

# VERSIGEN - TERMS & CONDITIONS OF SALE

The following terms and conditions apply to the sale of goods ("Goods") by Versigen Australia Pty Ltd ("Versigen") to a Customer effective 1 February 2019

## Notes:

- This price list supersedes all previous price lists.
- Versigen reserves the right to alter product specifications and prices without notice.

## 1. DEFINITIONS

- ACL means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- Customer means a person, partnership, corporation or entity whose order for the purchase of Goods is accepted by Versigen and includes a Reseller.
- GST together with "input tax credit", "Tax Invoice", "recipient" and "taxable supply" have the meanings given to those expressions in A New Tax System (Goods & Services Tax) Act 1998.
- PPSA means Personal Property Securities Act 2009 (Cth).
- Reseller means a person, partnership, corporation or entity that purchases the Goods with the intention of reselling them.

## 2. TERMS

- Unless otherwise agreed in writing by Versigen, any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions are expressly rejected by Versigen.
- Any variations to these terms and conditions not expressly agreed to in writing by Versigen are expressly rejected by Versigen.
- A quotation shall not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods shall exist between Versigen and the Customer until a Customer's order for the Goods has been accepted by Versigen (such acceptance of Customer's orders may be made and communicated by Versigen in writing or by an overt act of acceptance). Versigen may accept or refuse any order for Goods in its absolute discretion and may make its acceptance of an order conditional.
- These terms and conditions and all obligations are binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of Versigen's successors and assigns.

## 3. PRICES

- Unless otherwise stated, all prices do not include insurance, packaging or installation of the Goods. The cost of road freight from the Versigen depot and the Customer's nominated delivery address will be the Customer's responsibility.
- Unless otherwise expressly stated, all amounts payable by the Customer under these terms and conditions are exclusive of GST.
- If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to Versigen an additional amount equal to the GST payable or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice.

## 4. PAYMENT

- Unless otherwise expressly agreed between Versigen and the Customer the Customer shall pay Versigen 50% of the price for the Goods within seven days of acceptance of the order and the balance in full as a condition precedent to the dispatch of the Goods.
- If Versigen agrees to extend terms to the Customer and payment is not received by Versigen by the due date Versigen reserves the right to charge interest on so much of the price as shall from time to time remain unpaid at a rate being two (2) per cent greater than that charged by Versigen's main banker on overdrafts of One Hundred Thousand Dollars (\$100,000.00) or more computed on a daily basis from the due date for payment until the date of payment in full.
- In the event of a default by the Customer in the payment of the full price of the Goods Versigen may (without prejudice to any other rights it may have) retain all moneys paid on account of the Goods by the Customer and the same shall be forfeited in favour of Versigen and Versigen may cease all further deliveries to the Customer.
- If the Customer does not make payment in full for the Goods to Versigen in accordance with the terms of the invoice for the Goods, Versigen may on demand require the Customer to return the Goods to it and may enter upon the premises of the Customer to inspect and repossess the Goods.

## 5. DELIVERY

- Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer at the time of ordering. If no such address is nominated by the Customer when requested by Versigen, then delivery will be deemed to occur at the time when the Goods are ready for collection at Versigen's premises.
- Versigen reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 7 days of a request by Versigen for such information.
- The Customer authorises Versigen to deliver Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery. Versigen shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.

- Versigen shall not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by Versigen to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Goods delivered.
- Any times expressed for delivery are estimates only, time not being of the essence of the contract unless separately agreed to in writing by Versigen and further where a time for delivery has been agreed but delivery is delayed for any reason beyond the control of Versigen, a reasonable extension of time will be allowed to Versigen.
- Versigen shall not be liable to the Customer for any failure to deliver or for delay in delivery of Goods occasioned by instructions or lack thereof from the Customer, strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of Versigen.
- The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- Versigen reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not entitle the Customer to repudiate the contract in whole or in part.
- The Customer must inform Versigen in writing immediately upon discovering or being informed that any of the Goods delivered are at variance with the Goods referred to in the invoice for the Goods or that any Goods are defective or missing.
- The Customer may, upon obtaining a return authorisation from Versigen, return to Versigen (without cost to the Customer) Goods that are at variance with the Goods referred to in the Order. Goods returned pursuant hereto shall be accompanied by a dispatch note stating the original Order number and date of supply and the return authorisation number.

**6. CONNECTION TO ELECTRICITY.** The Goods will be delivered with appropriate power cables and plugs connected as per specification. The Goods will be tested by a qualified electrician before dispatch to the Customer's premises. It is the Customer's responsibility to ensure a qualified electrician connects and tests the Goods at the Customer's premises before commissioning or use.

**7. TRAINING.** Unless otherwise stated in the quotation, any training requested by the customer in respect of the operation, repair or maintenance of the Goods will be at the Customer's expense.

