



Sivantos Pty Ltd | ACN 009 163 419 | GST No. 106 595 259  
Conditions of Sale

## 1. DEFINITIONS

"Current Price List" means Sivantos' current standard price list as may be amended by Sivantos from time to time.

"Client" means the original end user of the hearing instrument or other goods sold under the contract.

"Customer" means the company, firm, or persons to whom the offer is addressed or contract entered into with and shall include executors, administrators, and successors and permitted assigns.

"Sivantos" means Sivantos Pty Ltd.

"24-hour in-house service" (available only to Australian Clinics) means Sivantos will dispatch custom hearing instruments to the Customer within 24 hours of receipt of a Customer order containing Client ear impressions provided:

- the Customer order is received by Sivantos by 12.00pm, Monday to Thursday (not being a gazetted public holiday in Queensland); and
- the day after the date in which Sivantos receives a Customer order is a business day (not being a gazetted public holiday in Queensland); and
- where a Customer order is received by Sivantos by 12.00pm on a Friday (not being a gazetted public holiday in Queensland), dispatch by Sivantos the next business day (not being a gazetted public holiday in Queensland) shall be deemed dispatch within 24 hours.

"Re - shell" means a re-build of the instrument in which a new shell and the plastic base of the faceplate is supplied.

## 2. GENERAL

These conditions of sale apply to the sale of items and goods included in the current issue of Sivantos' price lists or, where a written offer is made, they shall form part of that offer. No variation or cancellation of any of these conditions shall be binding on Sivantos unless agreed to by Sivantos in writing.

## 3. PRECEDENCE, PARTIAL INVALIDITY

If there is any inconsistency or variance in the terms of Sivantos offer and these conditions of sale, then the former shall prevail to the extent of any inconsistency. In the event of one or more clauses of these conditions of sale or any included in Sivantos' offer being held by a Court of Law to be legally invalid or unenforceable the remainder of such conditions shall in no way be affected.

## 4. ACCEPTANCE AND ORDER

Unless previously revoked by written notification to the Customer, Sivantos' offer shall remain valid for the period as stated in the offer or, where no such period is stated, for thirty (30) days from the date of the offer.

## 5. CANCELLATION OR VARIATION

Sivantos may terminate an order in the event of insolvency of the Customer or of execution being levied against any of the goods of the Customer or the Customer being placed in liquidation or administration whether voluntary or otherwise or if a receiver and manager or controller is appointed over part of all of Customer's assets.

An order may be cancelled or varied by the Customer only if such cancellation or variation is accepted by Sivantos in writing and any such variation or cancellation shall only occur on terms which will reimburse Sivantos for any costs or loss (included but not limited to loss of profit) incurred as a result of such cancellation or variation.

## 6. PRICES

The prices charged shall be the prices specified in the Price List ruling at the date of delivery ex Sivantos store or the price specified in Sivantos written offer. The price offered is based upon the quantities referred to in the offer. Should there be any variation in the total quantity of goods ordered from that offered, Sivantos reserves the right to amend the prices. The prices of goods which are not sold ex Sivantos' stock but imported for individual Customer's requirements are based on the quoted rate of exchange and shall be subject to adjustment in respect of any variation due to exchange fluctuation.

In application a calculation will be made at the date of invoicing, crediting or debiting the Customer with any variation, which has occurred between the quoted exchange rate and the Westpac Banking Corporation Spot Selling Rate applying at the date of invoicing.

## 7. INFORMATION AND DRAWINGS

All descriptions, specifications, illustrations, drawings, data, dimensions and weights furnished by Sivantos or otherwise contained in catalogues, price lists and other advertising matter of Sivantos are approximate only and are intended to be by way of a general description of the goods and shall not form part of the contract.

## 8. RISK

The goods sold shall be at the Customer's risk immediately upon delivery to the Customer or Customer's agent or where delivery is delayed, risk shall pass to the Customer after fourteen (14) days from the date of notification that the goods are ready for delivery.

