

Purchase conditions (March 2002)

1. Scope

The conditions herein shall constitute an integrated component of all orders of Baxter, hereinafter referred to as the "Purchaser".

The Vendor accepts the Conditions of Purchase herein as binding, provided the Vendor does not file an objection to the conditions herein immediately in writing. If the Vendor lodges an objection to said conditions, a Contract of Sale is not finalized until agreement has been reached between the Purchaser and the Vendor on the extent of validity of the Conditions of Purchase.

In the case that Conditions of Delivery are sent or made known to the Purchaser by the Vendor on the basis of the order, the said action is not solely to be taken as contradictory to the Conditions of Purchase herein, but to the extent that the Purchaser does not object, only those stipulations of the said Conditions of Delivery are valid that cannot be in contradiction to the Conditions of Purchase herein; that means that the Conditions of Purchase herein shall have priority over the conditions of Delivery.

2. Orders

Orders can be placed either in writing or can be made by means of electronic media such as Telex, Fax, BTX (Videotex), EDP, other means of data transfer etc. Written orders shall be signed, orders placed orally and/or by telephone shall be confirmed in writing.

3. Deliveries

The Purchaser shall be advised immediately of any and expected delays in delivery. The Purchaser is entitled, in case of failure of the Vendor to keep the Date of Delivery agreed upon by the Purchaser and the Vendor – provided a fixed date purchase has not been agreed upon, after setting an extension of the delivery date of a maximum of two (2) weeks – to rescind the agreement as a whole or in part; the aforementioned irrespective of any and all claims for damage by the Purchaser. Consignments that are larger or smaller than the quantity ordered will not be accepted by the Purchaser. In the case of any too great frequency of delivery caused by the Vendor, the Purchaser is entitled to charge the additional expenses incurred to the account of the Vendor. If the Purchaser is prepared to accept the goods in spite of failure of the Vendor to keep the date of delivery and in conjunction thereof, special measures are required, any and all costs thereof are to be borne by the Vendor. In case of delivery in advance of the delivery date the goods can be returned to the Vendor, the costs and risks shall be borne by the Vendor or the payment shall be postponed to the date of delivery agreed upon by Vendor and Purchase from which time the payment date is calculated. The Purchaser is entitled to make changes in the quantity and deadlines of orders placed by the Purchaser within due regard to the reaction time limit set by the Vendor and Purchaser.

Deliveries made direct to premises are by effected from Monday – Thursday between 7:00 a.m. and 3:00 p.m. and on Friday between 7:00 a.m. and 12:00 p.m. If delivery is effected at a point of time other than the aforementioned times and the merchandise is handed over to Baxter at the request of the Vendor/freight forwarder at times other than the aforementioned, it is agreed that any and all legal consequences of taking on of the merchandise (claim to performance, requirement to make a complaint in respect of a defect immediately on receipt of goods, bearing risk, etc.) shall not come into effect until the following business day (Monday through Friday).

Any changes and/or the abolition of obligations in accordance with ARA are to be informed immediately to Baxter

4. Liability/Warranties of the Vendor

The Purchaser shall examine the delivered merchandise after the arrival thereof at the place of performance agreed upon by the Vendor and Purchaser to ascertain that the said merchandise is free of defects and/or to take samples of an opinion report nature for the purpose of making a quality control provided that an examination/sampling of this type is possible and/or feasible in accordance with due course of business. Services performed shall be inspected by the Purchaser together with the Vendor and thereby examined for defects.

Complaints concerning defects shall be lodged with the Vendor immediately and in writing as soon as the Purchaser has determined said defects.

For defective goods delivered/services performed the Purchaser retains the right at the discretion of the Purchaser and the risk and costs of the Vendor.

a) to return the consignment as a whole or defective parts thereof to the Vendor or to store the consignment at the Purchaser's premises or at the premises of a third party and demand the replacement of the defective merchandise by non-defective merchandises/services

b) after ineffectual expiry of a deadline for repairs to be performed on the said defective goods to arrange for the defective goods/services to be repaired by the Purchaser or by a third party.

The Vendor shall compensate the purchaser for any and all losses incurred to the Purchaser by the defective goods delivered/services performed by the Vendor, especially in respect to the said measures cited above.

The Purchaser is entitled further to rescind any contract in case of serious and irreparable defects. A defect by shall be considered irreparable also in the case that the repair of the defect is technically, but economically not feasible.

The warranty time is twelve (12) months, calculated from the point of time of the delivery of the merchandise/performance of service, if a longer warranty is not provided for according to legal provisions. In case a longer warranty time is provided for, the (longer) legal warranty time is valid.

In other respects, the liability provisions of the Austrians laws concerning claims for damage, specifically the Austrian Law of Product Liability are valid in their entirety.

5. Norms, Regulations

The merchandise ordered, e.g. devices, medical apparatuses, medical syringes, facilities, etc. and/or services e.g. installing, servicing, maintenance etc. shall always be in accordance with the valid legal regulations of the country in questions and shall adhere to all other relevant regulations and be suitable for the purpose stated by the Purchaser and authorized, e.g. Ö-Norm (Austrian standard specifications); DIN-Norm (German industrial standard specifications), ÖVE (Austrian standard specifications for electric devices), Allgemeine Arbeitnehmerschutzverordnung (a general law protecting employees); etc. The Vendor shall pass on any and all storage and operating instructions on his own accord with the consignment; in case of failure to do so, the Vendor shall be liable for any and all damages caused by the unawareness of the said instructions. Should the Vendor have doubts as to the suitability of the goods ordered/services performed in conjunction with the purpose stated, the Vendor shall inform the Purchaser of his doubts immediately in writing.

