

BAXTER HEALTHCARE CORPORATION
TERMS AND CONDITIONS OF PURCHASE
(US HOSPITAL PRODUCTS AND ADVANCED SURGERY¹)

All purchases of Products are subject to and expressly conditioned upon these terms and conditions of sale (these “Terms and Conditions”), which are accepted by, and shall be deemed binding on, the Customer upon placing an order for Product(s) (as hereinafter defined). These Terms and Conditions, as amended from time to time, are available on Baxter’s website, <http://www.baxter.com/partners-suppliers/ecommerce/terms-of-sale.page>, which is accessible by Customer. Baxter reserves the right at any time to change these Terms and Conditions without notice. Baxter will update its website as these Terms and Conditions are changed; such changes shall become effective immediately upon posting of the modified Terms and Conditions. It is Customer’s responsibility to review the latest version of the Terms and Conditions prior to submitting an order. Any orders placed after the Terms and Conditions are changed shall be subject to such amended Terms and Conditions.

All matters arising out of or related to this Agreement or the performance of the Parties hereunder will be governed by the laws of the State of Delaware without regards to its conflicts of laws principles.

1. DEFINITIONS.

The following definitions apply to these Terms and Conditions:

1.1 Agreement means an agreement separate from these Terms and Conditions that has been negotiated and executed between Baxter and Customer for the purchase of Products or any other products (including Equipment) sold or otherwise distributed by Baxter.

1.2 Advanced Surgery Product means products listed in Baxter’s Advanced Surgery product catalog located at:
<http://ecatalog.baxter.com/ecatalog/loadcategory.html?cid=20016&lid=10001&hid=20001&categoryId=38455>

1.3 Customer means a person or entity located within the 50 United States and District of Columbia who is legally authorized to purchase Products from Baxter, and either purchases Products directly from Baxter or from a Baxter-authorized distributor.

1.4 Product(s) means any product other than Equipment, including without limitation intravenous (IV) solutions and administration sets, premixed drugs and drug-reconstitution systems, pre-filled vials and syringes for injectable drugs, IV nutrition products, inhalation agents, pharmaceutical injectable products, hemostats, sealants, adhesion prevention products and applicators, that is sold or otherwise distributed by Baxter.

1.5 Expedited Orders means a request from a Customer that indicates a guaranteed expedited delivery day (same day, next day, or second day delivery) which is outside of the Customer’s normal schedule or normal lead time.

1.6 Equipment means equipment, related parts, software, peripherals and accessories that are manufactured, licensed, leased, sold or otherwise distributed by Baxter pursuant to an Agreement.

1.7 Frozen Product means premixed frozen drug Products that are sold and billed by Baxter or that are offered by Baxter on behalf of the proprietary drug manufacturer and billed by such manufacturer.

1.8 Return Goods Policy shall mean Baxter’s Return Goods Policy, which can be viewed on-line at: <http://www.baxter.com/partners-suppliers/ecommerce/terms-of-sale.page>

¹ These Terms and Conditions are not intended to be used for purchases, leases or placements of infusion pumps, compounding equipment and related software, DoseEdge Pharmacy Workflow Manager and related software and equipment, vaporizers or temperature control equipment, or for purchases of Micro Companies Alliance (MCA), Inc products.

1.9 Specifications shall mean: (a) with respect to Products manufactured by Baxter, Baxter's specifications for the Product in effect at the time of shipment, and (b) with respect to Products distributed, but not manufactured, by Baxter, the manufacturer's published specifications at the time of shipment.

1.10 Terms and Conditions shall mean these Terms and Conditions of Purchase.

2. WARRANTIES AND LIMITATION OF LIABILITY.

2.1 Product Warranty and Remedy.

2.1.1 Product warranties shall be extended only to the original Customer, and are not assignable or transferable by Customer.

2.1.2 In the absence of a more specific warranty granted by Baxter in an Agreement that states the nature and duration of Baxter's obligation to Customer, Products are warranted, at the time of shipment, to conform to the Specifications (the "Warranty"). The Warranty period commences on the shipment date and continues for a period of 12 months, except for Products with a shelf life of less than 12 months. For Products with a shelf life of less than 12 months, the Warranty period commences on the shipment date and continues for the shelf life.

