

## DIRECTORY OF SERVICES

### HomeCare Services / Order Entry (Home Patients)

Hours: Monday through Friday 7:00 am - 6:00 pm CST

1-800-284-4060

Fax: 1-800-666-8457

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### HomeCare Services Web Portal Support

<https://homecareservices.baxter.com/>

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1-800-284-4060

### Customer Service / Order Entry (Hospitals & Centers)

Hours: Monday through Friday 7:00 am - 6:00 pm CST

1-888-229-0001

Fax: 1-888-229-0020

NOTE: Hospital and Center orders are required to be placed electronically.

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### eServices/EDI Support

<http://ecomm.baxter.com>

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1-877-334-2298

[ecteam@baxter.com](mailto:ecteam@baxter.com)

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### Sales Inquiries

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1-888-736-2543

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### Parts and Equipment Service

On-site Service

Hours: 8:00 am - 5:00 pm local time

Emergency On-site Service (7 days a week)

Hours: 8:00 am - 10:00 pm EST

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1-800-553-6898

### Baxter-Gambro Orders, Returns and Inquiries

1-800-525-2623  
[Gambro\\_Customer\\_Service@baxter.com](mailto:Gambro_Customer_Service@baxter.com)

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### Global Technical Services

Peritoneal Dialysis Operational Support (24/7/365 days a year)

Hemodialysis Technical Support

Hours: 8:30 am - 5:00 pm EST

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1-800-553-6898

### Clinical Support

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1-888-736-2543

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### Product Surveillance

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1-888-736-2543

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### Hardware Billing

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1-800-553-6898

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### Credit and Collections

Hours: 7:00 am - 5:00 pm CST

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1-888-270-3189

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### Pharmacy Services

Hours: Monday through Friday 7:00 am - 6:00 pm CST

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1-800-417-1434

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### Rockwell Customer Service

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1.800.449.3353  
Fax: 248.960.9015

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## 1. General Terms and Conditions of Sale

ALL BAXTER HEALTHCARE CORPORATION (“BAXTER”) SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE (THE “TERMS AND CONDITIONS”), WHICH ARE ACCEPTED BY, AND SHALL BE DEEMED BINDING ON, THE CUSTOMER UPON PLACING AN ORDER FOR PRODUCT(S) (“PRODUCT”). BAXTER’S 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 THESE TERMS AND CONDITIONS PRIOR TO SUBMITTING AN ORDER. BAXTER HAS NO RESPONSIBILITY TO NOTIFY CUSTOMER OF ANY CHANGES PRIOR TO THE EFFECTIVE DATE OF THE CHANGES. ANY ORDERS PLACED AFTER THESE TERMS AND CONDITIONS ARE CHANGED SHALL BE SUBJECT TO SUCH AMENDED TERMS AND CONDITIONS. NO VARIATION OF THE TERMS AND CONDITIONS WILL BE BINDING UPON BAXTER UNLESS AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED EMPLOYEE OF BAXTER.

### 1.1 No Reselling, Transfer or Export

Customer agrees that Product purchased from Baxter is not for: a) resale, transfer, barter or trade to any entity or person; b) use in the further processing, packaging or filling of other drugs, therapies or devices; or c) export. Neither Customer nor Home Patient shall transfer any Product to any other person or entity except to the person for whom the prescription is written. Any unused Product, once dispensed or delivered to Home Patient or Customer, cannot be transferred to any other patients and must be destroyed in accordance with applicable state or local regulations or returned to Baxter per the guidelines outlined in Baxter’s Returned Goods policy, listed in Exhibit A to these Terms and Conditions.

### 1.2 Drug and Service State Licensing Requirements

Customer agrees to maintain all state-mandated licenses and permits required to purchase, use, and dispense Baxter Product. Customer shall provide all applicable licenses and permit information to Baxter promptly upon request.

### 1.3 Tax, Tax-Exempt Status and Other Fees

Customer agrees to pay all applicable federal, state, and local taxes (including property taxes); license and registration fees; and all other fees and costs based on Customer’s lease, rental, purchase, possession or use of Product. A C Customer that is exempt from taxation is required to provide valid certification of its exempt status to Baxter’s Master Data Center of Excellence.

(1-877-329-0003; Fax 1-847-948-2540).

### 1.4 No Prohibited Use of Product

Customer will not knowingly use, resell, transfer or distribute any Product directly or indirectly for the development, production or proliferation of weapons of mass destruction, or missile delivery systems and/or for any terrorist activities.

