



Versalux Lighting Systems (NZ) Ltd  
Unit 3C Henry Rose Place  
Albany, Auckland, 0632  
[www.versalux.co.nz](http://www.versalux.co.nz)  
09 447 3985  
NZBN 9429039267184  
GST Reg Number 52684412

## **VERSALUX TERMS & CONDITIONS OF SALE.**

### **CONDITIONS OF SALE**

Please read these Conditions carefully, as they set out the legal rights and obligations of Versalux and You in relation to all Goods supplied by Versalux to You.

#### **1. DEFINITIONS AND INTERPRETATION**

##### **1.1 In these Conditions:**

**"CGA"** means Consumer Guarantees Act 1993

**"Business"** means any business entity including a company, partnership, limited liability partnership, sole trader, unincorporated association, or trust

**"Business Day"** means any weekday, other than a national public holiday or public holiday in New Zealand

**"Business Hours"** means between 07:00 and 16:00 on a Business Day

**"Charges"** means the charges payable by you to Versalux under the Contract

**"Conditions"** means these Conditions of Sale

**"Consumer"** means a Consumer as defined in the CGA and in determining if you are a Consumer, the determination is made if you are a Consumer under the Contract

**"Consumer Guarantee"** means the consumer guarantees under the CGA

**"Contract"** means a contract between Versalux and you incorporating these Conditions

**"Default Rate"** means the rate prevailing pursuant to s. 2 of the Penalty Interest Rates Act 1983

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, severe adverse weather conditions, riots, terrorist attacks and wars);

**"Goods"** means the Goods (if any) supplied or to be supplied to you by Versalux under the Contract

**"Guarantor(s)"** means Your Directors named as guarantors in the Contract

**"Implied Terms"** means any guarantees, conditions, warranties, or other terms implied by Versalux

**"Payment Terms"** means 30 days from the end of the month in which you receive an invoice for Charges

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

**"Purchase Order"** means the document issued by you to Versalux accepting the Charges and Conditions referred to in the Quotation

**"Quotation"** means any document issued to you by Versalux detailing the Charges and the Conditions relating to the supply of Goods to you under this Contract

**"Versalux"** means Versalux Lighting Systems (NZ) Ltd, a company incorporated in New Zealand with inland Revenue Department: 526 844 12 and New Zealand Business Number: 9429039267184, having its registered office at Unit 3C Henry Rose Place, Albany, North Shore City, Auckland New Zealand 0752

**"You, your"** means you, the customer under the Contract.

##### **1.2 In these Conditions, a reference to a statute or statutory provision includes a reference to:**

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

##### **1.3 The Clause headings do not affect the interpretation of these Conditions.**

##### **1.4 In these Conditions, "persons" include companies, partnerships, limited liability partnerships, unincorporated associations, and trusts.**

##### **1.5 In these Conditions, any reference to "include(s)" or "including" is without limitation.**

#### **2. QUOTATIONS**

##### **2.1 Subject to clause 2.2 and 2.3, all prices quoted for Goods are valid for 30 days from the date of Quotation.**

##### **2.2 Every Quotation is an estimate only and is subject to withdrawal correction or alteration at any time prior to Versalux's receipt of Your Purchase Order.**

##### **2.3 You acknowledge and agree that Versalux is entitled to charge for additional costs including but not limited to deliveries, packaging, and difficulties with delivery location accessibility, unloading of Goods and interest which Versalux incurs after Versalux's receipt of Your Purchase Order.**

##### **2.4 Each Quotation is issued by Versalux subject to your acceptance of these Conditions. Versalux's acceptance of any Purchase Order from you is subject to your acceptance of these Conditions.**

##### **2.5 If you issue a Purchase Order accepting a Quotation "subject to sample approval", you agree that the Purchase Order can only be withdrawn if the consulting engineer on the project for which the Goods are ordered provides certification in writing that the sample provided by Versalux does not meet the specification for that project.**

#### **3. CHARGES**

##### **3.1 Any Charges specified as a deposit will be invoiced by Versalux and must be paid before the Goods are supplied. Any deposit once paid is non-refundable. Versalux may issue an invoice for other Charges to you from time to time during the Term and at any time after the Goods have been supplied.**