2.1.3 Baxter cannot guarantee the Product shelf life dating on any Products upon delivery. Specific dating needs may be discussed with Baxter's Customer Service department at the time of order placement.

2.1.4 Baxter's Warranty is conditioned upon proper storage, installation, use, and maintenance in accordance with applicable written recommendations of Baxter. Baxter's Warranty will be void and of no effect if: (i) the Product is not used in accordance with its instructions or if it is used for a purpose not indicated on the labeling; (ii) the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than Baxter; (iii) the Product's failure to conform to Baxter's Warranty was due in whole or in part to other conditions beyond the control of Baxter; (iv) any repairs, alterations or other work has been performed by Customer or others on such Product (other than work performed with Baxter's prior written authorization and in accordance with Baxter's approved procedures). Without limiting the foregoing, Baxter's Warranty does not extend to damage to Products or other items resulting in whole or in part from the use of components, accessories, parts or supplies that are not furnished by Baxter.

2.1.5 THE WARRANTY IS EXCLUSIVE REGARDING THE PRODUCTS AND IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY STATUTES OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED.

2.1.6 BAXTER'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTY SHALL BE, AT BAXTER'S OPTION, TO REPAIR OR REPLACE THE PRODUCT, OR TO REFUND THE PURCHASE PRICE BY CREDITING CUSTOMER'S ACCOUNT FOR THE NON-CONFORMING PRODUCT. In addition, Baxter shall reimburse Customer for its reasonable documented shipping costs of returning the non-conforming Product(s), as well as assume all risk of loss or damage to such non-conforming returned Product(s) while in transit in accordance with Baxter's Return Goods Policy. In the event that no breach of Warranty is discovered by Baxter upon receipt of any returned Product(s), to the extent practicable such Product(s) will be returned to Customer at Customer's expense, and Customer shall reimburse Baxter for the transportation charges, labor and associated charges incurred in inspecting or testing the allegedly non-conforming Product(s).

2.2 Baxter shall not be liable to Customer or any third party or entity under these Terms and Conditions, under any equity, common law, tort, contract, negligence, strict liability or other theory, that are or include (a) proximate, accidental, special, punitive, incidental, consequential, or indirect or similar damages or (b) lost profits or lost revenues, even if Baxter has been advised of the possibility of any of the foregoing damages.

3. INDEMNIFICATION. Customer hereby agrees to indemnify, defend, and hold harmless Baxter, its affiliates and subsidiaries, and the officers, directors, employees, agents and insurers of each of them (individually and/or

collectively, “**Baxter Indemnitees**”), from and against any and all third party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable attorneys' fees and investigative costs) which may be sustained or incurred by Baxter Indemnitees, arising from, in connection with or as a consequence of (i) any negligent or wrongful act or omission by Customer; (ii) Customer's use or sale of the Products, except to the extent that such suit or demand arises out of the failure of the Products to meet Baxter's Warranty; and/or (iii) Customer's improper handling or storage of Product(s). Customer will provide Baxter with the opportunity to participate in the defense and settlement of such claim. No settlement of such claim shall be made unless such settlement provides a complete and unconditional release of Baxter. Baxter has the right to approve counsel or be represented by independent counsel of its own selection.

4. **ATTORNEYS' FEES.** In the event legal action is brought to enforce the provisions contained herein, the prevailing Party shall be entitled to recover its reasonable and actual attorneys' fees and costs.

5. **ORDERING INFORMATION.**

5.1 **Purchase Orders.** Baxter requires that Customer submit all orders to Baxter electronically under a purchase order, with the exception of warranty replacement orders. Baxter currently supports EDI, Global Healthcare Exchange (GHX), and its own eServices Center Website. Customer may call Baxter at 1-877-334-2298 or visit Baxter's eCommerce website at <http://www.baxter.com/eCommerce> for more information regarding Baxter's eCommerce policy.

5.1.1 The following information is requested and must be validated by Customer on every purchase order:

- Account number
- Customer name
- Complete delivery address
- Purchase order number
- Contact name and telephone number
- Product code number
- Quantity

5.1.2 When using a purchase order form, only the information set forth in Section 5.1.1 shall apply to Baxter. Any purchase order terms and conditions, and/or modifications regarding pricing or general ordering information, contained in such purchase orders shall have no effect. Customer acknowledges and agrees that these Terms and Conditions supersede the terms and conditions of any purchase order or other documentation used by Customer and, except for delivery and billing addresses, and types and quantities of items ordered, any conflicting or additional terms are void and have no effect.

