
IVANTIS EUROPE B.V. TERMS AND CONDITIONS OF SALE **(Order Acknowledgement/Invoice)**

1. **Applicable Terms.** Unless otherwise agreed in writing with a statutory director of Ivantis Europe B.V. (“Ivantis”) these conditions shall apply to all requests and orders for the sale by Ivantis in the United Kingdom and the Republic of Ireland (including the Channel Islands and the Isle of Man) of all medicinal, medical device and accompanying products offered for sale by Ivantis in the United Kingdom and the Republic of Ireland. A buyer is any person, firm, company or other legal entity which places an electronic or other order with Ivantis for Ivantis products no matter what or where may be the ultimate destination of that product. All Ivantis products marketed by Ivantis are sold subject to these conditions, which shall be the sole terms and conditions of any sale of Ivantis products unless Ivantis states otherwise. These conditions will prevail at all times over any terms and conditions that the buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The placing of an order for, or the acceptance of, Ivantis products by the buyer shall indicate unqualified acceptance of these conditions. All sales of Ivantis products are made pursuant to these conditions which together with the order form a contract between Ivantis and the buyer for the sale and purchase of Ivantis products (“Contract”). Ivantis reserves the right to make any changes in the specification of the Ivantis products which are required to conform with any applicable legal requirements or which do not materially affect their quality or performance.
2. **Buyer Resale in EEA and Switzerland.**
 - a. As a result of the United Kingdom’s departure from the European Union, Alcon products placed on the market in the United Kingdom by, or with the consent of, Alcon or its affiliates acting as the holder of intellectual property rights after 1st January, 2021 may no longer be considered IP-exhausted in the European Economic Area (EEA).
 - b. Therefore a buyer buying products from Alcon in the United Kingdom will need to contact Alcon at its UK headquarters to ask for Alcon’s permission to buy and export the Alcon products that are Alcon IP-protected goods, with a view to exporting them from the United Kingdom to the EEA and Switzerland. For the avoidance of doubt, Alcon as the holder of intellectual property rights is under no obligation to provide permission for the Alcon products to be parallel exported to the EEA and Switzerland.
3. **Ordering.** Subject to availability of Ivantis products, and to Ivantis’s right to reject or vary orders, or to cease supply of Ivantis products by notice, orders processed by Ivantis shall be legally binding upon the buyer and the buyer shall be liable to pay for Ivantis products as documented in Ivantis’s invoice to the buyer. Ivantis will not accept any cancellations of orders that have been processed by Ivantis. Ivantis reserves the right at any time at its sole discretion to reject orders upon or after receipt and not to process orders after receipt. Ivantis may also at its discretion give not less than 30 days’ notice in writing to the buyer that Ivantis shall no longer supply them with any Ivantis products (and during such period of notice Ivantis may supply such Ivantis products for orders which it has processed in accordance with the conditions). Ivantis may vary these conditions at any time by giving not less than 30 days’ notice.
4. **Management of Orders.** In the event of shortages or anticipated shortages of Ivantis products, Ivantis shall be entitled at its discretion as a supplier of Ivantis products, or otherwise at its discretion to be promptly provided with a copy of any information that is relevant to the order, including copies of anonymised prescriptions, licences and permits that the buyer may hold, copies of contracts that a buyer may have signed with its own customers (all price information redacted), anonymised sales data and of any other documents or data that Ivantis considers necessary for Ivantis to determine whether any order may be

considered or partly or fully accepted. In providing such information and data the buyer must take all steps to comply with applicable laws, professional conduct obligations and with best practice.

