entitled, without prejudice to Sachr Signage's other rights, to recover and repossess such Products / Goods and to enter any premises and the Site without notice to You.
  - e) You acknowledge and agree that Sachr Signage may retain 3 printed samples of any work performed for You, both for quality control and for promotional purposes and may, at its discretion, seek registration for any IP arising from the Goods/Product and/or Services without reference to You and/or any other entity or person. You acknowledge and agree that You have no claim to the IP and/or IP rights and You will ensure that any person employed or independently contracted to You will waive any and all moral rights in any and all territories.
- 5) **Site readiness:**
  - a) Our Quotation is based on Site conditions at the date of this Quotation and assumes a Site clear of other trades and with clear access. If any Site conditions change after this time that add any additional costs for the Products installation, You agree to pay for these as an expense.
  - b) You must satisfy all legislative requirements and the requirements of all authorities except to the extent expressly allowed for by Sachr Signage in the Quotation. Without limiting the generality of the foregoing, at your cost You must obtain and provide all approvals, permits, licences, security, traffic controllers, hoardings and power required for the Products / Good installation and operation, and provision of Services.
  - c) All work into ground has been quoted as natural earth, free and clear of obstructions, pipes, tree roots, wiring, solid rock etc.
  - d) Should any additional costs be incurred to complete the Work due to any unforeseen or hidden obstructions behind, above or under any surfaces at Site, these costs will be additional and at Your expense.
  - e) Any 240 volt primary wiring to the Product, its connection and any on/off control systems are not included in this Quotation.
- 6) **Surface and installation area / Site readiness:**
  - a) The surface, place and access to the immediate working area of the actual intended installation / Site must be ready and appropriately prepared by You, be free of other trades and be open and accessible.
  - b) You must allow for and advise Sachr Signage of any Site free and clear access timing delays, such as induction and Site operating hours. Any alterations to scheduled free and clear Site access will incur charges at Sachr Signage's usual hourly rates and a cancellation fee if Site access needs to be re-scheduled.
- 7) **Delivery & installation:**
  - a) All production and on-Site work has been quoted in Normal Working Hours and in one continuous operation.
  - b) Cancellation by You of an agreed installation date within 2 normal working days before due installation time and date will incur a full charge, unless otherwise agreed in writing by Sachr Signage.

**8) Delays & Cancellation:**

- a) Should the project be delayed by You or for reasons beyond the control of Sachr Signage, the completion date (and interim delivery / installation dates) may be rescheduled by Sachr Signage.
- b) Site installation delays not due to Sachr Signage or its workmen are charged additionally to You and at a rate as set by Sachr Signage, and You agree to pay those rates.
- c) In the event that You fail to provide delivery or installation instructions, within 10 business days of a request issued by Sachr Signage for such information, Sachr Signage reserves the right to charge for Product storage (pending delivery advice and delivery) and You agree to pay for same.
- d) Manufacturing and installation delays will not entitle You to cancel the contract or seek compensation.
- e) If, after authorising this Quotation, you seek to cancel this Agreement, contract, order, delivery of the Product, after Sachr Signage have ordered the Goods, provided Services or started production / assembly of the Product, you must still, and You agree to be liable for, and to pay, Sachr Signage in full, in accordance with this Agreement and for any cancellation costs / fees incurred by Sachr Signage.

**9) Variations:**

- a) Designs and artworks (in whatever form) provided by Sachr Signage are only to show You a concept of the final Product. You accept variations to the final Product, including but not limited to: its appearance, illumination, colours, finishes and function, may exist including but not limited to: due to the varying production methods, materials and lighting systems used to complete the Product.
- b) The final selection of all materials, finishes, colours, lighting and production systems used to complete the Product shall be at the discretion of Sachr Signage.
- c) Unless specified on supplied drawings or in writing at the time of order / Quotation, the final positioning and the type of installation fixings for all Products shall be at the discretion of Sachr Signage or its installers.