5.1.3 All orders are subject to acceptance by Baxter.

5.2 **Licenses.** Customer hereby represents and warrants that it has any and all current licenses (e.g. state pharmacy license, physician's license, etc.) required to purchase such Products and agrees that this representation is material consideration for purchasing Products from Baxter and that Baxter is relying on such representation. Upon Baxter's request, Customer shall forward a copy of such licenses to Baxter.

5.3 **Selling Unit of Measure.** Order quantities must be in the selling unit of measure indicated (i.e., pack/case). Pack factors are noted for reference only.

5.4 **Ordering (Lead Time, etc.).** Without limiting the foregoing, at a minimum, all Products must be ordered in accordance with the following requirements:

5.4.1 Except for Advanced Surgery Products, or unscheduled deliveries, under normal conditions, shipment will be made within seven days after receipt of order.

5.4.2 Except for Advanced Surgery Products, frequency and mode of delivery will be based on specific volumes, as set forth in attached Schedule 1, incorporated herein by this reference.

5.4.3 All orders are subject to credit approval and acceptance at Baxter’s corporate office.

5.4.4 Orders for Advanced Surgery Product must be received and processed prior to 2:00 P.M. CST in order to be processed for next scheduled deliveries. All other orders for Product must be received and processed prior to 12:00 noon local time in the time zone of Customer’s local Baxter distribution center in order to be processed for next scheduled deliveries.

5.4.5 Scheduled deliveries may be available for Customer based on Customer’s geography, frequency and volume of purchases. Customer may contact Baxter’s Customer Service Department to establish scheduled deliveries.

5.5 **General Minimum Order Charge.** Product orders, totaling less than \$500.00 will be assessed a minimum order charge of \$75.00.

5.6 **Minimum Quantity Charge for Frozen Products.** Orders for Tisseel [Fibrin Sealant] Pre-filled Syringe (Frozen) and ARTISS [Fibrin Sealant (Human)] (Frozen) of six or fewer kits will be assessed a minimum case charge of \$100.00.

5.7 **Minimum Order Quantity Charge for TachoSil and Preveleak.** A Minimum Order Quantity Charge of \$50.00 will be assessed for a single order of fewer than six individual TachoSil boxes in any combination of sizes or Preveleak boxes in any combination of sizes.

5.8 **Manual Order Charge.** Baxter may implement its manual order charge of \$50.00 per order that is purchased directly with Baxter by Customer via telephone or facsimile (the “Manual Order Charge”). The Manual Order Charge will be added to the Customer’s invoice. Customers may place orders, with no Manual Order Charge, through eCommerce Solutions. For information about these solutions contact please go to eservices.Baxter.com or call the eCommerce Support Desk at (877) 334-2298.

5.9 **Order Charge.** Baxter may in its sole discretion, on one or more occasion, in such manner, amount, and period of time determined by Baxter, charge a special fee that is intended, *inter alia*, to partially offset increases in Baxter’s costs to procure components and raw materials and deliver goods and services, including but not limited to a per order charge. Current U.S. Order Charges will be posted and can be viewed on the Baxter Terms & Conditions of Sale website located at <https://www.baxter.com/partners-suppliers/terms-conditions-sale>.

5.10 **Expedited Orders.**

5.10.1 Expedited Orders placed by Customer during Baxter’s regular business hours, if accepted by Baxter, shall be subject to a \$200.00 handling fee plus all other related shipping/delivery charges.

5.10.2 Expedited Orders placed by Customer after Baxter’s regular business hours or on weekends/holidays, if accepted by Baxter, shall be subject to a \$300.00 handling fee plus all other related shipping/delivery charges.

5.10.3 Baxter will attempt to ship all accepted Expedited Orders to Customer on an expedited basis based on Customer’s request, however, Baxter will not be liable for any loss or damage arising out of delay or failure of shipment or delivery.