## 9. TITLE

Notwithstanding that the risk in the goods sold shall pass to the Customer as provided for in Clause 8 hereof title and property in the goods sold shall, subject to the law, remain with Sivantos until such time as full payment is made to Sivantos for all amounts owing by the Customer so that the Customer's total indebtedness to Sivantos under the contract is discharged.

In the event that the Customer fails to make payment for the goods in accordance with the terms of this contract then, subject to the law, Sivantos shall have the right to recover from the Customer the goods and for that purpose the servants or agents of Sivantos may enter upon the Customer's premises in order to effect recovery and use any reasonable means of force in order to effect recovery. Sivantos shall have the right to resell or otherwise dispose of the goods so recovered without reference to the Customer.

If any of the goods are incorporated into or used by the Customer as parts components or materials in respect of any other product of the Customer before payment in full has been made for the goods then, subject to the law, the property in the whole of the product into which the part or components have been incorporated shall be and become that of Sivantos and remain the property of Sivantos until such time as payment in full has been made by the Customer.

Payment shall become due immediately upon the Customer (being a natural person) committing any act of bankruptcy or if the Customer (being a company) commits any act which entitles any person to apply to wind up the Customer or if a liquidator, administrator, controller, mortgagee in possession, receiver or like officer is appointed over part or all of the Customer's assets. The Customer acknowledges that until its total indebtedness to Sivantos is discharged it holds the goods sold as bailee of Sivantos and that a fiduciary relationship exists between Sivantos and the Customer. In the event that the Customer sells the goods to the Customer's Clients before payment in full for the goods has been made then, subject to the law, the Customer in a position of fiduciary shall:

- assign to Sivantos the benefit of any claim against such Clients;
- account fully to Sivantos for the proceeds of the sale of the goods sold or any part thereof until the Customer's total indebtedness to Sivantos is discharged.

## 10. SALES TAX, GST AND GOVERNMENT IMPOSTS

The prices offered are exclusive of GST, or other government imposts. Should GST or other government imposts be or become applicable they will be for the Customer's account at actuals.

If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply will be the amount calculated in accordance with clause 6 plus GST. For the purposes of this clause GST and Taxable Supply have the meaning given by the local legislation, as follows:

(a) In Australia - *A New Tax System (Goods and Services Tax) Act 1999*.

(b) In New Zealand - *Goods and Services Tax Act 1985*.

## 11. HEARING INSTRUMENT DISCONTINUATION AND REPAIR FACILITIES AND PARTS

Sivantos reserves the right to discontinue supplying any good contained in its product list, following three (3) months written notice to its Customers. Subject to clause 17, Sivantos does not warrant that repair facilities and or spare parts for goods will be available. The Customer must ensure that its Clients are made aware of the provisions of this clause prior to the Clients acquiring the goods.

## 12. BECOMING A SIVANTOS CUSTOMER

Prior to Sivantos accepting any order from a Customer, the Customer must complete a credit application, available upon request, which may, in Sivantos absolute discretion, be approved or rejected. Sivantos approval or rejection of a Customer credit application shall be confirmed in writing to the Customer prior to order acceptance. Sivantos retains the right to withdraw credit facilities at any time prior to delivery without further notification. Sivantos acceptance of a Customer is subject to Sivantos being granted a security interest attaching to the hearing instrument(s) or other goods sold under each order where such security interest is capable of being registered under the Personal Property Securities Act 2009 (Cth) and, where applicable, the Personal Property Securities Act 1999 NZ (both statutes called 'the Act'). Unless Sivantos waives its right for a registrable security interest in hearing instruments(s) or other goods sold under each order, the written acceptance of these conditions of sale shall create and deemed to create a registrable security interest granted by the Customer to Sivantos attaching to and enforceable against the hearing instrument(s) or other goods so purchased from Sivantos to the maximum extent recognised by the Act.

## 13. DELIVERY

Notwithstanding any provision of this contract to the contrary, the delivery date shall be extended in respect of any delay caused by the Customer, industrial disputes including strikes and lockouts, circumstances such as fire, war, mobilisation or by any other cause beyond the reasonable control of Sivantos.