## 2. Definitions

The following definitions apply to these Terms and Conditions:

**2.1 AFTER HOURS DELIVERY** shall mean any Order placed (i) outside of Normal Business Hours or (ii) on Baxter designated holidays.

**2.2 COURTESY NOTIFICATION** shall mean that Baxter will make best efforts to provide a courtesy notification to the Customer of record for Home Patient Orders that result in Off-Schedule Orders, Expedited Orders, Home Patient Re-Delivery, After Hours Delivery and travel Order requests. Baxter will not track any Courtesy Notification provided to Customer and any such Courtesy Notification is not required in order to charge Customer the fee associated with the service. Customer is responsible for setting expectations with Home Patients around managing product inventory and Scheduled Orders. A Courtesy Notification will not be provided for a Home Patient Re-Delivery when such Home Patient requests a re-delivery for which the purpose is to bring Product into such Home Patient’s home or otherwise move Product.

- 2.3 CUSTOMER** shall mean the legal entity purchasing Product or Rockwell Product for the provision of Automated Peritoneal Dialysis (“APD”), Aquapheresis Therapy (“AQS”), Continuous Ambulatory Peritoneal Dialysis (“CAPD”), Continuous Renal Replacement Therapy (“CRRT”), Hemodialysis (“HD”) therapy, Molecular Absorbent Recirculatory System (“MARS”) and/or Therapeutic Plasma Exchange (“TPE”). Such entities include, but are not limited to, hospitals and/or hospitals and their affiliated outpatient dialysis clinics (“Hospitals”) and other licensed, outpatient dialysis centers (“Centers”).
- 2.4 DISPOSABLE** shall mean any Product manufactured or sold by Baxter, other than Equipment or Parts.
- 2.5 EQUIPMENT** shall mean durable medical devices, hardware, instruments and instrumentation used primarily or in support of dialysis, multi-organ extracorporeal support therapy for critically ill patients, liver support therapy, ultra filtration treatment of fluid overloads and/or multiple intensive care therapies which are manufactured, provided as a rental or sold by Baxter for its intended use.
- 2.6 EXPEDITED ORDER** shall mean any order, which may be filled in Baxter’s sole discretion, placed for delivery with less Lead Time than outlined in Sections 2.13 and 3 of these Terms and Conditions.
- 2.7 FORCE MAJEURE EVENT** shall mean nonperformance or delay of performance 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, discontinuation of a Product or any other cause which is beyond the commercially reasonable control of Baxter.
- 2.8 HOMECARE WEB PORTAL** means any applicable on-line tools to allow Hospitals and Centers to manage Home Patient transactions. Key functions may include: new patient set-up, status change, and prescription management. HomeCare Web Portal is the preferred vehicle for Customer and Home Patients to manage Home Patient transactions with Baxter. Please contact HomeCare Services at 1-800-284-4060 for details or to set-up a HomeCare Web Portal account.
- 2.9 HOME PATIENT** shall mean an individual for whom Customer (i) holds an active prescription on file with Baxter and (ii) is providing CAPD, APD or HD therapy in such individual’s home.
- 2.10 HOME PATIENT RE-DELIVERY** shall mean an additional delivery to a Home Patient’s requested delivery address following an unsuccessful delivery attempt to such Home Patient. Home Patient Re-Delivery shall include circumstances when a Home Patient requests a re-delivery, the purpose of which is to bring Product into such Home Patient’s home or otherwise move Product from its originally delivered location.
- 2.11 HOME PATIENT SCHEDULED ORDER** shall mean an Order placed for delivery to an established Home Patient address per the established Order schedule, generally once every four (4) weeks on 28-day order cycles, preferably submitted using the HomeCare Web Portal.
- 2.12 HOME PATIENT OFF-SCHEDULE ORDER** shall mean requested Orders outside a Home Patient Scheduled Order cycle, including usage and prescription changes
- 2.13 LEAD TIME** shall mean the time from Order placement to delivery of Product. Orders must be placed no later than 12:00 pm local time in the time zone of Customer’s local Baxter distribution center to be deemed placed on that business day. Orders placed after 12:00 pm local time will be deemed placed on the following business day.
- 2.14 NORMAL BUSINESS HOURS** shall mean Monday through Friday, 7 AM to 6 PM CST
- 2.15 OFF-SCHEDULE ORDER** shall mean requested Orders outside a Customer’s Order cycle.
- 2.16 ORDER** shall mean any order for Product placed through Baxter or an authorized distributor.
- 2.17 PART** shall mean a component manufactured or sold by Baxter for Equipment.
- 2.18 PRODUCT** shall mean Disposable, Equipment, Part, ancillaries or any combination thereof.
- 2.19 ROCKWELL PRODUCTS** shall mean CitraPure, RenalPure, DriSate, and Rockwell ancillary products.