5. **Future Orders.** Ivantis will work with the buyer to plan future ordering based on the buyer's previous usage levels, in order to ensure the buyer's stock of Ivantis products is appropriate for their requirements. The minimum order value and minimum order quantity per order of Ivantis products that may be placed with Ivantis may be confirmed by Ivantis before or after receipt of an order. Ivantis products shall, unless otherwise agreed in writing with the buyer, be delivered with a minimum of six (6) months' unexpired shelf life at the time of delivery to the buyer, and in accordance with Ivantis's standard selling unit.
6. **Acceptance.** Ivantis's acceptance of Customer's purchase order is expressly made conditional on Customer's acceptance of these terms and conditions of sale, which are in lieu of any additional or different terms contained in Customer's purchase order or other document or communication pertaining to Customer's order or the goods. Customer's assent to the terms and conditions contained in this document shall be conclusively presumed from Customer's acceptance of all or any part of the goods, services or from payment by Customer for all or any part of the goods or services. None of these terms and conditions may be added to, modified, superseded or otherwise altered, except by a written instrument signed by an authorized representative of Ivantis, nor shall a course of dealing operate as a modification or waiver of these terms and conditions. Failure of Ivantis to object to any terms or conditions which may be contained in any document or form of Customer shall not be construed as a waiver of these conditions, nor as an acceptance of any such terms and conditions.
7. **Price.** The price of the Ivantis products shall be the price set out in Ivantis's published price list from time to time or as otherwise agreed in writing between the parties from time to time. All prices for Ivantis products shall be subject to alteration without prior notification. All prices are quoted in the relevant local currency and are exclusive of VAT or any other applicable tax levied on purchase of Ivantis products. Ivantis products will be invoiced at prices applicable as at the date of processing of an order on Ivantis systems. All prices shall be rounded to the nearest two (2) decimal places.
8. **Payment Terms.** Invoices are due for payment, and the credit date is, the date specified on the invoice issued by Ivantis with a delivery of Ivantis products or if no such date is stated, 30 days after the invoice date. Unless otherwise agreed in writing with a statutory director of Ivantis, payment must be made by BACS or by electronic transfer and reach Ivantis's account, as cleared funds, no later than the credit date. At its option, Ivantis may require or allow payment by direct debit or credit card. Failure to pay any invoice by the due date may result in a service charge in an amount not to exceed 1½% per month (18% per year) or the maximum legal rate, whichever is less, on the unpaid balance for such invoice(s) from the original due date. If the buyer fails to make payment on the credit date Ivantis shall be entitled without prejudice to any other rights it may have:
 - a. to cancel the Contract or suspend any further deliveries to the buyer; and
 - b. to appropriate any payment made to Ivantis to such outstanding invoice/invoices as Ivantis may think fit.
9. **No Set-Off.** All invoices shall be paid without any deduction whether by way of set off, counterclaim, discount, abatement, withholding or otherwise except for any deduction or withholding required by law or agreed overpayments and credits which have been given. Ivantis reserves the right, in its sole discretion, to use open credits on Customer's account, including rebate credits, to offset any outstanding past-due amounts owed by Customer. If for any reason an invoice is unpaid on the credit date Ivantis reserves the rights set out in the following sub-clauses:
 - a. to either not supply, or to postpone delivery of any orders placed by the buyer but not yet fulfilled or delivered by Ivantis;