##### **3.2 Unless agreed otherwise by Versalux in writing, you will pay invoiced Charges to Versalux within Versalux's Payment Terms.**

##### **3.3 The amounts of all Charges specified in the Quotation or elsewhere in relation to the Contract are inclusive of GST.**

##### **3.4 Time for payment of all Charges is of the essence of the Contract.**



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- 3.5 Charges must be paid in cash or by debit or credit card, bank transfer or by cheque (using such payment details as are notified by Versalux to you from time to time).
- 3.6 Payment will not be taken to occur until all payments tendered in discharge of Charges owing by You to Versalux have been presented and cleared in full.
- 3.7 If a payment by you is dishonoured then You acknowledge and agree that Versalux is entitled to charge you for the cost of any dishonour fees incurred by Versalux.
- 3.8 If you do not pay any amount properly due to Versalux under the Contract within the Payment Terms, Versalux may charge you interest on the overdue amount at the Default Rate for the period from the due date until the date of payment in full.

#### 4. CREDIT SALES

- 4.1 For credit approved customers, payment is to be made within Payment Terms. For all other customers, the terms are cash on order.
- 4.2 Versalux reserves the right to withdraw approval of a credit account at any time by written notice to You.
- 4.3 Versalux reserves the right to request such security or additional security for any credit arrangement with You as Versalux shall in its absolute discretion think necessary and shall be entitled to withhold supply of any Goods or credit arrangements until such security or additional security is provided by You.

#### 5. CASH ON ORDER

- 5.1 Where no credit terms have been approved by Versalux, or approval of for any credit has been withdrawn, the Charges for the Goods must be paid in full on placement of the order, or where expressly agreed in writing by Versalux, on delivery of the Goods.

#### 6. DELIVERIES

- 6.1 Versalux shall use its best endeavours to effect delivery by the estimated date given by Versalux in a Quotation and it shall not be liable to penalties or damages (either direct or indirect), for failure to deliver by the estimated date for any cause whatsoever beyond Versalux's control.
- 6.2 No deliveries will be made on public holidays.
- 6.3 If Versalux agrees to deliver the goods to a site as specified by you, unloading facilities thereat are the responsibility of You and if you or your representative are not in attendance at the site at the time of delivery, Versalux:
  - (a) Reserves the right to unload the goods at the site at your expense and in doing so will not be responsible for any claims of any nature with regard to damage, theft or loss to the goods or other property; or where the delivery site specified by You is in the opinion of Versalux inaccessible
  - (b) May take the goods back to its factory at Your expense and any subsequent cost for storage and re-delivery or collection shall be at Your expense.
- 6.4 Goods ordered for collection will be available for collection from Versalux's facility and if they are not collected by the agreed collection date then You acknowledge that
  - (a) Versalux will not hold the goods past collection date; and
  - (b) Any such Goods may be returned to stock and You agree to pay a restocking fee in addition to any future orders.

#### 7. PURCHASER TO SATISFY

- 7.1 You acknowledge and agree: -
  - (a) That the Goods supplied are of the size, design and capacity and manufacture selected by You.
  - (b) That You are satisfied that the Goods are suitable for its purposes
  - (c) That You are satisfied as to the quality of the Goods
  - (d) That in all matters relating to the purchase of goods the subject of this Agreement You have relied and will rely entirely on Your own judgement and not in any statements made by Versalux, its agents or servants.

#### 8. NOTIFICATION TO VERSALUX

- 8.1 You acknowledge and agree that the Goods shall be deemed to have been inspected and accepted by You in accordance with this Agreement unless notification of the contrary is received by Versalux in writing within three (3) days after delivery to Your destination.