In the event of delay caused by reasons other than those mentioned above and if as a result of such delay the Customer suffers loss, Sivantos undertakes to pay for each complete week of delay, pre-estimated and liquidated damages at the rate of 0.5% per week, but not more in aggregate than a total of 5.0% of the contract price. Such payment shall be in full satisfaction of damage sustained by the Customer due to any such delay and shall be in lieu of any other right the Customer may have against Sivantos.

## 14. TERMS OF PAYMENT

14.1 Unless otherwise stated in the offer, all prices offered are strictly net. All orders will be invoiced at the time of dispatch.

(a) In Australia, any payment due to Sivantos shall be made in full not later than thirty (30) days from the date of statement; and

(b) In New Zealand, any payment due to Sivantos shall be made in full not later than twenty (20) days from the date of statement.

14.2 Should the Customer delay in respect of any payment due to Sivantos then Sivantos shall have the right, in addition to all other rights to which Sivantos is entitled at law, to charge interest on the overdue amount at the rate of 6% per annum in excess of the interest rate prescribed by the Westpac Indicator Lending Rate for Business Loans calculated from the date of invoice to the actual date of full and final payment. Any payment by the Customer shall be credited first against any interest so accrued and the balance of payment if any shall be applied in reduction of the outstanding balance.

## 15. ORDERING

Orders for custom hearing instruments are to be made on Sivantos' Custom Products Order Form and sent to:

Sivantos Pty Ltd  
Level 4, 11 Finchley Street,  
PO Box 1950  
MILTON QLD 4064

or  
Sivantos Pty Ltd  
L5, BLDG 5, 666 Great South Road  
Eilerslie, Auckland 1061  
NEW ZEALAND

## AUSTRALIA

Orders for non-custom hearing instruments and accessories may be made either by telephone or facsimile to the following numbers:

Telephone: 1300 787 797 or Telephone: 0800 66 66 71  
Facsimile: +61 7 3858 7762 Facsimile: +64 9 580 5591

**16. DISPUTE RESOLUTION**

- (a) Sivantos and the Customer record their intention that, if any dispute or difference arises out of or in relation to these conditions, it is to be resolved in a spirit of good faith and on a commercially realistic basis by negotiation or mediation.
- (b) A mediator must be an independent person chosen by the parties or, at their request, by the Queensland Law Society Inc. (for disputes or differences in Australia) and New Zealand Law Society (for any dispute or differences arising in New Zealand).
- (c) The role of a mediator is to assist the parties in negotiating a mutually satisfactory resolution of any dispute or difference. The parties are not bound by a decision of a mediator unless agreed in writing between them.
- (d) Each party must bear its own costs in resolving any dispute under this clause and the parties must bear equally the costs of any mediator appointed in accordance with clause 16(b).

**17. NEW HEARING INSTRUMENT WARRANTY**

- 17.1 Clauses 17.2 and 17.3 shall only apply to new hearing instruments which are not covered by clause 17.4 and to repairs and services if expressly stated in these conditions of sale.
- 17.2 Subject to Clause 17.4, Sivantos shall make good by remake or repair within a reasonable time after notification by the Customer, defects which appear in new hearing instruments arising from faulty design, material or workmanship provided always that:
  - (e) such new hearing instruments have been properly handled, used operated and maintained in accordance with instructions issued by Sivantos; and
  - (f) such defects (whether apparent or not) occur within a period of:
    - (i) twenty four (24) months from the date the new standard hearing instruments have been dispatched (to a *New Zealand Clinic*) by Sivantos; or
    - (ii) twenty five (25) months from the date the new standard hearing instruments have been dispatched (to an *Australian Clinic*) by Sivantos; or
    - (iii) thirty six (36) months from the date the new full featured hearing instruments have been dispatched by Sivantos (to a *New Zealand Clinic*); or
    - (iv) thirty seven (37) months from the date the new full featured hearing instruments have been dispatched (to an *Australian Clinic*) by Sivantos; and
  - (g) Sivantos is notified in writing within seven (7) days of the alleged defect occurring.

Sivantos shall have no liability under this warranty where repairs, service or modifications are made to new hearing instruments within the warranty period other than by Sivantos or its authorised agents.