-
- b. to claim immediate payment of all invoices despatched, including those where the credit date has not been reached, even if delivery has not taken place and the property in any products has not passed to the buyer;
 - c. to be paid on an indemnity basis any costs Ivantis incurs in recovering any monies due under the Contract (and the costs of recovering such costs) including its administrative costs and any costs incurred with lawyers or debt collection agencies. Ivantis's administrative costs may include the costs of employing the staff concerned and the overheads attributable to them for the time spent. In calculating administrative costs, credit will be given for any compensation due under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - d. to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998, it being agreed that the terms implied by that Act shall apply after any judgment as well as before. Any reference to The Late Payment of Commercial Debt (Interest) Act 1998 is also a reference to any amendment, modification or re-enactment of it.
 10. **Taxes.** Prices quoted do not include applicable sales or use taxes. Unless Customer provides Ivantis with a valid, tax-exemption certificate, Customer agrees to pay any applicable taxes subject to applicable laws and all other laws, regulations, rules or acts in each jurisdiction in which it conducts business on products purchased hereunder.
 11. **Shipment.** Ivantis products shall be delivered to the address stated in the Contract, or such other address as agreed by the parties in writing, and the signature at such address, of an employee or agent or other person purporting to act on behalf of the buyer, on Ivantis's or its nominees' delivery note, shall be conclusive proof of delivery of Ivantis products in accordance with the Contract. Unless otherwise noted on the invoice, products are shipped **DDP (INCOTERMS 2010)**. Upon prior notice to Customer, Ivantis reserves the right to ship substitute products, where such substitutions do not materially affect the installation, performance or price of the original products.
 12. **Delivery.** A delivery charge payable by the buyer may be levied on orders, of an amount determined by Ivantis at the point of processing of an order. All times, dates or periods given for the delivery of Ivantis products are estimates only and time shall not be of the essence. Ivantis shall use commercially reasonable endeavours to supply by agreed delivery dates but shall not be liable for any delay in delivery that is caused by an Event of Force Majeure or the buyer's failure to provide Ivantis with adequate delivery instructions or any other instructions that are relevant to the delivery of the products. Delivery may take place by way of instalments in such quantities as Ivantis may reasonably decide. Each instalment shall constitute a separate Contract and no breach in respect of one or more of them shall entitle the buyer to cancel any subsequent instalment or repudiate the Contract as a whole. If the buyer fails to accept delivery of the Ivantis products within three business days of Ivantis notifying the Buyer that the Ivantis products are ready, then, except where such failure or delay is caused by an Event of Force Majeure or Ivantis's failure to comply with its obligations under the Contract: (a) delivery of the Ivantis products shall be deemed to have been completed at 9.00 am on the third business day after the day on which Ivantis notified the buyer that the Ivantis products were ready; and (b) Ivantis shall store the Ivantis products until delivery takes place, and charge the buyer for all related costs and expenses (including insurance). In the event that on receipt of a delivery it is apparent that:
 - a. there is a shortage;
 - b. over-delivery; or
 - c. signs of damage to the product packs and the buyer wishes to make a claim;

the buyer must notify Ivantis of the issue within five business days of the delivery. In the case of damages the buyer must retain the packaging in the state, condition and location in which they were delivered or take photographs of the delivery.

13. Risk and Ownership.

- a. The risk in the Ivantis products shall pass to the buyer on completion of delivery. Title and ownership in the Ivantis products shall pass to the buyer on receipt by Ivantis in full of:
 - i. The price (and VAT) for those Ivantis products; and
 - ii. all other sums due from the buyer under the Contract; and
 - iii. all sums due from the buyer under any other contracts, agreements or arrangements between the buyer and Ivantis.
- b. Until such time as title and ownership in Ivantis products passes to the buyer, the buyer agrees to:
 - i. hold the Ivantis products as Ivantis's fiduciary agent and bailee and to keep such Ivantis products separate from those of the buyer and third parties and properly stored, protected and insured and identified as Ivantis's property and not mix them with any other goods;
 - ii. not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Ivantis products;
 - iii. not dispose of or deal with the Ivantis products or any documents of title relating to them or any interest in them, except that the buyer may on its own account sell the Ivantis products in the ordinary course of its business; and
 - iv. notify Ivantis immediately if it becomes subject to any of the events listed in clause 14 (Bankruptcy).
- c. Ivantis shall have an action for the price of the Ivantis products notwithstanding that title in the Ivantis products has not passed.
- d. The buyer irrevocably authorises and grants Ivantis its servants or agents an irrevocable licence to enter the buyer's premises or any other premises over which the buyer has control or access in order to recover, take possession and/or to resell all Ivantis products for which the buyer has not made payments of the invoice price which may be due to Ivantis or which Ivantis retains ownership. The buyer shall take all reasonable steps to help Ivantis recover the Ivantis products. Demand for, or recovery of, the Ivantis products shall not of itself discharge the buyer's liability to pay the whole of the price or any other rights of Ivantis. A buyer shall not purport to set off or withhold any payment claimed or due from Ivantis under any contract.