#### 9. TITLE

- 9.1 Title to and property in the Goods will not pass until You have paid all moneys owed to Versalux on any account whatsoever.
- 9.2 Until You have paid all moneys owed to Versalux:
  - (a) Versalux retains a purchase money security interest in the Goods and the proceeds of sale of the Goods under the Personal Property Securities Act 1999
  - (b) Your relationship to Versalux is as a fiduciary in respect of the Goods and accordingly:
    - (i) You will hold the Goods as bailee of Versalux
    - (ii) You must store the Goods in such a way that they can be recognised as the property of Versalux
    - (iii) You must deliver up the Goods to Versalux upon demand
    - (iv) Upon resale of the Goods by You, Versalux will have the right to trace the full proceeds of sale
    - (v) You must account to Versalux for such proceeds of sale and Versalux may recover from such proceeds of sale any moneys then owing to Versalux on any account whatsoever; and
    - (vi) You shall hold all sale proceeds of the sales of the Goods or any new goods into which the same have been incorporated in trust for Versalux and such moneys shall be deposited by You into a separate bank account apart from any other accounts You may conduct from time to time;
  - (c) If You make new goods or other goods from or with the Goods or mix the Goods with other goods or if the Goods become a constituent part of other goods, Versalux thereupon shall become the owner of such new goods as surety for full payment of the Goods by You;
  - (d) Versalux reserves the right to enter upon any premises where the Goods are or may be situated for the purpose of repossessing the Goods without prejudice to any other rights of recovery available and You grant Versalux and its employees and agents an irrevocable licence to enter such premises for the purpose of exercising such right without liability for trespass or any resulting damage; and
  - (e) Versalux has the right to the Goods and beneficial interest in any conduct of any claims, suits, demands or actions which You may have against any other party emanating from the sale of the Goods (or of the new goods or other goods into which they have been incorporated) and such right of subrogation shall not be effected by the part performance of any of the obligations on Your part herein contained.



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- 9.3 You must do all things reasonably required by Versalux in respect of the registration of Versalux's interest in the Goods under this clause or the enforcement of Versalux's rights under the PPSA in respect of the Goods.
- 9.4 You waive any right you have under the PPSA:
- (a) To receive notice in relation to registration of Versalux's interest in the Goods under the PPSA; and
  - (b) To claim damages against Versalux under Section 148 of the PPSA.

#### 10. RISK

- 10.1 Notwithstanding that ownership of the Goods does not pass to You pending payment for the same, and irrespective of the physical location of the Goods, the risk in the goods shall upon delivery, pass to You.

#### 11. CUSTOMER WARRANTY

- 11.1 You warrant and represent to Versalux that You have the legal right and authority to enter and perform your obligations required by the Contract.

#### 12. CONSUMER GUARANTEES ACT 1993

- 12.1 Where the sale of Goods is made to you as a Consumer under the CGA:
- (a) the Goods are supplied subject to the Consumer Guarantees
  - (b) if the Goods fail to meet any Consumer Guarantee, you will be entitled to such rights and remedies as are permitted or provided in the CGA for such failure, to the extent that such rights and remedies cannot be lawfully excluded. You may only exercise any right or remedy for breach of a Consumer Guarantee strictly in accordance with your rights and responsibilities under the CGA
  - (c) Where the Goods are not ordinarily acquired for personal, domestic or household use or consumption, then, unless Versalux is the manufacturer of the Goods under the CGA, Versalux's liability for breach of a Consumer Guarantee is limited at Versalux's option to repairing or replacing the Goods, supplying equivalent goods or paying the cost of the repair or replacement of the Goods or of acquiring equivalent goods;
- 12.2 Where you resupply the Goods to a Consumer and the Goods are not ordinarily acquired for personal, domestic or household use or consumption, Versalux's liability to You in connection with any breach of a Consumer Guarantee in respect of the Goods is limited to paying you an amount equal to the cost of replacing the Goods, supplying equivalent Goods, or having the Goods repaired, whichever is the lower amount.
- 12.3 12.3. Nothing in the Contract will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence
  - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party
  - (c) limit any liability of a party in any way that is not permitted under applicable law; or
  - (d) exclude any liability of a party that may not be excluded under applicable law, and any statutory rights that you have where you are a Consumer and not a Business, that cannot be limited or excluded, will not be limited, or excluded by the Contract.
- 12.4 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in the Contract:
- (a) are subject to Clause 12.1 and 12.2; and
  - (b) govern all liabilities arising under the Contract or in relation to the subject matter of the Contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