5.11 **Special Services.** Special services related to packing, shipping, and/or delivery are subject to commensurate service fees per occurrence as listed below:

- Lift gate \$ 50.00
- Inside delivery \$ 75.00
- Custom Palletization \$ 75.00
- Additional deliveries (in addition to standard deliveries under Schedule 1) \$150.00

6. SHIPPING INFORMATION.

6.1 **Scheduled Delivery Dates/Delivery Delays.** Shipping dates that Baxter may provide to Customer are approximate only and are estimated from the date of receipt of order. Baxter reserves the right to revise shipping estimates to reflect conditions in effect on or before the date on which an order is scheduled to be shipped. Baxter shall use its reasonable commercial efforts to fill and ship accepted orders on or before the estimated shipping date, however, Baxter will not be liable for any loss or damage associated with a delay or failure of shipment or delivery of Product for any reason. In any event, receipt of Product by Customer shall constitute acceptance and waiver of any and all claims due to delay.

6.2 **Nonperformance.** Without limiting the foregoing, Customer agrees that Baxter will not be liable for any loss or damages that may result from nonperformance caused by manufacturing problems, discontinuation of a product line, acts of Customer, and/or by reason of any "Force Majeure Event" as more particularly described and defined in Section 8 of these Terms and Conditions. Customer agrees and understands that under any such circumstances, Baxter may, subject to Baxter's discretion and without liability to Customer, allocate available Products (including Products subject to these Terms and Conditions) among all its Customers without liability.

6.3 **Inspection and Acceptance of Product at Delivery.** Customer shall be responsible for visually inspecting and counting all Product(s) received prior to acceptance of delivery from the carrier. Any exception must be noted on both the packing list accompanying the shipment and the carrier's freight bill or bill of lading and must be signed by Customer. The carrier should countersign the packing list and the carrier's freight bill or bill of lading. Customer shall notify Baxter's Customer Service Department of any delivery exceptions (e.g., shortage, damage, picking error, warehouse error, Customer error, overage, labeling error, and order entry error) within two business days of receipt of shipment for credit eligibility consideration in accordance with Baxter's Return Goods Policy.

6.4 **Shipping and Handling Charges.** Customer is responsible for freight and Special Services charges for all Products when Customer requests Expedited Orders processing and delivery. Refer to Section 5 for details.

6.5 **Proof of Shipment/Delivery.** Customer must maintain Baxter's invoice and packing list as its proof of shipment and delivery. Customer must request proof of delivery from Baxter's Credit and Collections Department within 30 days of receipt in order to obtain clear documentation from the carrier. After this period, Baxter will assume the shipment is undisputed and the full invoice amount for such shipment will be due and payable.

6.6 **Shipping Terms/Risk of Loss.** Except as otherwise permitted herein, Product is shipped FOB destination (freight prepaid by Baxter), and the risk of loss on any Product shall pass to Customer when Customer receives the Product. Notwithstanding the foregoing, all Product, other than Advanced Surgery Product, shipped to addresses in Alaska or Hawaii will be subject to a 20% price premium above contracted price to cover shipping and handling charges. Advanced Surgery Product will be subject to a \$40.00 freight surcharge for shipments to Alaska or Hawaii.

6.7 **Title.** Title to all Products shall pass to Customer upon receipt by Customer.

6.8 **Product Recall.** Baxter will notify Customer promptly upon the occurrence of a Recall for any Products purchased by Customer directly from Baxter. Baxter shall be responsible for implementing the Recall and upon Baxter's reasonable request, Customer shall fully cooperate with Baxter to implement the Recall. The Product subject to Recall shall be deemed non-conforming and Baxter shall pay to Customer, in addition to the amounts set out in Section 2.1.6, Customer's reasonable, documented out-of-pocket expenses incurred in connection with such Recall, provided such expenses are preapproved by Baxter. "Recall" shall mean any action by Baxter or any governmental authority whether voluntary or involuntary, to recover title to or possession of Product sold or shipped, including Product recalls, market withdrawals, and field corrective actions.

7. BILLING AND PAYMENT INFORMATION.

7.1 **Prices.** Products are priced at the amount indicated for the selling unit of measure.

7.2 **Taxes.** Customer shall be responsible for payment of all applicable state and/or local sales, use, and/or gross receipts tax receipts resulting from its transactions with Baxter. Customers claiming an exemption from

taxation are required to provide valid certification to Baxter's Customer Master Team supporting its claim of exemption.