14. Bankruptcy.

If a buyer fails to make any payment to Ivantis when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against it or being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if Ivantis has reasonable cause to believe that any of these events is likely to occur:

- a. the buyer irrevocably authorises and grants Ivantis its servant or agents an irrevocable licence to enter without prior notice any premises where Ivantis products are stored, and to re-possess and dispose of any Ivantis products that are in the possession of the buyer;
- b. the buyer's right to sell or otherwise dispose of Ivantis products shall terminate immediately;

-
- c. Ivantis shall have the right to withhold delivery of any Ivantis products ordered; and
 - d. any and all sums unpaid in respect of Ivantis products shall become immediately due and payable.
15. **Storage of Products.** All stocks of Ivantis products in possession of the buyer shall be stored in accordance with the conditions of storage as issued or amended by Ivantis from time to time. The buyer remains fully responsible for correct storage, Ivantis will make no provision or contribution to the buyer for means of storage. Ivantis shall be entitled with the prior agreement of the buyer (which shall not be unreasonably withheld or delayed) to send its authorised representative(s) at all reasonable times to any of the buyer's depots or sub-depots to inspect the buyer's stocks of Ivantis products or other items.
16. **Waste Minimisation.** Ivantis representatives and the buyer's representatives will, every three (3) months (or more frequently, at Ivantis's discretion on notice to the buyer) carry out regular inspections of lenses to establish the following and to ensure that no stock has exceeded its expiry date and minimise waste.
- a. Stock which has nine (9) months or less unexpired shelf life will be identified to the buyer and for Ivantis's records. Ivantis's representatives will attach stickers to that stock. Stock will be prioritised for use as follows:
 - i. Stickered stock with nine (9) months or less unexpired shelf life is to be used first;
 - ii. Stock with between nine (9) and fifteen (15) months of unexpired shelf life is to be used second;
 - iii. Stock that has more than fifteen (15) months of unexpired shelf life should be used as a third priority. If requested by the buyer, Ivantis shall make available a report of the relevant stock identified pursuant to this clause.
 - b. The adequacy of stock levels will be determined by Ivantis in its sole discretion, to provide for the buyer's current usage patterns. In order to minimise waste through expiration of shelf life, Ivantis reserves the right to control the supply of certain models or powers of IOLs, acting reasonably.
 - c. For the avoidance of doubt, this clause operates to ensure:
 - i. that the buyer's stock usage is occurring on a First Expire First Out basis;
 - ii. that any change in the mix of products provided pursuant to this Agreement may be changed with the prior written consent of Ivantis in order to suit the needs of the buyer; and
 - iii. quality and condition of the stock and their conditions of storage.
 - d. In all correspondence a buyer must quote the order number quoted by Ivantis and where requested by Ivantis, must also quote the manufacturer's batch number of Ivantis products.
17. **Regulatory.** In submitting orders to Ivantis, the buyer warrants that in ordering Ivantis medicinal products for resale, the buyer will comply with Regulation 8(1)(b) of The Medicines for Human Use (Manufacturing, Wholesale Dealing and Miscellaneous Amendments) Regulations 2005 No 2789. When ordering contact lens products, the buyer will comply with the Opticians Act 1989 (as amended).
18. **Audit.** To comply with its obligations as holder of a wholesale dealer licence, or a manufacturer's licence, or as distributor and supplier of medicinal and medical device products to the National Health Service or to others, or to comply with its obligations as employer of employees who provide services and support to customers of Ivantis, Ivantis reserves the right at any time to audit any site from where an order has been issued or where Ivantis products are to be stored, delivered or otherwise handled, prior to considering an order that it has received. The scope of such audit may include all records and permits, licences or other data relating to a buyer or to the Ivantis products or of other products of a buyer.