#### 13. GENERAL LIMITATION OF LIABILITY

- 13.1 This clause 13 does not limit the liability of Versalux under Consumer Contracts.
- 13.2 Versalux shall not be liable for any guarantee, warranty or representation as to the quality, performance and fitness for purpose or otherwise of any Goods outside of these Conditions unless expressed in writing and signed on behalf of Versalux and any such warranty or representation shall be limited to its express terms.
- 13.3 None of the Implied Terms apply to any Contract except to the extent that they cannot be lawfully excluded.
- 13.4 Versalux's liability for breach of any provision of any such Contract or for breach of any Implied Terms which by force of law cannot be excluded from applying to any such Contract is limited at the option of Versalux to repairing or re-supplying Goods which have been found defective, or, paying the cost of repairing or re-supplying Goods which Versalux finds to be defective.
- 13.5 Versalux is not liable in tort for any loss or damage suffered by You or by any third party.
- 13.6 In no circumstance whatsoever shall Versalux be liable to You or to any third party for any loss of profits, loss of anticipated savings, economic loss or interruption of business or for any indirect or consequential loss ("Consequential Loss") arising out of the late delivery of Goods or any failure to perform or observe Versalux's obligations under any contract or Implied Terms and You will keep Versalux fully indemnified against any claim made against Versalux by a third party for any such Consequential Loss.
- 13.7 Versalux will not be liable to you in respect of any special, indirect or consequential loss or damage including, where you are a Business, loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.
- 13.8 Versalux's aggregate liability to you will not exceed the greater of the total amount paid and payable by you to Versalux under the Contract.
- 13.9 Save to the extent that Versalux's negligence has resulted in the loss or damage, Versalux will not be liable to you in respect of any loss or damage arising out of pre-existing faults in your electrical systems, notwithstanding that such pre-existing faults may only become manifest during or following the installation of any Goods.
- 13.10 Other than as expressly provided under the Contract any material presented to you by Versalux via its website or otherwise including estimates of costs, savings or returns is provided as illustration only and is not intended to constitute a definitive statement nor specific advice. You agree that you place no reliance on such material and that you exercised your own judgement before deciding whether or not to enter into the Contract with Versalux.

#### 14. VERSALUX 5/10 YEAR WARRANTY & CONDITIONS

- 14.1 Versalux guarantees that Versalux branded LED products are free from manufacturing and / or material defects provided they are used in compliance with intended use, for a period of 5 years from the date of invoice. Versalux also guarantees that FAEL LUCE LED products are free from manufacturing and / or material defects provided they are used in compliance with intended use, for a period of 10 years from the date of invoice.
- 14.2 The guarantee offered in clause 14.1 shall only be effective subject to You complying with the following conditions:
- (a) Goods must be installed and used in strict compliance with the relevant specifications and installation instructions relevant to those goods.
  - (b) Any installation and / or assembly work relating to the Goods shall be carried out by a qualified electrical contractor.
  - (c) Temperature and voltage limit values must not be exceeded, and the Goods must not be subjected to mechanical loads which do not comply with its intended use.