- 2.20 SCHEDULED DELIVERY** shall mean the day and estimated time of delivery for each Home Patient Scheduled Order (excluding deliveries made by third parties companies such as UPS) and Scheduled Order to a Hospital or Clinic.
- 2.21 SCHEDULED ORDER** shall mean an Order placed for delivery to a Hospital or Clinic per the established Order schedule.

### **3. Order/Delivery**

#### **3.1 Orders**

All Orders for Product shall be subject to these Terms and Conditions and shall not be subject to the terms, conditions, or provisions of any Order confirmation or Customer purchase order, except to the extent that such document specifies quantities.

**3.1.1** Baxter will use commercially reasonable efforts to fill Orders, but Baxter shall not be liable for non-performance or delays caused by a Force Majeure Event. Customer agrees that in any and all such events, Baxter may allocate Product among Customer in Baxter's reasonable judgment without liability to Baxter.

**3.1.2** All Orders require a valid purchase order supplied by the Customer. In the event of a conflict between a purchase order and these Terms and Conditions or the underlying purchase agreement between the parties, these Terms and Conditions and the underlying purchase agreement shall control.

**3.1.3** Any modification by Customer to a contract regarding pricing, terms of sale or any other terms or conditions shall not be effective unless accepted in advance and in writing by an authorized representative of Baxter.

**3.1.4** Order quantities must be in the selling unit of measure indicated. Pack factors are noted for reference only.

#### **3.2 Bulk Orders**

Unless otherwise approved in writing by Baxter, each Home Patient Order placed by Customer shall not exceed fifty-five (55) cases of Disposable Product for new Home Patients and forty (40) cases of Disposable Product for prevalent Home Patients ("Bulk Orders"). If Customer or Home Patient places a Bulk Order, such Bulk Order shall be subject to a charge of one thousand dollars (\$1,000.00).

#### **3.3 Prescription Requirement**

Baxter will not ship any Order for a Home Patient without a prescription, signed and dated by a physician, which lists Product codes, quantities and the allowable refill period, not to exceed one (1) year. All new APD Home Patient prescriptions must also include a HomeChoice, HomeChoice Pro or AMIA Equipment rental. Such Equipment cannot be shipped until a signed prescription is on file.

Prescriptions should be managed and e-signed through the HomeCare Web Portal. Verbal and facsimile changes to prescriptions will be assessed a processing fee of fifty dollars (\$50.00) per prescription change.

Customer may obtain copies of prescriptions at no charge through the HomeCare Web Portal. Copies of prescriptions through other modes will be assessed a processing fee of forty dollars (\$40.00) per prescription.

#### **3.4 Lead Time Excluding Home Patient Orders**

Disposable Orders require a five (5) business day Lead Time. Equipment Orders may require up to a thirty (30) business day Lead Time. Product Orders requiring expedited delivery at Customer's request are subject to an Expedited Order charge as described in Sections 3.12. Orders placed by Customers past the Lead Time cut-off are subject to a late fee of fifty dollars (\$50.00).

#### **3.5 Lead Time for Home Patient Orders**

Home Patient Orders, including Home Patient Equipment, must be placed, with signed prescriptions on file with Baxter, no later than five (5) business days prior to the Scheduled Order date or requested ship date. While HomeCare Web Portal is the primary and preferred manner to place Orders, Baxter will continue to take Home Patient Orders by telephone or fax. Any complete Order received less than five (5) business days prior to the Scheduled Delivery date will be considered an Expedited Order and will be subject to charges as described in Section 3.13.

### **3.6 Lead Time for Rockwell Products**

Rockwell Products require four (4) weeks Lead Time for all initial Orders. Subsequent Orders for Rockwell Products must be received via fax by Monday (4 pm EST) for delivery the following week, otherwise Customer will incur a seventy five dollar (\$75.00) Expedited Order charge and additional freight and/or handling cost.

### **3.7 Minimum Order Charge**

All Orders that are less than two hundred fifty dollars (\$250.00) will be subject to a charge of forty (\$40.00) dollars. Exemptions will be permitted only for deliveries required to correct Baxter error or Home Patient Orders (except as otherwise noted herein).

