

**SIGNCRAFT PTY LTD**  
**TERMS AND CONDITIONS**

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**1. INTERPRETATIONS AND DEFINITIONS**

1.1 In these Terms, unless the contrary intention appears: **"ACL"** means the Australian Consumer Law contained within the Competition and Consumer Act 2010 (Cth) and all equivalent State and Territory legislation;

**"Goods"** means all goods including any inventory (and, where applicable and where the context of these Terms permits, all services including, without limitation, all installation services) purchased and/or provided by Signcraft to the Customer;

**"Customer or you"** means a person, firm or corporation which requests or purchases Goods from Signcraft;

**"PPSA"** means the Personal Property Securities Act 2009 (Cth);

**"Signcraft"** means Signcraft Pty. Ltd. (ABN 79 006 420 515);

**"Terms"** means these Terms and Conditions.

1.2 In the interpretation of the Terms unless the contrary intention appears:

1.2.1 headings are for convenience only and do not affect the interpretation of the Terms;

1.2.2 the words 'includes' or 'including' will not limit whatever follows;

1.2.3 a reference to these Terms includes a any schedule to these Terms and includes any variation or replacement of these Terms;

1.2.4 a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders; and

1.2.5 a reference to any legislation includes a reference to any modification or re-enactment.

1.3 If there is any inconsistency between these Terms and the terms of Schedule 1, the terms of Schedule 1 will prevail to the extent of the inconsistency.

**2. APPLICATION OF TERMS**

2.1 The Customer agrees that these Terms shall apply to all orders or purchases of Goods by the Customer and to all Goods supplied by Signcraft to the Customer. Any terms and conditions of the Customer included on any document of the Customer (of any kind whatsoever) shall not apply to any supply of Goods by Signcraft to the Customer and shall not bind Signcraft unless Signcraft has signed such document indicating its acceptance of such terms in relation to a particular supply (or particular supplies) of Goods.

2.2 If the Customer comprises more than one person the persons shall be jointly and severally liable for their obligations under these Terms.

2.3 These Terms may only be varied in writing by Signcraft.

**3. QUOTATIONS**

3.1 All quotations and tenders by Signcraft for the sale of Goods to the Customer shall be valid for

acceptance by the Customer for fourteen (14) days from the date of issue of the quotation or tender to the Customer.

3.2 All orders made by the Customer, shall be in writing either in the form of an official Signcraft order or other document signed by the Customer.

3.3 Unless in writing to the contrary, all quotations and tenders by Signcraft to the Customer shall exclude all fees, costs and charges for:

Transportation Packing; Crating; Insurance; Delivery; Taxes, including Goods and Services Tax; Duties; Supply or installation of electrical feeds; and all permits, engineers computations and statutory requirements.

**4. DELIVERY**

4.1 If Signcraft is unable to effect delivery or provision of the Goods to a Customer through circumstances beyond the control of Signcraft, it may cancel the Customer's order by notice in writing to the Customer and the Customer agrees that Signcraft will be under no liability to the Customer or any third party for any damage, loss or other liability resulting from such cancellation.

4.2 In the event that Signcraft finds problems at the premises where the Goods are to be delivered or installed which cause additional costs to be incurred by Signcraft and such problems were not advised by the Customer to Signcraft before or at the time of quotation, the Customer agrees to be liable to Signcraft for any costs associated with such problems.

4.3 For the purposes of 4.2, additional costs shall include, but not be limited to, excessive rock or sub-standard soil conditions in excavation sites, lack of structural integrity, or conditions imposed by statutory authorities or third parties.

4.4 Signcraft shall use all reasonable efforts to deliver and where applicable install the Goods to the Customer's specified location by the agreed date.

4.5 Signcraft will not be liable for any loss, damage or other liability whatsoever arising either directly or indirectly from a delay in delivery or installation by Signcraft or its agents.

**5. PAYMENT**

5.1 Signcraft may, at its discretion, require payment by the Customer of a deposit prior to the commencement of any work by Signcraft pursuant to a quotation or tender.

5.2 The Customer agrees that Signcraft is under no obligation to commence work on any order until receipt by Signcraft of the payment described in 5.1.

5.3 The Customer shall pay the balance of the quotation or tender within thirty (30) days of the date of invoice by Signcraft to the Customer.

5.4 The payment by the Customer to Signcraft in accordance with 5.3 shall be free of all and any deductions by the Customer.