19. Returned Products Policy.

- a. For security reasons, Ivantis does not accept unauthorised returned products. Any unauthorised returns delivered to Ivantis may be destroyed immediately without investigation. No compensation will be provided in such circumstances.
- b. If a return is required for any reason other than under clause 19(a) above, the buyer will obtain Ivantis's prior written consent to such return, before it effects a return. Ivantis may accept or refuse such a proposed return of Ivantis product, in its sole discretion, except in the following circumstances:
 - i. in relation to contact lenses where notification must be made within ninety (90) days of receipt of delivery;
 - ii. in relation to all consumables where notification must be made within sixty (60) days of the buyer's receipt of such items, and such items may only be returned if they are in a saleable condition and have at least six (6) months to their expiry date;
 - iii. in relation to all intraocular lenses where returns must be made within ninety (90) days of the buyer's receipt of such items, and such items may only be returned if they are in a saleable condition and have at least six (6) months to their expiry date. In the event that a return of intraocular lenses is attempted by the Customer beyond ninety (90) days after the Customer's receipt, Ivantis may accept such return but for the avoidance of doubt, no credit will be granted to the Customer's account; and
 - iv. in the case of a latent defect in any good, where notification must be made within a reasonable time of the latent defect having become apparent.
- c. Ivantis will scan the bar codes/serial numbers of intraocular lenses on their return to confirm the details of such intraocular lenses. However, in contrast no consumable products may be returned for consideration of credit or replacement unless the buyer:
 - i. Contacts the customer services department of Ivantis to obtain a unique returns number and returns label which must be affixed to the items being returned;
 - ii. Ensures that Ivantis receives the completed returns form within the packaging containing the returned product and the returns label, to be affixed to the returned product. No other products are to be shipped back in the package.
- d. In the event that the buyer returns other products not described in the completed returns form, Ivantis may return such product at the buyer's expense or retain and re-sell those products without credit to the buyer. The only products exempted from the returns obligations in this clause are those Ivantis products described in sub-clause 19(h) below.
- e. Pads of blank copies of the returns form may be distributed from time to time by Ivantis to customers' premises, may be available on delivery notes, may be obtained from Ivantis's Customer Care Department on request or may be downloaded from the Easy ONLINE Patient Management System. Failure of the buyer to provide a fully completed returns form shall constitute an unauthorised return. Ivantis will provide assistance by telephone and email in the first six months after the Effective Date to ensure that the buyer understands their obligations under this sub-clause 19(e).
- f. The approval for any return will be given at Ivantis's discretion. In the event that Ivantis has accepted to receive a return, Ivantis should receive the returned product before the stated expiry date. Ivantis will provide the address for returns to the buyer. For the avoidance of doubt, replacement of that expired product is at the discretion of Ivantis.

