

General Terms and Conditions of Delivery

1. **Applicable conditions.** Sivantos B.V., hereinafter referred to as Sivantos, issues quotations and enters into agreements for the supply of goods and the performance of additional services, exclusively on the basis of the General Terms of Delivery set out below. Any deviations or addenda thereto require Sivantos' express written consent. Should any provision in the agreement be invalid, the other provisions remain in force without prejudice, unless the agreement then becomes obviously unreasonable to uphold.
2. **Quotation; conclusion of agreement.** Quotations issued by Sivantos are without prejudice and subject to confirmation, and an agreement binding on Sivantos shall only come into effect after Sivantos issues written confirmation of an order or order confirmation from the customer. The illustrations, drawings, dimensions, weight specifications, etc. pertaining to a quotation shall be regarded as an estimate unless Sivantos has expressly stated that they are to be regarded as an accurate specification.
3. **Prices.** All prices specified by Sivantos are exclusive of the VAT payable in the context of the agreement. This is charged separately. The price of the goods to be supplied excludes the services to be rendered and is delivered carriage paid to delivery address. If the cost price of goods ordered, including the costs of wages and materials, have escalated between the time the agreements were concluded and the date of delivery, Sivantos shall be entitled to increase the prices accordingly.
4. **Payments.** Payments are due no more than 30 calendar days after the invoice date. If Sivantos has reason to believe that the customer may not comply with its payment obligations, such as in the event of a suspension of payments, bankruptcy or an application for bankruptcy on the part of the customer, seizure, shut-down or liquidation of the company, previous payments not paid on time, etc., Sivantos may require full payment in cash before or on delivery. In the event of late payment, the customer shall be liable to pay interest on the outstanding amount at the statutory rate without notice. Interest shall also be charged on any interest due but not paid after one year. Any collection costs incurred by Sivantos shall also be borne by the customer. In the event of late payment, including the failure to comply with the above-mentioned request for cash payment in advance or on delivery, Sivantos shall be entitled to suspend performance under the agreement until such time as full payment is received and, if the customer fails to pay in full after a written notice has been sent, to terminate all or part of the agreement. The above does not affect Sivantos' right to compensation. Amounts may not be offset against claims against Sivantos. In the case of bankruptcy, suspension of payments or seizure on the part of the customer, all amounts owed by the customer to Sivantos shall be due and payable immediately and in full, and Sivantos may offset any claims immediately.
5. **Delivery; acceptance.** If Sivantos uses Incoterms, the version in force on the date the quotation is issued applies. The delivery period starts on the day on which the agreement comes into force or on the day on which an agreed advance payment is paid in full and all information to be provided by the customer which is relevant to the execution of the agreement is received, whichever is the later. Sivantos shall only be deemed to be in default for failing to meet a deadline if it fails to comply with all or part of its obligations towards its customer as a result of circumstances that are attributable to it and after the expiry of a reasonable additional period of time the customer has granted in writing. In that case, the customer shall only be entitled to terminate the agreement if it cannot reasonably be expected to uphold it. Sivantos is authorized to make partial deliveries. The customer is obliged to accept the goods or services. A defect such as the non-availability or partial availability of the appropriate documentation that does not seriously impede the use of the goods delivered or services rendered shall neither constitute grounds to claim failure to meet a deadline nor to refuse to accept or pay for the goods or services. This shall not affect the customer's right to have the shortcoming rectified as soon as possible.
6. **Transfer of risk and ownership.** The risk for goods being supplied always passes permanently to the customer at the time of arrival at the agreed place of delivery. Title to goods supplied only passes to the customer once the customer has paid all amounts owing to Sivantos in connection with the supply of these goods as well as other goods supplied by Sivantos previously or subsequently, including the related services, interest and costs. In the event of late payment, Sivantos shall be entitled to repossess or arrange for the return of any goods delivered without further notice of default and without legal intervention and the customer authorizes Sivantos in advance to access all sites in an around the customer's business to this end. The customer is entitled to use any goods subject to retention of title as part of its normal business activities. However this does not include encumbering such goods with rights or security interests.
7. **Non-attributable failure; force majeure.** Failure to comply with an obligation shall not be regarded as attributable if it is the result of or is related to a circumstance which is beyond the control of the Party concerned, whether it could have been foreseen or not. Such an event will in any event include but will not be limited to: war or a similar circumstance, mobilization, riots, sabotage, terrorism, threats of terrorism, fire, lightning strike, implosion, explosion or escape of dangerous gases or substances, natural disasters, extreme weather conditions, strikes, sit-ins, boycotts or blockades and measures taken by a domestic or foreign Government such as the imposition of import, export, delivery or production bans. If a party fails to comply with the agreement, without this being attributable to the Party concerned, and if it remains impossible to comply with the Agreement on a permanent basis, the agreement may be terminated with immediate effect. If compliance is not permanently impossible, the delivery period will be extended with the period during which compliance was impossible, including time required for resumption. In that case, the agreement may only be terminated by either of the parties after an extension period of at least seventy-five consecutive calendar days. If Sivantos incurs extra costs in complying with the agreement as a result of circumstances not attributable to Sivantos, Sivantos shall be entitled to charge these costs on to the customer in all reasonableness.