**10) Defects:**

- a) You must:
  - i) examine the Product/s and Goods as soon as reasonably practicable after delivery and again after installation;
  - ii) immediately notify Sachr Signage in writing of any incomplete or defective Product, Goods or Services or any other failure to comply with the Agreement within 7 days of delivery of the relevant Product/s, Goods or performance of the relevant Services and again on completion of installation (failure to so provide defects notification will, to the extent legally possible, void our Product Warranty to You); and
  - iii) preserve, as far as possible for Sachr Signage's inspection, Product/s / Goods that are alleged not to comply with the Agreement and return Product/s / Goods to Sachr Signage if Sachr Signage so requests.
- b) If You fail to strictly comply with the sub-clause above, You will be deemed to have waived your right to claim in connection with the Product, Goods and/or Services and You are barred from bringing any action whatsoever against Sachr Signage in connection with Product, Goods, Services and/or the Agreement.

**11) Default:**

- a) If You commit a breach of the Agreement and that breach has not been remedied within 3 days of the breach occurring, Sachr Signage may either suspend the Goods / Product and/or Services or terminate the Agreement, and Sachr Signage will be entitled to damages.
- b) Sachr Signage reserves the right immediately to terminate or suspend Sachr Signage's performance of the whole or any outstanding part of any Agreement for the supply of Goods and/or Services without incurring any liability to You in any of the following circumstances:
  - i) You fail to take delivery of or to pay for Goods and/or Services by the due date or otherwise breaches any other term of the Contract;
  - ii) You inform Sachr Signage, or creditors generally, that You are insolvent or financially unable to proceed with the Agreement;
  - iii) execution is levied against You by a creditor;
  - iv) You are an individual person or a partnership including an individual person, and if that person:

- (1) commit an act of bankruptcy;
- (2) have a bankruptcy petition presented against You or present Your own petition;
- (3) are made bankrupt;
- (4) make a proposal for a scheme of arrangement or a composition; or
- (5) have a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cwlth) or like provision under the law governing the Contract; or
- v) in relation to You being a corporation:
  - (1) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (2) it enters a deed of company arrangement with creditors;
  - (3) a controller or administrator is appointed;
  - (4) an application is made to a court for its winding up and not stayed within 14 days;
  - (5) a winding up order is made in respect of it;
  - (6) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
- vi) a mortgagee of any of its property takes possession of that property;
- vii) Sachr Signage notifies You of having reasonable grounds for suspecting that You will not pay for Goods, Product and/or Services on the due date;
- viii) there has been a substantial increase in Sachr Signage's costs of manufacture and supply of Goods, Product and/or Services after the date of the Quotation arising from circumstances beyond Sachr Signage's reasonable control where the Contract is for a fixed price and Sachr Signage and You have failed to reach agreement on a reasonable adjustment in the Price within thirty (30) days of Sachr Signage notifying You of such increase; or
- ix) contractual performance by either Sachr Signage or You is delayed or prevented due to any Force Majeure Event.

**12) IP:**

- a) Sachr Signage owns the IP of any work it produces for You or at the request of You, including the creation of the Product, use of Goods and provision of Services.
- b) Any use of Sachr Signage's IP by You or by others through You, must be obtained under a prior, written, licence or other approval from Sachr Signage. Note: A licence fee may apply.
- c) You warrant You own the IP in the designs, goods, materials, documents and methods of working You provide to Sachr Signage ("**Supplied IP**") and grant to Sachr Signage an irrevocable and royalty free licence to use the Supplied IP and that the Supplied IP does not infringe any third party's IP, and if it does you hereby indemnify and hold harmless Sachr Signage against such infringements.

**13) Warranty:** Subject to guarantees that cannot be excluded under the Australian Consumer Law and subject to Sachr Signage having received your defects notification within the time limits specified in clause 10:

- a) We provide a 3 month warranty on our workmanship in the manufacture of our Products ("**Product Warranty**").
- b) (Back to base warranty): Goods not manufactured by Sachr Signage and used in the Products manufacture are only warranted to the extent we are able to obtain warranties from the supplier of the Goods ("**Goods Warranty**"). Sachr Signage is responsible for any item, condition, representation or warranty given by the Goods manufacturer.
- c) Subject to this, You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Product repaired or replaced if the Product fails to be of acceptable quality and the failure does not amount to a major failure.
- d) If the Goods Warranty extends beyond the Product Warranty, all Sachr Signage labour and other associated costs of You using this Goods Warranty will be an additional cost and charged to You.
- e) Subject to the clause below (Limitation of Liability) our warranty is limited to the cost of repairing, replacing or

making good the Product at ground or step ladder level. Access to the Product (goods in the Product) above ground or step ladder level need to be quoted and pre-paid before works can be undertaken by or for Sachr Signage to effect repair, replacement or make good.