7.3 **Invoices.** Product is invoiced after it is shipped to Customer. Notwithstanding the foregoing, Baxter reserves the right to demand payment before shipping Product. Questions regarding invoices should be directed to Baxter's Credit and Collections Department. Baxter shall send all invoices electronically and Customer must have the capability to receive invoices electronically.

7.4 **Payment Terms.** Payment terms are net 30 days from date of invoice ("Due Date"). Baxter must receive payment at the "Remit To" address listed on the invoice on or before the Due Date to be considered as received on time. Customer shall pay Baxter a service charge of 1.5% per month (18% per year) or the highest amount allowed by law, if lower, on all past due amounts. Additionally, Baxter reserves the right to require payment in advance of shipment.

7.5 **Disputes Regarding Invoices.** All disputes regarding invoices, with the exception of delivery exceptions as defined in Section 6.3, must be submitted to Baxter's Credit and Collections Department within 30 days after the date of invoice. All disputes or rights are waived unless Customer's complaint has been filed within such time period. Only amounts that are disputed may be withheld from payment pending resolution. Any portion of an invoice not in dispute must be remitted within the timeframe specified within these Terms and Conditions. If Customer disputes an invoice or portion of an invoice and such dispute is invalid or incorrect, Customer will pay additional charges referenced above (in Section 7.4) on any unpaid amounts in dispute. Such charges will begin to accrue on the date payment was originally due. If Customer and Baxter are unable to resolve a disputed invoice, then Section 9 shall govern.

7.6 **Discounts.** Customer and Baxter intend that these Terms and Conditions shall be administered in accordance with the provisions of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) ("AKS"). To the extent that any discounts and/or rebates are issued by Baxter and received by Customer with respect to Products under these Terms and Conditions, such discounts and/or rebates may be considered "discounts or other reductions in price" under 42 U.S.C. § 1320a-7b(b)(3)(A) of the AKS. To the extent required by the AKS or the Discount Safe Harbor regulations, 42 C.F.R § 1001.952(h) *et seq.*, Customer shall fully and accurately disclose such discounts and other reductions in price in accordance with the applicable state or federal cost reporting requirements. Baxter will provide Customer with sales and discount information to allow Customer to comply with this Section 7.6 and the Discount Safe Harbor, including sufficient discount, rebate and/or other pricing information that may be applicable to enable Customer to accurately report its costs for all purchases of Baxter Products and services made pursuant to these Terms and Conditions.

7.7 **eCommerce Billing & Payment Process.** In order to implement electronic invoicing and payment, Customer may contact a Baxter eCommerce Representative at the phone numbers listed in the Directory of Services available at <http://www.baxter.com/partners-suppliers/eCommerce/terms-of-sale.page>, or by visiting Baxter's eCommerce website at <http://www.baxter.com/eCommerce>. Customer may also call 1-877-334-2298 if it has any questions regarding Baxter's eCommerce practices and capabilities.

8. **FORCE MAJEURE.** Neither party shall be liable for nonperformance or delays caused by strikes, lockouts, concerted acts of workers or other industrial disturbances, fires, explosions, floods, or other natural catastrophes, civil disturbances, riots, or armed conflict, whether declared or undeclared, curtailment, shortages of power or materials, rationing, or allocation, of normal sources of supply, labor, materials, transportation, energy, or utilities, accidents, acts of God, sufferance of or voluntary compliance with acts of government or governmental regulation, (whether or not valid) embargoes, or any other cause not specified above which is beyond the commercially reasonable control of Baxter (a "Force Majeure Event"). Customer agrees that in the event of any of the foregoing, Baxter may, subject to Baxter's good faith discretion and without liability to Customer, allocate the distribution of any of its Products (including the Products subject to these Terms and Conditions) among its Customers. Notwithstanding the foregoing, this Section 8 shall not apply to either party's payment obligations.