- 17.3 The warranty set out in clause 17.2 shall continue to apply for the unexpired portion of the warranty period of new hearing instruments that have been repaired or remade under clause 17.2.
- 17.4 Sivantos' warranty obligations for Office of Hearing Services (OHS) funded instruments shall be governed by any Deed of Standing Offer between Sivantos and OHS.
- 17.5 The express warranties contained in clauses 17.2 and 17.4 are in lieu of any other rights that would otherwise be conferred on the Customer under any law save that the express warranties do not exclude any conditions or warranties available to Clients implied into this contract by the provisions of the Competition and Consumer Act 2010 (Cth) and any applicable New Zealand equivalent or by any other Federal or State Laws to the extent that such conditions or warranties may not be excluded by express agreement.
- 17.6 The Customer may, at the Customer's option, select an additional twelve (12) month extended warranty which shall extend Sivantos' obligations under 17.2 by twelve (12) months by noting that option in the Special Instructions section of Sivantos' Custom Products Order Form at the time of initial order placement. Where selected the twelve (12) month extended warranty shall be charged to the Customer on a per instrument basis at the rate prescribed in the Current Price List for twelve (12) month extended warranties. Requests for the twelve (12) month extended warranty shall not be accepted by Sivantos if made after initial order placement.

**18. CUSTOM INSTRUMENT SHELL REMAKE POLICY**

Upon written request by the Customer, Sivantos shall provide custom instrument shell remakes for the same ear of a Client free of charge provided such request is made within three (3) months of the date in which the original custom instrument was invoiced by Sivantos to the Customer. Requests made outside the three (3) month period shall incur a charge in accordance with the Current Price List.

**19. CIRCUIT CHANGE POLICY**

- 19.1 Only one circuit change shall be permitted for the same shell type and same ear of a Client within ninety (90) days of the date of the Sivantos invoice.
- 19.2 Circuit changes requested by the Customer within ninety (90) days of the date of the Sivantos invoice shall be made by Sivantos free of charge. The unexpired portion of the warranty period contained in clause 17 shall continue to apply.

**20. LOSS OR DAMAGE TO NEW HEARING INSTRUMENTS WITHIN THE FIRST 12 MONTHS**

Sivantos may, in its absolute discretion and provided the hearing instrument has been paid for in full, replace once only any hearing instrument lost or damaged beyond repair by the Client within twelve (12) months of the date of the Sivantos invoice for that hearing instrument. A condition precedent to Sivantos replacing a hearing instrument shall be the receipt by Sivantos of a completed and duly executed statutory declaration by the Client outlining the date and circumstances of the loss or damage. Where a hearing instrument has been damaged, the damaged instrument must accompany the statutory declaration. Sivantos will apply a standard excess to all claims at the rate prescribed in the Current Price List.

Where a lost or damaged hearing instrument is a discontinued model, Sivantos may in its absolute discretion replace the lost or damaged instrument with a model of equal or greater value.

The unexpired portion of the warranty period contained in clause 17 for the lost or damaged beyond repair hearing instrument shall apply to all hearing instruments replaced by Sivantos under this clause 20.

**21. REPAIRS AND RE-SHELL PROCEDURE**

- 21.1 Sivantos' Repair Form must be completed by the Customer for each hearing instrument and accompany each hearing instrument returned to Sivantos for repairs or remake.
- 21.2 Subject to clause 21.3, the following shall apply to repairs to hearing instruments where the warranties under clause 17.2 and 17.4 do not apply:
  - (a) hearing instruments returned for repair outside the period prescribed in clause 17.2(b) but within five (5) years of the date of the Sivantos invoice for that hearing instrument shall be repaired by Sivantos at a flat rate prescribed in the Current Price List. A twelve (12) month repair only warranty period covering faulty workmanship and components, including those not replaced in the repair, with the exception of the faceplate and the shell, shall apply commencing from the date of invoice for the repair. The flat rate repair does not cover a change of matrix or any other modification to the normal performance of the hearing instrument.
  - (b) hearing instruments returned for repair outside the period specified in clause 21.2(a) shall be repaired by Sivantos at a flat rate as listed in the Current Price List. A one (1) month repair only warranty period against faulty material and workmanship shall apply to such repairs. The flat rate repair does not cover a change of matrix or any other modification to the normal performance of the hearing instrument.