Orders of less than two thousand (2,000) pounds of Rockwell Product may be subject to additional freight charges.

### **3.8 Scheduled Orders**

**3.8.1** Recognizing that Hospitals and Centers have unique delivery and service requirements, the parties will set a mutually agreeable delivery schedule subject to Off-Schedule Order and Expedited Order fees. Accessorial services may be subject to additional fees.

**3.8.2** Upon initiation of a new Home Patient account, Baxter will establish a Home Patient Scheduled Order calendar that includes targeted delivery dates and targeted Scheduled Delivery. Home Patient delivery days shall be set according to this schedule.

**3.8.3** Baxter offers some flexibility in its Home Patient Order cycles. Customer requests for fourteen (14) day (or fewer) Order cycles will be assessed a twenty five (\$25) surcharge for each Order placed (a "14 Day Order Cycle").

**3.8.4** Customer and Home Patient Order frequency and scheduling will be maintained in Baxter's transaction management system.

**3.8.5** Home Patient will receive a calendar indicating necessary Order placement and Scheduled Delivery days. Clinicians requiring a copy of Home Patient's order and delivery schedule must utilize HomeCare Web Portal to obtain a copy.

**3.8.6** Sales of Rockwell Products include delivery to the locations listed in the underlying agreement between Customer and Baxter. Stated shipment dates for Rockwell Products are approximate and based upon timely receipt of all necessary information from Customer. Baxter shall make reasonable efforts to meet the stated shipment dates for Rockwell Products.

### **3.9 Home Patient Off-Schedule Orders**

Each Home Patient Off-Schedule Order will be assessed a one hundred fifty dollar (\$150.00) service fee. Exemptions will be permitted only for (a) deliveries correcting Baxter error; (b) domestic travel Orders subject to Section 3.14, Travel Orders; and c) new Home Patient Orders.

### **3.10 Off-Schedule Orders to Hospitals or Centers**

Off-Schedule Orders to Hospitals or Centers that can ship ground are subject to a delivery fee of fifty dollars (\$50.00).

### **3.11 Home Patient Re-Delivery**

Orders requiring Home Patient Re-Delivery are subject to a charge of seventy five dollars (\$75.00).

### **3.12 Expedited Orders to Hospitals or Centers; Expedited Orders for Rockwell Products**

**3.11.1** The Expedited Order processing charge for Orders placed to Hospitals or Centers is one hundred fifty dollars (\$150.00) if placed during Normal Business Hours and two hundred fifty dollars (\$250.00) if placed outside of Normal Business Hours, plus freight.

**3.11.2** Expedited Orders for Rockwell Products will be subject to the Expedited Order charge of seventy five dollars (\$75.00), plus freight and handling.

### **3.13 Expedited Orders to Home Patients**

**3.13.1** The Expedited Order processing charges for Home Patients are:

Same Business Day Delivery*	Next Business Day Delivery *	Second Business Day Delivery *	Third Business Day Delivery *	Fourth Business Day Delivery *
\$500.00	\$400.00	\$300.00	\$250.00	\$200.00

**3.12.2** Expedited Orders to Alaska and Hawaii Home Patients may be subject to additional freight charges.

**3.12.3** Expedited Orders placed for Home Patients under After Hours Delivery are subject to the Expedited Order processing charge in Section 3.12.1, plus an additional charge of two hundred fifty dollars (\$250.00).

**3.13 Travel Orders**

**3.13.1** Travel Orders for destinations within the continental U.S. (excluding all cruises regardless of departure port) require a Lead Time of fourteen (14) business days. Travel Orders received with Lead Time of nine (9) to five (5) business days will be subject to a one hundred dollar (\$100.00) fee. Travel Orders with less than five (5) days Lead Time will be subject to a one hundred fifty dollar (\$150.00) fee plus any applicable Expedited Order fees.

**3.13.2** Through the Global Destinations Program, peritoneal dialysis Home Patients can successfully continue their therapy while traveling outside of the continental U.S., including Alaska and Hawaii and cruises from any port, domestic or international. Home Patient is responsible for the shipping and handling costs associated with the Order delivery. The handling cost for a Global standard order (>30 days' notice) is one hundred dollars (\$100.00) while the handling cost for a Global Expedited Order (<30 days) is two hundred dollars (\$200.00). Shipping fees vary and are calculated based on travel destination. To place an order through the Global Destinations Program, call 1-800-284-4060.