9. **ARBITRATION.**

9.1 Any and all disputes, claims or controversies ("disputes") arising out of or relating to this Agreement, including without limitation, any dispute as to the existence, validity, performance, breach or termination

of this Agreement, shall be resolved in the following manner. A party must first send written notice of the dispute to the other party for attempted resolution by negotiation between executives who have authority to settle the controversy. Negotiations must be conducted within 14 days after such notice is received (all references to “days” in this provision are to calendar days). If the parties fail to meet or if the matter has not been resolved within 14 days, the parties shall mediate their dispute within 30 days after the 14 day period has expired. If the mediation fails to resolve all disputes or if the mediation has not been scheduled within 30 days, either party may initiate arbitration with respect to the matters submitted to negotiation and mediation by filing a written demand for arbitration. Disputes shall be settled by final and binding arbitration administered by the International Institute for Conflict Prevention & Resolution (CPR) in accordance with its arbitration rules (“Rules”). The place of arbitration shall be Chicago. Notwithstanding the foregoing, to the extent a party is seeking injunctive relief either party may immediately bring a proceeding seeking preliminary injunctive relief in a court having jurisdiction, and this relief shall remain in effect until the parties reach a resolution or so long as the arbitrator(s) feel as appropriate.

9.2 For disputes under \$10,000,000, one arbitrator shall either be mutually agreed by the parties or appointed in accordance with the administrator’s Rules. For disputes over \$10,000,000, a panel of three arbitrators shall be appointed in accordance with the administrator’s Rules. Within 30 days following the initiation of an arbitration proceeding, the arbitrator(s) will be selected. No later than 60 days after selection, the arbitrator(s) shall hold a hearing to resolve each of the issues identified by the parties. All arbitration proceedings shall be conducted in the English language. At least 7 days prior to the hearing, each party shall submit the following to the other party and the arbitrator(s):

9.2.1 A copy of all exhibits on which such party intends to rely in any oral or written presentation to the arbitrator(s);

9.2.2 A list of any witnesses such party intends to call at the hearing, and a short summary of the anticipated testimony of each witness;

9.2.3 A proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue. The proposed rulings and remedies shall not contain any recitation of the facts or of any legal arguments. The parties agree that neither side shall seek as part of its remedy any punitive damages; and

9.2.4 A brief in support of such party’s proposed rulings and remedies, provided the brief shall not exceed 20 pages.

9.3 Within 14 days following completion of the hearing, each party may submit to the other party and the arbitrator(s) a post-hearing brief in support of its proposed rulings and remedies, provided that such brief shall not contain or discuss any new evidence and shall not exceed 10 pages. The arbitrator(s) shall rule on each disputed issue within 21 days following completion of the hearing. Such ruling shall adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue and may adopt one party’s proposed rulings and remedies on some issues and the other parties proposed rulings and remedies on other issues. The arbitrator(s) shall not adopt any written opinion or otherwise explain the basis of the ruling. If the arbitrator(s) rule in favor of one party on all disputed issues, the losing party shall pay the prevailing party’s fees and expenses (including attorneys’ fees). If the arbitrator(s) rule in favor of one party on some issues and the other party on other issues, the arbitrator(s) shall allocate fees and expenses in a way that bears a reasonable relationship to the ruling. The rulings of the arbitrator(s) and the allocation of fees and expenses shall be binding, non-reviewable and non-appealable, and may be entered as a final judgment in any court having jurisdiction. Except as required by law, the parties agree to keep confidential the existence of the arbitration, the submissions made by the parties (including exhibits, testimony, proposed rulings and briefs) and the decisions made by the arbitrator(s), including its awards.

10. **DEBARMENT.** To the best of Baxter’s knowledge, neither Baxter nor any of its officers, U.S. employees, or directors are: (i) currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 USC § 1320a-7b(f) (the “Federal Healthcare Programs”); (ii) has been convicted of a criminal offense related to the provision of healthcare items or services during the last five years; or (iii) has been excluded, debarred or otherwise declared ineligible to participate, during the last five years, in the Federal Healthcare Programs. Baxter will take prompt steps to correct any known non-compliance with any exclusion law or regulation and will notify Customer if it becomes aware of any such exclusion that likely will impact Customer’s reimbursement from the federal

government. If Baxter becomes excluded from participating in the federal health care programs, this will be considered a material breach of this Agreement.