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- (d) The Goods must be maintained by qualified technical staff in compliance with any instructions accompanying the Goods.
- (e) You must establish to Versalux's reasonable satisfaction that you have taken all necessary steps to examine installation factors and mitigate the risk of loss, i.e.: eliminating exposure to extremes of temperature, not covered by insulation, and preventing overvoltage, incorrect installation, surges, and spikes, including lightning strike.
- (f) In the event of a claim, you shall not tamper with failed goods and must return them in original condition to Versalux for inspection at Your expense.
- (g) No guaranteed claim will be entertained until the full invoice amount have been paid and the funds have cleared.
- (h) The Goods supplied have been installed in Australia or New Zealand.
- 14.3** The guarantee offered in clause 14.1 does not cover defects in Goods due to unforeseen events i.e.: accidental circumstance and / or Force Majeure (including electrical surges and lightning) that cannot be ascribed to a defective manufacturing process of the product.
- 14.4** No claims will be accepted under the guarantee offered in clause 14.1 for Goods which have been affected by overheating due to obstruction in the form of insulation or inadequate ventilation within mounting cavity, or operation of exterior luminaires during daylight hours.
  - (a) No claims will be accepted under the guarantee if it is deemed that a power ripple signal has affected the operation of the product.
  - (b) No claims will be accepted under the guarantee if the light fittings and components are exposed to an environment where they are adversely affected by conditions not previously known to have been present.
- 14.5** Where Versalux accepts a claim under the guarantee offered in clause 14.1 in relation to Goods, Versalux shall be free to decide in its absolute discretion whether to repair or replace the Goods with the same or an equivalent Goods subject to the technological progress that has taken place from the release of the original Goods or refund the price for the Goods. In the event of a manufacturing or material defect, the goods will be replaced, entirely or partly, or repaired at Versalux's sole discretion. The maximum liability of Versalux (subject to Clause 12 hereof) is limited to the invoice value of the goods. Removal and return of goods to Versalux's factory is at Your cost.

#### 15. PURCHASER SPECIFICATION

- 15.1** When Goods are manufactured to Your specification, you indemnify Versalux against any liability to or action by a third party for direct infringement of indirect infringement of a patent, registered design, trademark or copyright or any other intellectual property right whatsoever.
- 15.2** The guarantee offered in clause 15.1 shall only be effective subject to You complying with the following conditions:
  - (a) Goods must be installed and used in strict compliance with the relevant specifications and installation instructions relevant to those goods
  - (b) Any installation and / or assembly work relating to the Goods shall be carried out by a qualified electrical contractor
  - (c) Temperature and voltage limit values must not be exceeded, and the Goods must not be subjected to mechanical loads which do not comply with its intended use
  - (d) The Goods must be maintained by qualified technical staff in compliance with any instructions accompanying the Goods.
  - (e) You must establish to Versalux's reasonable satisfaction that you have taken all necessary steps to examine installation factors and mitigate the risk of loss, i.e.: eliminating exposure to extremes of temperature, ensuring the use of adequate insulation and preventing overvoltage, incorrect installation, surges and spikes, including lightning strike;
  - (f) In the event of a claim, you shall not tamper with failed goods and must return them in original condition to Versalux for inspection at Your expense
  - (g) No guarantee claim will be entertained until the full invoice amount for all Charges have been paid in clear funds; and
  - (h) The Goods supplied have been installed in New Zealand.
- 15.3** The guarantee offered in clause 15.1 does not cover defects in Goods due to unforeseen events i.e.: accidental circumstance and or Force Majeure (including electrical surges and lightning) that cannot be ascribed to a defective manufacturing process of the product.
- 15.4** The guarantee offered in clause 15.1 does not cover defects in Goods due to unforeseen events i.e.: accidental circumstance and or force Majeure (including electrical surges and lightning) that cannot be ascribed to a defective manufacturing process of the product.
- 15.5** No claims will be accepted under the guarantee offered in clause 15.1 for Goods which have been affected by overheating due to obstruction in the form of insulation or inadequate ventilation within mounting cavity, or operation of exterior luminaires during daylight hours.
- 15.6** Where Versalux accepts a claim under the guarantee offered in clause 15.1 in relation to Goods, Versalux shall be free to decide in its absolute discretion whether to repair or replace the Goods with the same or an equivalent Goods subject to the technological progress that has taken place from the release of the original Goods or refund the price for the Goods.