**3.14 Proof of Delivery**

The Baxter invoice and packing list must be retained as proof of delivery. Subject to availability and within thirty (30) days following the date of shipment, requests for additional documentation of delivery (e.g., carrier delivery logs) will be subject to a service charge of forty dollars (\$40.00).

Delivery to a Hospital or Center shall be made to a receiving or loading dock.

**3.15 Safe Environment**

Customer and Home Patient shall ensure Baxter drivers and agents may safely and securely enter Home Patient's designated place of delivery in order to deliver Product. Upon risk to Baxter's drivers or agents, as determined in Baxter's sole discretion, Baxter may immediately cease deliveries of Product to Home Patient or Customer.

**3.16 Accessorial Services to Hospitals and Centers**

Special services related to packing and/or shipping for Hospitals and Centers are subject to commensurate service fees per occurrence.

### BAXTER HOME PATIENT SERVICE FEE SUMMARY CHART

SERVICE	DEFINITION	PRICE	EXCLUSIONS	INVOICE CODE
14 Day Order Cycle	Home Patient Orders set for 14 day cycles or less	\$25.00 per Order	Baxter error New Patient Orders	RENSERVICE14
Expedited Order	Home Patient orders, which may be filled in Baxter's sole discretion, placed for delivery with less than five (5) days Lead Time prior to the requested delivery date	4 days Lead Time - \$200.00 3 days Lead Time - \$250.00 2 days Lead Time - \$300.00 1 day Lead Time - \$400.00 0 day Lead Time - \$500.00	Baxter error New Patient Orders Travel Orders	RENEOC*
Home Patient Off-Schedule Order	Home Patient requested orders outside a Home Patient's Scheduled Order cycle, including usage and prescription changes	\$150.00 per Order	Baxter error New Patient Orders Travel Orders	RENOFF*
Home Patient Re-Delivery	Home Patient orders when a Home Patient's requested delivery address following an unsuccessful delivery attempt to such Home Patient	\$75.00 per event	Baxter error	RENRED*
After Hours Delivery	Home Patient orders requested to be delivered outside of normal business hours defined as Monday to Friday, 7 AM to 6 PM CST, and including Baxter designated holidays	\$250.00 per Order	Baxter error	RENAHC*
Verbal or Fax Prescription Change	Baxter oversees the processing of a Home Patient prescription via fax or over the phone	\$50.00 per event	Prescription approvals fully processed via HomeCare Web Portals, including DirectAccess <a href="http://www.baxter.com/homecareservices">www.baxter.com/homecareservices</a> or Sharesource Customer Service Portal	RENFAX RENVERBAL
Travel	Overseeing and processing of Home Patient orders specified for alternate delivery locations	\$100.00 to \$150.00 per order depending on Lead Time. Travel Orders placed with less than five (5) days Lead Time are also subject to the Expedited Order fee	Baxter error	RENTRAVEL*
Bulk Order	Home Patient Orders that exceed fifty-five (55) cases of Disposable Product for new Home Patients and forty (40) cases of Disposable Product for prevalent Home Patients	\$1,000.00 per Order	Baxter error	Manual Bulk Order

\*Courtesy Notification

## **4. Freight, Distribution and Shipping**

### **4.1 Freight and Distribution**

Published prices for Equipment and Parts do not include delivery, handling and installation. These charges will be arranged and billed separately, if applicable.

Customer is responsible for all freight and distribution charges for Products when Expedited Order processing and delivery is required, unless specifically provided in these Terms and Conditions.

All shipments are considered "contiguous USA only" unless otherwise mutually agreed to in writing by Customer and Baxter.

### **4.2 Shipping Terms and Risk of Loss**

**4.2.1** Except as otherwise permitted herein, Disposable items are shipped FOB Destination (freight prepaid by Baxter), and the risk of loss on any Disposable shall pass to Customer when Customer receives the Disposable. Notwithstanding the foregoing, all Disposables shipped to Customers in Alaska and Hawaii will be subject to a twenty percent (20%) price premium above contracted price to cover shipping and handling charges.

**4.2.2** Equipment is shipped FOB Origin (freight charges are prepaid by Baxter and shall be added to Customer's invoice as separate line item charges). The risk of loss on Equipment passes to Customer upon Baxter's shipment from Baxter's shipping point. Customer agrees, at Customer's own cost and expense, to keep the Equipment fully insured against destruction and loss from the date of shipment of the Equipment until the amounts owed are paid in full. Upon Baxter's request, Customer will provide Baxter with proof of such insurance.