-
- g. For the avoidance of doubt a credit of the price paid by the buyer is only to be considered in respect of:
- i. Ivantis products sent by Ivantis in error;
 - ii. Ivantis products returned, when Ivantis quality control checks show the complaint to be justified; or
 - iii. Ivantis products which have been supplied with less than six months' unexpired shelf life at the date that delivery occurred; or
 - iv. Ivantis contact lenses, provided that the lenses were supplied for use by a specific patient, the patient's prescription has changed and the products returned amount to not more than 6 months' supply for that patient's full-time wear.
- h. The following Ivantis products will **not** in any event be accepted for credit:
- i. date-expired stock;
 - ii. products with outer packaging or seals that are broken and/or damaged;
 - iii. products which require special storage conditions such as temperature controlled storage and transportation;
 - iv. products which are not the subject of a completed returns form received within the required timescale by Ivantis's Customer Care Department; and
 - v. products which need to be returned as a result of any acts or omissions of the buyer.
- i. There is no returns policy applicable to the Ivantis viscoelastic products, including Provisc, Duovisc and Viscoat.
20. **Batch Recall.** In order to facilitate any batch recall the buyer shall maintain suitable records such as order quantities and, where possible, associated batch numbers in respect of all sales to customers. In the event of any batch recall the buyer shall co-operate with Ivantis in taking all necessary steps to remove the relevant batch(es) from the market within the specified time. Ivantis products that are recalled from the buyer's customers may be reimbursed by Ivantis to the buyer at prices determined by Ivantis at its discretion.
21. **Patents and Trademarks.** Nothing in the conditions shall be construed as granting or implying the grant of any licence under any patent, trade mark or other intellectual property rights held by Ivantis anywhere in the world and Ivantis shall be entitled to exercise such rights to the fullest extent legally permissible at the time of such exercise. Unless this is necessary for the purpose of resale in the United Kingdom, no trademarks of which Ivantis, (or any of its Affiliates or associates) are proprietors or authorised users shall be applied by the buyer to any goods originally supplied by Ivantis (or any such Affiliate or associate of Ivantis) on removal from their original container. Unless this is necessary for the purpose of resale in the United Kingdom, if a trademark is affixed on Ivantis products when originally supplied by Ivantis such trademark shall not be altered, partly removed or partly obliterated. Ivantis gives no warranty or representation that Ivantis products do not infringe any patent, trademarks, registered designs or other intellectual property rights of any third party anywhere in the world.
22. **Warranty.** To the extent the Products are designed and manufactured by Ivantis, Ivantis represents and warrants that all Products as of the date of delivery by Ivantis are (1) free and clear of all liens and encumbrances; (2) free from all defects or deficiencies in design, materials and workmanship; and (3) manufactured and labelled in compliance with applicable laws relating to medical devices. Ivantis makes no

other warranty, express or implied, as to the products and specifically disclaims all other warranties including, without limitation, any implied warranties of merchantability and fitness for a particular purpose. The buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Ivantis which is not set out in the Contract.

23. **Limitation of Liability.** In no event shall Ivantis be liable to Customer for lost profits, injury to goodwill, or any other special, incidental or consequential damages, even if Ivantis has been advised of the possibility of such damages (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the Contract) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; (iii) whether caused by any total or partial failure or delay in supply of the products or by any defect in materials; and (iv) whether deliberate (but not with malicious intent) or otherwise, however fundamental the result. Customer agrees that under no circumstances will Ivantis's liability relating to its sale of products to Customer for any cause exceed the purchase price paid by Customer for the particular products involved. Nothing in these conditions shall limit or exclude any liability or any remedy to the extent prohibited or limited by law and in particular nothing in the Contract shall affect liability (a) for death or personal injury caused by negligence or (b) arising from any fraudulent misrepresentation or any other fraudulent act or omission by or on behalf of any party.

24. **Termination/Suspension.**

- a. Without affecting any other rights and remedies it might have, Ivantis shall be entitled to terminate the Contract and/or suspend its performance at any time without liability to the buyer by giving written notice to the buyer at any time if the buyer:
 - i. is in breach of any provision of, or purports to cancel, the Contract; or
 - ii. has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets, or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the buyer is incorporated, resident or carries on business.
- b. Any termination however caused shall not affect:
 - i. any right or liabilities which have accrued prior to the time of termination; and
 - ii. the continuance in force of any provision of the Contract which expressly or by implication is intended to come into or continue in force after termination including without limitation clauses 8 (Payment Terms) and 29 (Assignment/Subcontracting).

25. **Force Majeure.** Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent such failure or delay is caused by events beyond its reasonable control, including but not limited to acts of God, fire, strikes, lockouts, deliberate damage, shortage of materials or power, pandemic, accidents and breakdowns of plant or machinery or prohibition or restriction by a competent authority ("**Event of Force Majeure**"). If an Event of Force Majeure continues for more than a period of 30 days, Ivantis shall be entitled at its discretion and without liability, to perform, suspend performance of, and/or terminate the Contract.