5.5 The Customer agrees that Signcraft is entitled to invoice the Customer for progress claims and that

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- the Customer shall pay such progress claims within thirty (30) days of invoice of the progress claims.
- 5.6 In the event that the Customer fails to make payment in accordance with 5.3 or 5.5, the Customer shall pay to Signcraft interest at the penalty interest rate for the time being fixed under s.2 of the Penalty Interest Rates Act 1983 (Vic), together with all costs, charges and expenses (including legal costs on a solicitor-client basis) incurred by Signcraft in the recovery by Signcraft of any overdue amount from the Customer.
- 5.7 In the event that the Customer fails to provide delivery instructions within fourteen (14) days of a request by Signcraft for such information, Signcraft shall be entitled to charge the Customer the reasonable costs associated with storage of the Goods pending delivery.
- 5.8 Where applicable, all invoices and/or claims for payment are covered under the relevant legislation for construction industry security of payment applicable to the state or territory in which supply was made.
- 6. RETENTION OF TITLE**
- 6.1 Neither ownership of nor property in the Goods sold by Signcraft passes until the Customer has paid to Signcraft all monies owing by the Customer on any account.
- 6.2 Until payment of all monies owed by the Customer to Signcraft on any account, the Customer holds the Goods as fiduciary bailee and agent for Signcraft and must keep the Goods physically separate from all other goods purchased or owned by the Customer, and clearly identified as owned by Signcraft, until they have been paid in full.
- 6.3 In the event that the Customer fails to make payment in accordance with 5.1, 5.3, 5.4 or 5.5, then without prejudice to Signcraft's other rights, whether under these Terms or at law, Signcraft may lawfully and without notice enter the location or any premises of the Customer and remove the Goods from any part of the location or premises to which they have been fixed.
- 6.4 In the event that the Customer sells any of the Goods while money is owed to Signcraft, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- 6.5 Risk of the Goods passes to the Customer at the time of delivery, and for so long as ownership and property in the Goods remains with Signcraft, the Customer must keep the Goods insured in Signcraft's name for at least the price at which the Customer acquired them from Signcraft.
- 6.6 If the Customer mixes the Goods with the other Goods, so that the Goods are no longer separately identifiable, the purchaser and Signcraft will be owners in common of the mixed Goods.
- 7. PERSONAL PROPERTY SECURITIES ACT**
- 7.1 Unless otherwise stated, a term contained in these Terms that is defined in the PPSA (but not otherwise defined in these Terms) has the meaning given to it in the PPSA.
- 7.2 The Customer acknowledges and grants Signcraft a security interest for the purposes of the PPSA in:
- 7.2.1 all Goods and any proceeds from Goods previously supplied by Signcraft to the Customer;
- 7.2.2 all Goods and any proceeds from Goods that will be supplied in the future by Signcraft to the Customer created under this Agreement (as the accepted and adopted security agreement between the parties); and
- 7.2.3 this security interest secures all moneys owing by the Customer to Signcraft under these Terms or otherwise.
- 7.3 The Customer acknowledges and agrees the security interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) security interest and any unsecured creditor.
- 7.4 The Customer grants to Signcraft a security interest over Goods or their proceeds arising under this clause 7 and acknowledges the security interest is a 'purchase money security interest' (PMSI) under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods.
- 7.5 For the avoidance of doubt and without prejudice to Signcraft's rights under the PPSA:
- 7.5.1 The Customer may process the Goods supplied by Signcraft to the Customer and accession or commingle them with other property in which case Signcraft will have a security interest in any processed, accession and commingled Goods; and
- 7.5.2 The Customer may sell the Goods to its customers and if it does so, then Signcraft will have a security interest in the proceeds of sale.
- 7.6 The Customer will do everything reasonably required of it by Signcraft to enable Signcraft to register its security interests with the priority Signcraft requires and to maintain those registrations including:
- 7.6.1 signing any documents and/or providing any information which Signcraft may reasonably require to register a financing statement or a financing change statement in relation to a security interest; or
- 7.6.2 to correct a defect in a statement.
- 7.7 The security interests arising under this clause 7 will be perfected by Signcraft prior to the Customer obtaining possession (on delivery of the Goods) and the parties confirm they have not agreed that any security interest attaches at any later time.
- 7.8 Any time the Customer makes a payment to Signcraft, irrespective of whether the payment is made under or in connection with these Terms, Signcraft may apply that payment:
- 7.8.1 first to satisfy and obligation that is not secured;