## 8. PROPERTY AND RISK

- All risk in the Goods passes to the Customer upon the unloading of the Goods on the ground at the delivery place nominated by the Customer or if a deemed delivery when the goods are ready for collection by the Customer from Versigen.
- Title and property in the Goods will remain with Versigen until such time as payment in full is made by the Customer to Versigen.
- If the Customer in the meantime takes custody of the Goods the Customer shall do so as fiduciary and bailee of Versigen.
- The Customer shall insure the Goods against fire, accident, theft or any damage from the date of delivery or deemed delivery of the Goods until the Goods have been paid for in full in accordance with the terms of the invoice and Versigen shall be entitled to call for details of the insurance policy. If the Customer does not insure the Goods or fails to supply details of its insurance policy the Customer will reimburse Versigen for the cost of any insurance which Versigen may reasonably arrange in respect of the Goods supplied of the Customer.

**9. ALLOCATION OF PROCEEDS.** Versigen may at its discretion and in such manner as it may determine allocate payments made by the Customer in relation to the Goods.

**10. NEGATIVE PLEDGE.** The Customer shall not enter into any security agreement with any other party that permits that party to register a security interest in respect of the Goods or proceeds of those Goods.

## 11. PPSA.

- For the purposes of the PPSA:
- The Customer acknowledges that Versigen holds a purchase money security interest in the following:
    - the Goods;
    - all proceeds in relation to the Goods, including without limitation, money, accounts receivable and insurance proceeds;
    - any goods for which any of the Goods have been exchanged or traded or that have been acquired in lieu of the Goods, as security for Versigen's interest in the Goods.
  - The Customer acknowledges that Versigen also holds a security interest in the Goods supplied by Versigen from time to time and all proceeds in relation to those Goods for all monies payable by the Customer to Versigen at any time, together with all of The Customer's present and after-acquired property (including without limitation all freehold and lease hold real estate).

- c. If requested by Versigen, the Customer shall promptly and without undue delay execute any documents (including any new contracts or mortgages over real estate), provide all information required in order to complete a financing statement (as defined under the PPSA) and comply with any other reasonable requests by Versigen to ensure that Versigen' purchase money security interest(s) and general security interest is perfected as a first ranking security interest over the Goods and proceeds.
- d. The Customer shall immediately notify Versigen in writing of any change in the Customer's name and shall also provide all information required in order to complete a financing change statement (as defined under the PPSA).
- e. The Customer waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement in relation to Versigen' security interests.
- f. The Customer shall be responsible for all costs, expenses and other charges incurred, expended or payable by Versigen in relation to the filing of a financing statement or a financing change statement.
- g. The Customer irrevocably grants Versigen the right to enter upon its property or premises, without notice, and without being in any way liable to the Customer or any third party, if Versigen has cause to exercise any of its rights under section 123 and/or sections 128, 129 or 134 of the PPSA, and the Customer shall indemnify Versigen from any claims made by any third party as a result of such exercise. Versigen in its discretion may deal with the Goods or any goods it repossesses or takes, in any manner that it sees fit, including, without limitation, by leasing, disposing of, or otherwise dealing with all or any part of them.
- h. The Customer waives its rights under sections 95 (notice of removal of accession) , 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and the parties agree that those provisions do not apply to this Agreement.

**12. PACKING.** The cost of any special packing and packing material used in relation to the Goods shall be at the expense of the Customer notwithstanding that such cost may have been omitted from the quotation.

**13. WARRANTY.** The Versigen Focus Range of Goods are provided with a 24 month parts warranty and 12 months labour warranty. All other Goods are provided with a 12 month parts and labour warranty to repair or replace from the date of the invoice/installation of goods (whichever occurs first). The warranty includes the cost of both parts and labour costs (for the relevant period) during normal business hours (9am – 5pm Monday to Friday). Such repair or replacement is subject to the following conditions:

- a. **To be eligible for the warranty Versigen must be notified in writing within seven (7) days of the alleged defect occurring with the following information:**
  - i. **Customer details, invoice number and date of purchase, delivery and installation (if applicable);**
  - ii. **Location of Goods (Name of premises and address);**
  - iii. **Model and serial number of Goods;**
- b. The Goods have been properly handled and used and have been operated and maintained in accordance with instructions issued by Versigen.
- c. The defects have not, in the reasonable opinion of Versigen, arisen from accident, misuse, neglect, incorrect installation, lack of reasonable maintenance or any other cause beyond the reasonable control of Versigen.
- d. Versigen shall have been provided with an adequate opportunity to examine the Goods.
- e. The Goods have not been moved at any time from the Customer's premises or nominated place of delivery at the place of delivery without the consent of Versigen first had and obtained which consent shall not be unreasonably withheld.
- f. Versigen shall not be liable for that portion of the Goods of a consumable nature, or those having a low rated service life such as electric lamps, temperature probes and glass components or where any unauthorised repair or alteration to the Goods has been performed by the Customer or others.
- g. The liability of Versigen under this warranty is limited to the repair or replacement of defective Goods or components. All other costs including, without limitation, cartage, carriage and installation will be borne by the Customer. Travelling time is not part of the warranty and will be charged on the distance from the technician to the repair site.
- h. Without limiting the generality of the above warranty terms, this section applies to "Consumers" as defined in the Competition and Consumer Act 2010 (Cth): In addition to the extended warranties set out in these terms, certain legislation (including the ACL) may give you rights which cannot be excluded, restricted or modified. The extended warranties must be read subject to such legislation and nothing in this warranty has the effect of excluding, restricting, replacing or modifying those rights. If Versigen fails to meet a guarantee under the ACL, your remedy for such failure may be limited to any one or more of the following:
  - i. replacement of the Goods;
  - ii. repair of the Goods;
  - iii. refunding the cost of the Goods;
  - iv. payment of reasonable costs of having the Goods repaired;
  - v. payment in respect of the reduced value of the Goods.

As required under legislation, including the ACL, any claims for damage, or any consequential loss either directly or indirectly due to defects of any kind in a Machine will only be met by Versigen where the damage or loss was reasonably foreseeable by Versigen.

**Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.**

#### 14. LIABILITY

- a. Subject to these terms and conditions Versigen will not be under any liability whether in contract, tort or otherwise from any cause whatsoever, whether occasioned by negligence or otherwise, for any injury, damage or loss, including indirect, incidental or consequential damage, loss of profits or loss whether to persons or property, arising out of these terms and conditions of Goods supplied pursuant hereto including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto.
- b. Except as set out herein all guarantees, conditions, warranties and rights are excluded from these terms and conditions. Where the Competition and Consumer Act 2010 (Cth) or other laws imply guarantees, conditions or warranties or give other rights in respect of these terms and conditions, Versigen's liability for any breach of such a condition, warranty or right will (but only to the extent permitted by law), at Versigen's option, be limited to:
  - i. in the case of goods supplied, to the replacement or repair of the goods or the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or of acquiring equivalent goods;
  - ii. in the case of services supplied, to the supplying of the services again or the payment of the reasonable cost of having the services supplied again.
- c. If any advice, recommendation, information or assistance is provided by Versigen in relation to the handling, preparation, treatment or storage of food incidental to the use of the Goods the Customer acknowledges that the same has been provided without any liability whatsoever and that the Customer does not rely on any such advice recommendation, information, or assistance but rather on its own investigation, assessment and advice.

#### 15. CANCELLATION FEES

- a. A 25% cancellation fee will be charged on any Goods listed in Versigen's Price List confirmed by written order from the Customer for returning/cancel to Versigen's warehouse in Sydney.
- b. A 75% cancellation fee will be charge for any special order Goods or custom made goods confirmed by written order by the Customer (whether or not listed in Versigen's price list) for returning/cancel to Versigen's warehouse in Sydney.

**16. INTELLECTUAL PROPERTY.** These terms and conditions are not a licence of, and the Customer will not acquire any interest of any nature in any of Versigen's intellectual property rights in the Goods or any other material supplied or created in connection with the supply of Goods.

#### 17. GENERAL

- a. In the event of war, invasion, act of foreign enemy, hostility (whether war has been declared or not) civil war rebellion, revolution, insurrection or military or usurped powers, Versigen shall be relieved of liabilities incurred under the contract wherever and to the extent to which fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by rules, regulations, orders or requisitions issued by a government department, council or duly constituted authority, or from strikes lock-outs breakdown of plant or any other cause (whether or not of like nature) beyond control.
- b. Notice to be given by the Customer to Versigen may be delivered personally or sent to Versigen at PO Box 1194, Bowral, New South Wales 2576 and unless the contrary is proved shall be taken as delivered when received by Versigen. Notice to be given to the Customer by Versigen may be delivered personally, or sent to the Customer's last known address and unless the contrary is proved shall be taken as delivered on the second business day following posting by ordinary pre-paid post.
- c. Acceptance by the Customer of these terms and conditions (as amended by Versigen from time to time) may be by any of the following ways; signing and returning a copy, by performing an act with the intention of adopting or accepting these terms including placing an order, or by oral acceptance.
- d. Failure by Versigen to insist on the strict performance of any term, warranty or condition of these terms and conditions will not be deemed a waiver thereof or of any rights Versigen may have and no express waiver will be deemed a waiver of any subsequent breach of any term, warranty or condition.
- e. In the event that the whole or any part or parts of any provisions of these terms and conditions should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.
- f. All contracts entered into by Versigen shall be subject to the law of New South Wales and Versigen and the Customer agree to submit all disputes arising between them to the courts of New South Wales and any court competent to hear appeals therefrom.