26. **Confidentiality and Publicity.**

-
- a. The buyer shall not, without the prior approval of Ivantis take or permit to be taken any photographs of Ivantis facilities or of any other property or staff of Ivantis or of any Ivantis Affiliates for use in any publicity or advertising or otherwise. If Ivantis gives such consent, such photographs may be used only for the purpose authorised by Ivantis.
 - b. The buyer (and their agents and employees) shall not, without the prior approval of Ivantis, disclose to any other person any confidential information relating to Ivantis, its Affiliates and their products, operations, processes, business, customer base, pricing and employees which is not in the public domain or already in the possession of the buyer (“**Confidential Information**”), except that the obligations contained in this clause shall not prevent any disclosure of Confidential Information which is required by law, court order or any legal or regulatory authority or disclosure to a party’s professional advisors subject to a duty of confidence.
 - c. The buyer shall ensure that its employees are given access to the Confidential Information only on a “need to know” basis in relation to the works and that such employees are informed of the confidential nature of the Confidential Information and are contractually bound to safeguard the Confidential Information on terms the same or similar to those set out in these conditions.
 - d. In the event that any request for disclosure is made to the buyer under the Freedom of Information Act 2000 for disclosure of any Confidential Information, the buyer will consult Ivantis at least 10 business days before it is due to respond to any such request.
 - e. For the purposes of these conditions an Ivantis “**Affiliate**” is any organisation or subsidiary directly or indirectly controlled by Ivantis Eye Care UK Limited or which is under joint control with Ivantis Eye Care UK Limited or any of its subsidiaries, “**control**” being the ownership of a greater than 50 per cent voting interest (whether held directly or indirectly) at a directors’ or shareholders’ meeting. This Contract is made for the benefit of, and Ivantis’s rights may be enforced by, all Ivantis Affiliates but Ivantis and the buyer may vary or rescind this Contract without notifying any such Ivantis Affiliates.
27. **Indemnity.** The buyer shall indemnify and hold Ivantis harmless from and against any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Ivantis and arising in contract or in tort, negligence or otherwise (and whether or not Ivantis has advised the buyer of the possibility of such loss or damage), arising out of or in connection with (i) any failure by a buyer (or its agents and employees) to comply with the law or breach of the Contract, or (ii) any neglect of the buyer (or its agents and employees) in respect of the Ivantis products or (iii) any use or sale of any products manufactured by the buyer and incorporating Ivantis products.
28. **Enforceability, Waiver, Cumulative Remedies.**
- a. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - b. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

-
- c. Except as set out in these conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Ivantis.
 - d. These rights and remedies are cumulative and (subject as otherwise provided) are not exclusive of any right or remedy provided by law. No exercise by Ivantis of any one right or remedy shall (save unless expressly provided otherwise) operate so as to hinder or prevent the exercise by it of any other right or remedy.
29. **Assignment/Subcontracting.** Ivantis may perform any of its obligations or exercise any of its rights under the Contract itself or through any Ivantis Affiliate, provided that any act or omission of any such Affiliate shall be deemed to be the act or omission of Ivantis. Ivantis may at any time assign, transfer, charge or deal in any other manner with any of its rights hereunder, and may sub-contract any or all of its obligations under the Contract. The buyer shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Contract, or purport to do so, or sub-contract any or all of its obligations under the Contract without the prior written consent of Ivantis in its absolute discretion.
30. **Data Protection and Call Recording.**
- a. Each party agrees that, in the performance of its respective obligations under these conditions, it shall comply with the provisions of the Data Protection Act 2018 (the "Act") to the extent it applies to each of them. Where used in this clause, the expressions "process", "Personal Data", "Data Processor", "Data Controller" and "Data Subject" shall bear their respective meanings given in the Act.
 - b. Where the buyer is acting as a Data Controller, the buyer must ensure that any processing of Personal Data in connection with this Contract for which they are responsible complies with the Act. Where the buyer provides Personal Data to Ivantis or its appointed agents, for example in the event that the buyer is providing Personal Data relating to the buyer's customers to Ivantis or its appointed agents during the term of this Contract for marketing purposes or in relation to the supply of products, it warrants that it has obtained such Personal Data lawfully under the Act and is entitled to provide it to Ivantis and for Ivantis to use it for reasons connected with this Contract. Where Personal Data is provided by the buyer to Ivantis, Ivantis will process such Personal Data strictly in accordance the Act for the purpose of fulfilling its contractual obligation and any guidelines provided by Ivantis in connection with the processing of such Personal Data.
 - c. Where the buyer is acting as a Data Processor in relation to Personal Data processed in relation to this Contract, it shall process the Personal Data strictly in accordance with the terms of the Act and in accordance with Ivantis's instructions, unless otherwise required by law or any other regulatory body.
 - d. Both parties shall ensure, in relation to their respective processing of Personal Data, that appropriate operational and technical measures are in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Personal Data and, having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage. Each party agrees to notify the other party in the event that one party receives a request or notice from a Data Subject exercising his rights under the Act in relation to Personal Data being processed by the other party and to assist the other party promptly with all subject access requests which may be received from Data Subjects.
 - e. Ivantis records incoming and outgoing calls for quality and training purposes and for the purpose of evidencing business transactions, in compliance with applicable law.