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- 7.8.2 second, to satisfy an obligation that is secured, but not by a PMSI; and
- 7.8.3 third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
- 7.8.4 fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source; or
- 7.8.5 despite the foregoing, any manner Signcraft sees fit.
- 7.9 Signcraft does not need to give the Customer any notice under the PPSA (including notice of the single financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded and if Signcraft is required to give a notice to the Customer under the PPSA, and the Customer may, under the PPSA, waive the Customer's right to receive that notice, then the Customer hereby waives that right.
- 7.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under this Agreement, the Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of those security interests.
- 7.11 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any information of the kind described in section 275(1) of the PPSA including the security agreement between the Customer and Signcraft.
- 7.12 The Customer will notify Signcraft immediately in writing if the Customer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA.
- 7.13 The Customer agrees, until title in the Goods passes to it, to keep and maintain all Goods free of any charge, lien, or security interest except as created under these Terms and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of Signcraft under these Terms or the PPSA.
- 7.14 The Customer irrevocably grants to Signcraft the right to enter any premises of the Customer without notice, and without being in any way liable to the Customer or any other person, if Signcraft has cause to exercise any of its rights under the PPSA (and in particular s123) and the Customer agrees to indemnify Signcraft against any such liability.
- 8. CLAIMS**  
Subject to rights provided for under the ACL, the Customer accepts the Goods unless it makes a written claim noting any defects to Signcraft with seven (7) days of delivery and or installation.
- 9. LIMITATION OF LIABILITY**  
9.1 To the fullest extent permitted by law, the only warranties Signcraft gives to the Customer in relation to the supply of the Goods are the warranties specified in Schedule 1 and all other warranties, whether express or implied, in relation to the supply by Signcraft of Goods to the Customer are excluded.
- 9.2 To the fullest extent permitted by law, any liability of Signcraft to the Customer arising out of or relating to the supply of Goods to the Customer, whether arising in contract, tort, equity, statute or otherwise, is in all cases limited to the remedies available to the Customer as specified in Schedule 1, and the Customer discharges and releases Signcraft from all such other responsibilities and liabilities.
- 9.3 Without limiting the generality of clauses 9.1 and 9.2, Signcraft is not (to the fullest extent permitted by law) responsible or liable for indirect, special or consequential damages arising out of or in connection with the use or performance of the Goods or other damage with respect to any economic loss, loss of property, loss of revenue or profit, loss of enjoyment or use, cost of removal, installation or other consequential damage of any nature.
- 9.4 Nothing in these Terms limits or excludes Signcraft's liability to the extent such liability cannot be limited or excluded by applicable law or results from the fraud, wilful misconduct or gross negligence on the part of Signcraft.
- 10. INDEMNITY**  
10.1 The Customer agrees to indemnify and keep indemnified Signcraft, its agents, employees or contractors from all claims, demands, actions or suits arising from:  
10.1.1 loss or damage to any property or death or injury to any person in connection with supply to and use of the Goods by the Customer;  
10.1.2 infringement by Signcraft of any patent, design or other intellectual property.
- 11. DEFAULT**  
11.1 If the Customer:  
11.1.1 commits any breach of these Terms;  
11.1.2 refuses or fails to accept delivery of the Goods;  
11.1.3 becomes bankrupt, insolvent or, if the Customer is a corporation, a liquidator, receiver, manager or administrator is appointed to the Customer;  
11.1.4 has an application for winding up made against it; or  
11.1.5 enters into any composition or arrangement with the creditors,  
(collectively referred to as an **Event of Default**), Signcraft may without prejudice to its other legal rights:  
11.1.6 refuse, suspend or withhold any further supply of the Goods; and  
11.1.7 revoke any credit arrangement that the Customer may have had with Signcraft.
- 11.2 In the event the Customer commits an Event of Default and Signcraft so demands, the Customer shall immediately deliver-up the Customer's

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expense any Goods for which payment has not been made to Signcraft in full together with any other monies then outstanding from the Customer to Signcraft.

- 11.3 If the Customer fails to return the Goods, the Customer agrees that Signcraft may retake possession of the Goods and for that purpose Signcraft, its servants or agents may without notice enter the location or any other premises of the Customer and remove the Goods from any part of the location or premises to which they have been fixed.

**12. GOVERNING LAW AND JURISDICTION**

- 12.1 These Terms shall be governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the Courts of that State and of the Commonwealth of Australia (including any Courts having appellate jurisdiction) in respect of any dispute between them.

**13. SEVERABILITY**

- 13.1 If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**14. GENERAL**

- 14.1 These Terms supersede all prior representations, arrangements and agreements between the parties in relation to the subject matter and form the entire agreement between the parties.
- 14.2 Each provision of these Terms capable of having effect after termination shall survive termination and shall not merge on such termination.