- 21.3 Sivantos' warranty obligations under clause 21.2 shall not apply where no repairs, other than a clean and check, have been performed on a hearing instrument.
- 21.4 Sivantos' warranty obligations under clause 21.2(a) shall not apply to hearing instruments that have, in the reasonable opinion of Sivantos, been mistreated or worn out through fair wear and tear.
- 21.5 Hearing instruments returned for Re-shell outside of the trial period shall be Re-shelled by Sivantos at a flat rate prescribed in the Current Price List. A ninety (90) day warranty period shall apply to Re-shells commencing from the date of the Re-shell.
- 21.6 Clients travelling overseas must only use authorised Sivantos agents to repair, service or modify hearing instruments that are under warranty. Sivantos shall not be responsible nor liable for any fees, charges, costs or expenses imposed by overseas dealers on Clients nor have any warranty obligation for repairs, service or modifications made other than by authorised Sivantos agents. The Customer undertakes to draw each Client's attention to the substance of this clause at the point of sale to the Client.

A world wide list of Sivantos service providers can be found on the internet at the following address: [www.sivantos.com](http://www.sivantos.com)

- 21.7 Sivantos' warranty obligations under clause 21.2(a) shall not apply to hearing instruments that have, in the reasonable opinion of Sivantos, been mistreated or worn out through fair wear and tear.
- 21.8 Hearing instruments returned for Re-shell outside of the trial period shall be Re-shelled by Sivantos at a flat rate prescribed in the Current Price List. A ninety (90) day warranty period shall apply to Re-shells commencing from the date of the Re-shell.
- 21.9 Clients travelling overseas must only use authorised Sivantos agents to repair, service or modify hearing instruments that are under warranty. Sivantos shall not be responsible nor liable for any fees, charges, costs or expenses imposed by overseas dealers on Clients nor have any warranty obligation for repairs, service or modifications made other than by authorised Sivantos agents. The Customer undertakes to draw each Client's attention to the substance of this clause at the point of sale to the Client.

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**22. RECEIPT OF SIVANTOS CONSIGNMENT BY CUSTOMER**

Customers receiving consignments must sign and legibly print their name on all courier bag delivery dockets delivered from Sivantos to aid the tracking of consignments.

**23. LOSS OR DAMAGE DURING TRANSIT**

- 23.1 The Customer must, at its own expense and risk, use courier bags when delivering Client ear impressions and hearing instruments for repair, service or modification to Sivantos.
- 23.2 If a hearing instrument is damaged or lost in transit from Sivantos premises to the Customer's premises, Sivantos will replace the damaged or lost hearing instrument free of charge provided the Customer has:
  - (a) in the case of damage, notified Sivantos in writing of such damage within three (3) days of the Customer receiving delivery of the damaged hearing instrument; or
  - (b) in the case of loss, notified Sivantos in writing of such loss within three (3) days after the due date for delivery of the hearing instrument to the Customer.

- 23.3 Subject to Sivantos receiving notice in accordance with clause 23.2, where:
  - (a) a standard inventory product is damaged or lost in transit from Sivantos' premises to the Customer's premises, Sivantos shall replace the product free of charge within fourteen (14) days of receipt of notice under clause 23.2; or
  - (b) a non-custom made hearing instrument is damaged or lost in transit from Sivantos' premises to the Customer's premises, Sivantos shall replace the non-custom made hearing instrument free of charge within fourteen (14) days of receipt of notice under clause 23.2; or
  - (c) a custom made hearing instrument is damaged or lost in transit from Sivantos' premises to the Customer's premises, Sivantos shall, subject to the Customer having provided Sivantos with the Client's ear impression(s), commence manufacture of a replacement hearing instrument within fourteen (14) days of receipt of notice under clause 23.2.