- f) Travel outside the Sydney metro area, access equipment, regulatory permits or specialized services and the associated costs required to service the Product are not included in the warranty.
- g) All warranty work is quoted in Normal Working Hours only.
- h) Illuminated signage: the client must provide a photo of the sign showing the service area requested, and if there is more than one sign at site a plan/description clearly identifying which sign requires service.
- i) All service requests must be confirmed in writing by You to initiate the service request, and in order to comply with applicable OH&S and work place safety method requirements.
- j) Any requested service calls to our Products that are found not to be the fault of Sachr Signage or the Goods supplied by Sachr Signage, or a call out for a Product in an inaccessible Site or above ground / step ladder level will incur a call out fee payable by You.
- k) Site induction meetings required to be completed by Sachr Signage or its service technicians to enable Site access and to service (repair etc.) the Product are additional and payable by You, regardless of being under warranty, at our usual hourly rates, or weekend / penalty rates as the case may be.
- l) The cost of servicing any sign above ground level is not included in our quotation and only the replacement cost of any faulty Goods (parts) are included.
- m) For self-adhesive vinyl (and similar) product/s and/or Goods to any painted surfaces, no warranty is given as to the longevity or degree of adhesion of the Products/ Goods to the surface.
- 14) Limitation of Liability:**
- a) All terms, conditions, warranties and representations that might otherwise be granted or implied by law, are hereby expressly excluded.
- b) Sachr Signage does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent, as between Sachr Signage and You by law including liability under the *Competition and Consumer Act 2010* (Cth).
- c) However, where such statutory provisions apply, to the extent to which Sachr Signage is entitled to do so, Sachr Signage's liability will be limited at its option to:
- i) in the case of a supply of Goods:
- (1) the replacement of the Goods or supply of equivalent Goods;
  - (2) the payment of the cost of replacing the Goods or acquiring equivalent Goods;
  - (3) the payment of the cost of having the Goods repaired; or
  - (4) the repair of the Goods; and
- ii) in the case of Services:
- (1) the supply of the Services again; or
  - (2) the payment of the cost of having the Services supplied again.
- d) To the extent permitted by law Sachr Signage will under no circumstances be liable in any way whatsoever to You for any form of loss, damage or expense sustained or incurred by You or any other party in consequence of or resulting directly or indirectly out of the damage, breakage or faults which occurs in shipment organised by You, or damage that is attributed to acts of God, vermin, terrorism, fire, vandalism or improper use or storage, the supply of the Goods or Services by Sachr Signage, the use or performance thereof, any failure to install the Goods in accordance with their applicable installation instructions and manuals provided with the Goods or to operate the Goods in accordance with their applicable operation instructions and manuals provided with the Goods, any breach by Sachr Signage of any Contract incorporating these Conditions, or the negligence of Sachr Signage, or the negligence of You or any third party including in relation to the delivery, installation or operation of the Goods. In particular, Sachr Signage is not liable in any circumstances whatsoever (including any fault or default of Sachr Signage) for any indirect or consequential losses (including loss of goodwill, loss of business or anticipated savings), loss of profits or use, any rectification costs or any third party claims, in connection with the Goods, Services or the Contract.
- 15) Indemnity:** You hereby indemnify Sachr Signage for any loss or damage suffered by Sachr Signage arising from or in connection with:
- a) any breach of the Contract by, or negligence of, You;
  - b) any breach of law by You;
  - c) the death or injury to any person or damage to any property arising from the performance by You of your obligations under the Contract; or
  - d) any failure to install the Goods / Product in accordance with their applicable installation instructions and manuals provided with the Goods / Product, or in connection with the negligence of You or any third party including in relation to the installation or operation of the Goods / Product.
- 16) Governing Law:** The Agreement is governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 17) Waivers:** A failure or delay in the exercise, or partial exercise, of a right arising from a breach of the Agreement does not result in a waiver of that right. A waiver of any term or condition of this Agreement is only valid if waived in writing and signed by Sachr Signage.
- 18) Variation of Agreement:** A variation of any term of the Agreement must be in writing and signed by the parties. For the avoidance of doubt, this clause does not apply to Variations to the Products, Goods and/or Services.
- 19) Severability:** If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provision, which shall be deemed deleted.