8. **Warranty.** For a period of 24 months after the risk passes to the end customer, but no longer than 27 months after delivery to the client, Sivantos warrants all products newly manufactured in the factory and delivered by Sivantos that have any material or manufacturing defects at the time at which the risk passes or that lack a guaranteed property. With the exception of receivers. For receivers a warranty period of 12 months is applicable. Sivantos will assess whether such products can be repaired free of charge, whether defective parts of such products will be replaced with new parts or used parts whose quality is fully guaranteed, or whether such products will be replaced with other, similar products, which may contain used parts whose quality is fully guaranteed. In order for this warranty to apply, the following conditions must also be met:
 - the defect must be reported to Sivantos in writing within 14 days after it could reasonably have been discovered; and
 - any additions or changes to the product delivered, any malfunctions repaired and any maintenance work must have been performed by Sivantos or with its prior written consent; and
 - any consumables used must meet Sivantos specifications.
 Sivantos does not give any warranty on used products. To avoid any misunderstanding it should be noted that this does not apply to new products that may contain used parts that have been included in the material cycle again, whose quality is fully guaranteed. Injudicious use and damage caused by moisture or and/or earwax (cerumen) are excluded from free repair. Sivantos is not required to repair defects that are due to normal wear and tear of parts and accessories, such as batteries, cables, dishes, audio shoes, earpieces, tubes, ear hooks and filters. Sivantos may require that a product that qualifies for repair be sent to it or to an address stated by it, at the client's expense. Any parts that become available when replaced remain or become Sivantos's property. A repair duty applies to defects in repairs as referred to above, for a period of three months after the repair was made, but in any event until the end of the original maximum period of 24 months after delivery to the end customer and no later than 27 months after delivery to the client. An agreement may be dissolved in whole or in part on the grounds of breach only insofar as the client cannot reasonably be required to continue the agreement.
9. **Return of goods.** A request to have delivered instruments credited can be made up to three months after the delivery. Only instruments that are in normal condition, in their original packaging, and provided with all items included in the delivery, such as user manual, case, etc. are eligible for crediting. Costs of shells for ITE instruments are never credited.
10. **Liability for damage.** If the customer suffers damage for which Sivantos can be held liable, the customer shall be compensated solely according to the following provisions, regardless of the grounds on which the claim for compensation is based. In the event of damage which the customer can prove to have suffered as a result of Sivantos' failure to meet a deadline, the customer shall be entitled to compensation of 0.5% up to a total of 5% of the price, excluding VAT, of that part of the agreement that was not executed on time for each full calendar week of the delay. Sivantos shall pay compensation for other damages only insofar as it concerns personal injury or damage to property. Compensation shall not be paid under any circumstances for loss of income, profit or revenue, loss of production, loss due to business interruption, loss of information including the costs of restoring it, loss of anticipated savings, loss of contracts, wages paid in vain, any increase in operating costs, excess costs incurred due to external purchasing, and discounts or penalties payable to third parties. With the exception of personal injury, which qualifies for full compensation, Sivantos's liability for compensation shall be limited to a maximum of once the invoice amount of the instrument concerned per event, whereby a series of related events are considered as a single event. The right to compensation for damage shall expire if no claim is made in writing within 14 days of the discovery of the damage. No compensation shall be paid for damage that comes to light more than 12 months after the handover of the goods concerned or the notification that the service has been performed. Third parties involved in the execution of the agreement may invoke the same defense against any claims made by the customer as that which Sivantos is entitled to invoke on the basis of these conditions.
11. **Intellectual property rights.** Sivantos reserves all rights, including that of intellectual property rights, relating to the information made available to a customer in the context of performing an agreement, for example in the form of drawings, diagrams, designs, calculations, descriptions, software or relevant documentation. The information may not be made available to third parties without explicit permission from Sivantos, and may only be used within the framework of creating and executing the agreement by the customer. Should no agreement come into existence the customer shall immediately return the information carriers, including the quotation, and any copies thereof to Sivantos when first requested to do so.
12. **Export.**
 - If the client transfers to third parties products supplied by Sivantos (hardware and/or software and/or technology, with the related documentation, regardless of the manner in which they were provided) or work performed or services provided by Sivantos (including all forms of technical support), the client must comply with all applicable Dutch and international regulations in the field of export control and re-export.
 - Before transferring to third parties any products, works and/or services provided by Sivantos, the client must warrant in particular that any embargo imposed by the European Union, the USA and/or the United Nations will not be infringed, with due observance of applicable domestic trade restrictions and bans on circumventing restrictions, that such products, works and services are not intended for use related to military goods, nuclear technology or weapons, if and insofar as such use is subject to an injunction or licence, unless the licence required has been obtained, and that the rules of all applicable lists of sanctioned parties of the European Union and the USA regarding trade with natural persons, legal entities and organisations on those lists are observed.
 - If the client is required to perform export controls, it must immediately provide Sivantos at its request with all the information regarding the end customer in question, the destination and the proposed use of products, works and services provided by Sivantos, as well as all restrictive measures that apply in the context of export control.
 - The client indemnifies Sivantos against all possible claims, proceedings, judicial actions, penalties, loss, costs and claims for damages that arise from or are related to any failure of the client to comply with export control rules and the client must reimburse all resulting loss and costs to Sivantos, unless such non-compliance is not due to a mistake of the client.
13. **Applicable law, disputes.** Dutch law, with the exception of the Vienna Sales Convention (CISG), shall govern agreements between Sivantos and the customer. The competent court of The Hague shall have sole jurisdiction over disputes between the customer and Sivantos.