11. ADDITIONAL OBLIGATIONS OF CUSTOMER.

11.1 **Safe Medical Devices Act.** If any of the Products purchased by Customer are medical devices, Customer acknowledges that it is familiar with the Safe Medical Devices Act of 1990 (the “Medical Devices Act”) and the reporting obligations imposed on device users thereunder. Customer will notify Baxter immediately of the occurrence of any event identified in the Medical Devices Act, which imposes a reporting obligation on Customer and/or Baxter. Customer will maintain adequate tracking for the Products to enable Baxter to meet FDA requirements applicable to the tracking of medical devices.

11.2 **Own Use; No Reselling.** Customer represents and warrants that all purchases made by Customer under these Terms and Conditions are for its “own use” under Abbott Laboratories v. Portland Retail Druggists Association. Except as required by ambulance restocking laws, Customer agrees that it will not resell or otherwise transfer any Products, in their original form, to any reseller, distributor or end-user. Customer represents and warrants that it will not knowingly use, resell or distribute any Product directly or indirectly for use in lethal injection protocols for capital punishment.

11.3 **No Export or Transfer.** Customer will not export, re-export or otherwise transfer, directly or indirectly, any Products except as authorized by United States law. In particular, but without limitation, Products may not be exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals (SDN), the U.S. Department of Commerce Denied Person's List or Entity List (DPL), or the U.S. Department of Health and Human Services List of Excluded Individuals and Entities (LEIE). Customer also represents and warrants that it is not listed on the SDN, DPL or LEIE or any other similar prohibited/restricted list issued by the US or other governmental entity and will not use the Products for any purposes prohibited by applicable law.

12. **CONFIDENTIALITY.** Except as may be required by law, Customer and Baxter shall not for a period of 3 years after the termination of this Agreement use, publish or disclose any confidential or proprietary information disclosed by one party to another in connection with this Agreement (“Confidential Information”). Notwithstanding the foregoing, the Customer and Baxter may use or disclose Confidential Information as reasonably required to conduct their business provided that the party receiving the Confidential Information is bound by confidentiality provisions as least as strong as those in this Agreement. The foregoing confidentiality obligations shall not apply to any information which (i) is generally available to the public; (ii) was made available to other third persons on a non-confidential basis prior to the executed of this Agreement; (iii) is available on a non-confidential basis from a third person, which third person was not itself under an obligation to maintain the confidentiality of such information or (iv) is required by law, subpoena or court order to be disclosed. A party disclosing Confidential Information pursuant to Section 12 (iv) must notify the other party as soon as reasonably practicable of such requirement to disclose and cooperate with the other party in protecting against disclosure or obtaining a protective order.

13. **RETURN POLICY.** Baxter's Return Policy, located at: <http://www.baxter.com/partners-suppliers/ecommerce/terms-of-sale.page>, is incorporated herein as part of these Terms and Conditions. The Return Policy applies only to purchases of Products made directly from Baxter and does not apply to purchases of Products made through a distributor.

14. **RELIANCE; WAIVER.** Each Party expressly disclaims reliance on any representation, inducement or promise not set forth herein or in another signed agreement between the Parties. Any waiver of any of the provisions of this Agreement shall not constitute a waiver of any other provision, nor shall it constitute a continuing waiver.

Schedule 1

STANDARD DELIVERY SCHEDULES

For Customers located fewer than 150 miles from local Baxter Distribution Center		Number of Weekly Deliveries from Local Distribution Center				
Weekly minimum number of cases of Disposable Products from local Baxter distribution center	900 + cases	1	2	3	4	5
	450 – 899 cases	1	2	3	4	4
	245 – 449 cases	1	2	3	3	3
	90 – 244 cases	1	2	2	2	2
	0 – 89 cases	1	1	1	1	1
		0 -1,999	2,000 - 5,399	5,400 - 9,999	10,000 - 19,999	20,000 +
		Weekly minimum weight (in pounds) from local distribution center				

For Customers located 150 miles or more from local Baxter Distribution Center		Number of Weekly Deliveries from Local Distribution Center				
Weekly minimum number of cases of Disposable Products from local Baxter distribution center	1,600 + cases	1	2	3	4	5
	820 - 1,599 cases	1	2	3	4	4
	450 – 819 cases	1	2	3	3	3
	140 – 449 cases	1	2	2	2	2
	0 – 139 cases	1	1	1	1	1
		0 -3,499	3,500 - 10,999	11,000 - 19,999	20,000 - 39,999	40,000 +
		Weekly minimum weight (in pounds) from local distribution center				