#### 16. GOODS RETURN FOR CREDIT

- 16.1** Unless otherwise required under these Conditions or at law, Versalux is not under any duty to accept Goods returned by You and:
  - (a) No claim in relation to damaged goods, as shortage of length, quantity or weight will be considered unless notified in writing in accordance with Clause 8 hereof
  - (b) No goods will be accepted for credit after 30 days from the date of original invoice
  - (c) Non-standard items will not be accepted for credit
  - (d) Versalux reserves the right to charge a restocking fee on Goods accepted for credit and the minimum fee is 50% of the Charges for the Goods
  - (e) In all cases an authorisation for a Customer Return Number (CRN) must be obtained from Versalux Lighting Systems (NZ) Ltd and quoted on all returned goods. Any Goods returned without a CRN will not be accepted by Versalux
  - (f) Goods returned for credit must be in original pack and in a completely re-saleable condition
  - (g) A credit will be raised on customer accounts only when goods have been received with a CRN and an inspection of goods have satisfied Versalux that a credit is applicable
  - (h) All freight charges for Goods returned to Versalux are to be borne by You.

#### 17. GUARANTEE BY DIRECTORS

- 17.1** The Guarantor(s) hereby guarantee (jointly and severally where there is more than one Guarantor) to Versalux the due performance by You of the whole of the obligations imposed upon You under these Conditions.
- 17.2** The Guarantor(s) agree to indemnify Versalux against all losses it sustains because of dealings Versalux has with You including all legal costs, recovery costs and interest (as permitted by law).
- 17.3** This guarantee shall be continuing, unconditional and is enforceable immediately on demand upon default by the Customer in discharging all or some of the said obligations or in paying all or some of the said monies.
- 17.4** The Guarantor(s) hereby charge in favour of Versalux all of my/our right, title, estate or interest in any land which I/we have or may any legal or beneficial interest in and any other asset or trust asset with payment of all moneys owing to Versalux by You.



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**18. FORCE MAJEURE EVENT**

- 18.1 Where a Force Majeure Event gives rise to a failure or delay in Versalux performing its obligations required by the Contract, those obligations will be suspended for the duration of the Force Majeure Event.
- 18.2 Versalux will not be liable to you for any losses arising out of a Force Majeure Event.

**19. PURCHASER'S RIGHT TO SELL**

- (a) You shall have the right to resell the goods provided always that such a sale shall be made in the ordinary course of your business.
- (b) You are not authorised and have no right to sell Goods other than in the ordinary course of Your business.

**20. WAIVER**

- 20.1 No waiver of any time, provision or condition of this Agreement or any part of this Agreement whether by conduct or otherwise in any one or more instances by Versalux shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition. Written instruments signed by the parties hereto may only amend this Agreement.

**21. PROPER LAW**

- 21.1 The contract and these terms shall be governed by New Zealand Law and the New Zealand Courts shall have exclusive jurisdiction in connection herewith.

**22. ENTIRE AGREEMENT**

- 22.1 These Conditions will constitute the entire agreement between the parties in relation to the Contract, and supersede all previous agreements, arrangements, and understandings between the parties in respect of that subject matter.
- 22.2 No promise, representation, warranty or undertaking (including any technical advice or assistance provided by Versalux to you in connection with the Goods) other than that which is expressed in these Conditions will bind Versalux, unless Versalux expressly agrees otherwise in writing.
- 22.3 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering the Contract.

**23. SEVERANCE**

- 23.1 In the event that any of the terms, provisions or part thereof of this Agreement cannot be given effect or full force and effect by reason of statutory invalidity, uncertainty or otherwise the said term or provision of part thereof as the case may be which cannot be given full force and effect alone shall be severed, ignored or read down restrictively to maintain and uphold so far as possible the remaining terms and provisions hereof.

**24. TIME OF THE ESSENCE**

- 24.1 So far as your obligations herein are concerned, time is of the essence.

**25. VARIATION OR AMENDMENT**

- 25.1 No term of this Contract may be varied except by a written document signed by or on behalf of each of the parties.

**26. GENERAL**

- 26.1 The parties hereto acknowledge and agree that in the event at any time hereafter Versalux will be obliged to pay any tax, imposition, fine, duty or other fee to any New Zealand authority, department, instrumentality or taxing authority or Commissioner in respect of the goods or services or other matters in transaction the subject of this Agreement that You shall indemnify and keep indemnified Versalux against all such payments and shall forthwith upon demand pay to Versalux the amount or amounts from time to time acquired by Versalux to reimburse Versalux in respect of any such payments.