31. **Compliance with Laws.** Each party shall comply with its obligations under applicable laws and regulations with respect to all matters related to the invoice.
32. **Reporting Obligations.** Products purchased hereunder include discounts. Customer may have an obligation to report the price paid, net of any discounts and/or rebates for third-party reimbursed products or procedures using products purchased hereunder.
33. **Reporting for Products Complaints.** All complaints regarding the products or services on the invoice will be forwarded to Ivantis immediately, which shall be no later than one calendar day following awareness of the complaint, to qa.complaints@ivantis.com.
34. **Governing Law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
35. **Third Party Rights.** All Ivantis Affiliates and all employees, agents and subcontractors of Ivantis shall each be entitled, in its own right pursuant to the Contracts (Rights of Third Parties) Act 1999 (“**TP Act**”), to enforce every defence and limitation expressed to be in favour of Ivantis under these terms and the Contract to the extent determined by Ivantis in its absolute discretion from time to time, as if such defences and limitations were expressed to be for the benefit of the relevant third party. Also, each Ivantis Affiliate shall be entitled in its own right to enforce, pursuant to the TP Act, all indemnities in these terms and the Contract expressed to be in favour of Ivantis to the extent determined by Ivantis in its absolute discretion from time to time, as if such indemnities were expressed to be for the benefit of the relevant Ivantis Affiliates. The buyer and Ivantis shall not be required to notify or obtain the consent of any third party in order to rescind or vary the Contract or any provision of it. The aggregate liability of all third parties and Ivantis collectively to the buyer shall be no greater than the liability of Ivantis alone, as set out in the Contract. No third party may assign or otherwise transfer any of their rights referred to in this clause. Save as referred to in this clause, no provision of a Contract shall be enforceable pursuant to the TP Act by any person who is not a party to it.
36. **Entire Agreement.** These terms and conditions of sale constitute the final entire agreement of the parties with respect to the products herein (including applicable rebates), and shall supersede any other agreements or proposals, whither oral or written, pertaining to the subject matter hereof, including, without limitation, any terms and conditions contained in purchaser’s purchase order forms (regardless of when such purchase order is issued by the purchaser). Agents and salesmen of the parties have no authority to make representations not included herein.

Ivantis Europe B.V.

Registered Office: Schiphol Boulevard 359, 1118 BJ Schiphol, Netherlands

UK Registered Address: Registered Address: Ivantis Europe B.V., The Blade, Abbey Square, Reading, RG1 3BE

Registered in England

UK/IRL CUSTOMER SERVICE CONTACT DETAILS

UK Customer Care telephone: +44 (0) 7827 128 447

UK&IRL Customer Care e-mail: customercareuk@ivantis.com

UK&IRL Surgical e-mail orders to:

HydrusUK@Ivantisinc.com