- 23.4 Sivantos shall not be responsible nor liable for goods couriered by a Customer to Sivantos until such goods are delivered to and accepted by Sivantos. A signed delivery docket by Sivantos shall constitute acceptance.

**24. RETURN FOR CREDIT**

- 24.1 Subject to clause 24.2, hearing instruments may be returned within ninety (90) days of the date of the Sivantos invoice and Sivantos will issue a credit note or a refund. Sivantos' Credit Return Form must be completed by the Customer for each hearing instrument and accompany each hearing instrument returned to Sivantos for credit. Returned hearing instruments must be delivered to Sivantos free of charge, in good order and condition, in original packaging containing all accessories and manuals supplied with the hearing instrument and accompanied by a dispatch note stating the original invoice number, date of supply and reason for return.

- 24.2 Where a hearing instrument is returned incomplete or damaged, Sivantos will only issue a partial credit for an amount, which reflects the incomplete or damaged value of the hearing instrument.

**25. ALTERATIONS TO SHIPPING DESTINATIONS AND REQUESTS FOR ORDERS TO BE PLACED ON HOLD**

Any alteration to the shipping destination of an order subsequent to it being placed or any requests for orders to be put on hold or taken off hold must be directed to the Sivantos customer service section.

**26. LIABILITY OF SIVANTOS**

- 26.1 Subject to clauses 13, 17, 26.2 and 26.3 and to the law, Sivantos shall not be under any liability whether in contract, tort or otherwise from any cause whatsoever, whether occasioned by breach of contract, negligence or otherwise, for any injury, damage or loss, including economic or consequential damage or loss whether to persons or property, arising out of or in connection with this contract including any goods supplied, repaired or replaced or any other work related thereto.
- 26.2 If the basis of a contract is such that the Customer and or Client are a consumer as defined in the Competition and Consumer Act 2010 (Cth) or the New Zealand equivalent or in any other law of the Commonwealth (or any State or Territory) of Australia, the Customer's and or Client's rights shall be governed by the provisions of the said Act or any such Law to the extent that such liability may not be excluded by express agreement.
- 26.3 If liability may not be excluded by express agreement and where the goods to be provided by Sivantos are not of a kind ordinarily acquired for personal domestic or household use or consumption, then the liability of Sivantos for a breach of a condition or warranty implied by the Competition and Consumer Act 2010 (Cth) or the New Zealand equivalent (other than a condition or warranty implied by law) shall be limited to the repair of the goods, or, at Sivantos' option, the replacement of the goods or the supply of equivalent goods.

**27. PATENTS AND DESIGN RIGHTS**

The patent and design rights held by Sivantos and relating to goods offered or supplied by Sivantos shall remain the absolute property of Sivantos and Sivantos' designs and drawings shall not be reproduced or disclosed without Sivantos' written consent. The Customer will not, without Sivantos' written consent, copy or allow others to copy any drawings, goods or part thereof supplied by Sivantos.

**28. LEGAL CONSTRUCTION**

This contract shall be construed and operate in conformity with the laws of the State of Queensland which is hereby deemed to be the proper law of this contract. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and waive any right to object to proceedings being brought in those courts.

**29. BANKRUPTCY, LIQUIDATION**

If the Customer:

- (a) being a person, dies or commits an act of bankruptcy; or
- (b) being a company, takes or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction or if a receiver, manager, controller, liquidator, administrator, mortgagee in possession or like officer is appointed over part or all of the Purchaser's assets,

then Sivantos, at its option and without prejudice to any other rights it may have under the contract or at law, shall give notice in writing to the Customer and after fourteen (14) days from such notice may, unless otherwise provided by Law:

- (i) terminate the contract or suspend manufacture or delivery of any goods then outstanding; and
- (ii) retain any security given or moneys paid by the Customer and apply this against the assessed loss and damages incurred by Sivantos in the performance of the Contract.

**30. RESERVATION CLAUSE**

This offer (contract, order confirmation) or fulfilment of contract is subject to the proviso that required export licenses have been granted or that there are no other impediments arising from US, German or other export regulations.