6. Industrial Property Rights

The Vendor declares that the merchandise delivered does not infringe on the patent rights of a third party and the Vendor shall in the case of a patent right dispute in respect of delivered merchandise hold the Purchaser harmless and unsharable. All and any relinquished drawings, models, materials, calculations and other information, as well as any and all aids used for submitting offers and/or orders remain the unrestricted property of the Purchaser and shall not be copied, made available to third parties or used to carry out orders of a third party. The aforementioned shall be immediately handed over to the Purchaser on the request of the Purchaser.

Designs of any and every type made by the Supplier for the Purchaser become the property with all rights reserved by the Purchaser.

The Supplier shall be obligated to hold in absolute secrecy to third parties all and any business matters in the widest sense, in particular data, regulations, models, drawings, constructions, etc., known to the Vendor by means of the offered documents and/or orders.

Either the name of the Producer or trademark of the Producer shall be placed on goods, etc. that are according to the specifications of the Purchaser, solely with the expressed written permission of the Purchaser. The said permission shall be valid only for the particular transactions for which it was given.

7. Tools

Tools and including spare parts, maintenance documents, operating instructions that are produced to carry out a commission on behalf of the Purchaser and are paid for by the Purchaser become the unrestricted property of the Purchaser.

Provided nothing else is agreed upon, the Vendor shall obtain all tools and / or devices after the completion of production on loan. The Vendor undertakes, however, to mark the said tools or devices as the property of the Purchaser.

The Vendor administers the aforementioned tools and devices in a fiduciary capacity for the Purchaser solely for the execution of placed by the Purchaser.

The costs for the maintenance of tools, repairs, compliance with security regulations and the payment in settlement of claims of inventor, copyrights and patent rights shall be compensated with the price hereof for the respective physical life. In advance of scrapping of said tools, written permission shall be obtained from the Purchaser.

Third parties, who make a claim thereon shall be informed that the aforementioned are the property of the Purchaser and the Purchaser shall be informed thereof immediately.

8. Invoices and Payments

a) Invoices shall be clearly stated and be in a form easily checked by the Purchaser and in triplicate and shall be sent separately from the delivered good/performed services to address of the Purchaser, and the copies thereof are to be marked as such. For consignments of goods from abroad, the invoice shall be enclosed in duplicate with the consignment note, for animal consignments and consignments of animal origin, in addition, a veterinary certificate shall be enclosed. For consignments of merchandise from EFTA member states, the corresponding Movement Certificate of Declaration of Origin is enclosed with the invoice.

b) The beginning of the time of payment for invoice for the consignment / service in question is, at the earliest, the day on which the invoice arrives at the address stated above and the goods / services are at the disposal of Purchaser. In case the goods reach the Purchaser later than the invoice arrives or the performance takes place after the invoice has arrived, the time period of payment begins at the earliest with the arrival of the delivered merchandise of performance of the service.

c) Any invoice not including the order number cannot be acknowledged and will be returned.

d) Goods delivered with defects or unsatisfactory service exempt the Purchaser from payment of the amount of the invoice until the consignment / service is rendered free of defects. In such cases the said determined time of payment does begin until the point of time at which the consignment / service is rendered free of defects.

e) The payment of an invoice by the Purchaser is not deemed recognition that the consignment / service is without defects.

9. Forwarding and Shipping

The shipping regulations and shipping conditions shall be unconditionally observed. The order number shall be written on all and any shipping documents, in case of failure to do so, the consignment in question will be returned. C.O.D. consignments shall be accepted only under the provision that C.O.D. terms have been expressly agreed upon.

a) The advice of dispatch shall arrive at the premises of the Purchaser at least two days before arrival of the consignment / delivery (preferably by telefax and shall include the necessary shipping data such as e.g. air consignment note number, flight number, etc.).

b) Defects and costs due to faulty actions and decisions of the Vendor shall be borne by the Vendor. The Purchaser is entitled to deduct the aforementioned costs from the price of the consignment.

c) Materials from sales packing, repacking, and transport packaging shall be returned to the Vendor by the Purchaser at no charge to the Purchaser.

10. Disputes and Disagreements

All and any disagreements and / or disputes arising from the order and / or in connection with the order, the purchasing and delivery conditions and the consignments / performance shall be settled by mutual agreement of the Parties involved in said dispute. In case the dispute cannot be settled by mutual agreement, for orders to Vendors whose headquarters are in Austria, according to the value of matter in dispute, such disputes from the concluded supply agreements / service agreement shall be brought solely before the responsible in accordance with the subject matter involved. District Court for Commercial Affairs or the Commercial Court of Vienna. Austrian law shall be applicable. The Vienna UN-Convention on Contracts for the International Sale of Goods shall not valid and is excluded.

11. General Conditions

a) Diverging and / or supplementary clauses or agreements to the Purchasing Conditions herein shall be valid only in writing.

b) In case individual stipulations of the Conditions of Purchasing are in contradiction of binding legal regulations and therefore invalid, the remaining stipulations herein shall retain full validity, provided that the conditions still valid allow for a proper execution of the order.