**4.2.3** Notwithstanding the foregoing, Baxter reserves the right at any time to ship Disposable items FOB destination, Freight Collect (Customer will be responsible for shipping and handling; the costs prepaid by Baxter and added to Customer's invoice).

**4.2.4** Title to all Products except for Equipment shall pass to Customer upon receipt by Customer. Title to Equipment shall pass to Customer upon full payment of all applicable fees under the applicable Equipment agreement. Notwithstanding the foregoing, title to HomeChoice, HomeChoice Pro and AMIA automated peritoneal dialysis system cyclers shall remain with Baxter.

## **5 Billing and Payment**

### **5.1 Terms of Sale**

All Orders are subject to credit approval and acceptance at Baxter's home office. Standard payment terms are net thirty (30) days from the date of invoice. Payment terms are in effect as of the date of the order. Payment is made to the "remit to" address indicated on the invoice. Credit card payments are subject to approval by Baxter's Credit and Collections department.

A service charge of one and one-half percent (1 ½%) per month (or the highest amount allowed by applicable law, if lower) shall be added to all amounts past due. Additionally, Baxter reserves the right to require payment in advance of shipment.

### **5.2 Prices**

Product is priced at the amount indicated for the selling unit of measure ordered. Prices and specifications are subject to change without notice. All shipments are billed at the price in effect on the date of the order. Product, with the exception of Equipment, is billed upon shipment. Equipment is billed after implementation. Product prices are exclusive of all taxes, discounts or rebates.

### **5.3 Discount Disclosure Statement**

Any discounts, rebates, incentives, or other reductions in price issued by Baxter to Customer under these Terms and Conditions may constitute a discount within the meaning of 42 U.S.C. §1320a-7b(b)(3)(A) and/or 42 U.S.C. §1320a-7b(b)(3)(C). Customer may have an obligation to properly disclose and appropriately reflect such discount to any state or federal program that provides cost or charge based reimbursement to Customer for the items to which the discount applies. Customer agrees to make proper disclosures of any and all discounts, rebates, credits, reimbursement and other like programs. Customer



agrees to comply with all applicable laws when seeking reimbursement from any government entity for Products supplied under these Terms and Conditions. Baxter will report all discounts on the invoices, coupons or statements submitted to Customer. Where the value of a discount is not known at the time of sale, Baxter will report the existence of the discount program on the invoices, coupons or statements submitted to Customer, and when the value of the discount becomes known, provide Customer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied.

For Product provided to Customer, Customer acknowledges the value of such Product. Customer further acknowledges that this dollar value is a "discount or other reduction in price" on the Product under Section 1128B(b)(3)(A) of the Social Security Act (42 U.S.C. 1320-a-7b(b)(3)(A)). Customer shall disclose the discount or other reduction in price under any state or federal program which provides cost or charge-based reimbursement to Customer.

## **5.4 Credit and Disputes**

**5.4.1** Only amounts which are disputed in good faith may be withheld from payment pending resolution. Any portion of an invoice not in dispute must be remitted within the payment terms of each sale. All disputes must be submitted in writing to Baxter's Credit and Collections Department (contact information noted on page 1 of these Terms and Conditions) within thirty (30) days from the date of invoice. All disputes or rights are waived unless the Customer's complaint has been received by Baxter within such thirty (30) day period.

**5.4.2** 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 5.Billing/Payment) on any unpaid amounts in dispute. Such charges will begin to accrue on the date payment was originally due.

**5.4.3** Baxter reserves the right to place a hold on Product deliveries to Home Patients or Customer in accordance with Baxter's Home Patient/Customer Order Hold Procedure (available on request) should Customer continue to withhold payment after multiple attempts to obtain an approved payment commitment.

## **5.5 Lost Product**

For all Rockwell Product Orders there is a \$150.00 charge for lost drums and a \$50.00 charge for lost pallets.

## **6. Warranties**

### **6.1 DISPOSABLE PRODUCT WARRANTY**

Baxter warrants that Disposable Product manufactured by Baxter, when used in accordance with the directions on the labeling, is fit for the purposes and indications described on the labeling. The applicable manufacturer under the manufacturer's warranty will cover Disposable Product not manufactured by Baxter, and Baxter provides no warranty for Disposable Product not manufactured by Baxter.

The warranty does not apply to any Disposable Product that is misused, abused, neglected, tampered with or damaged intentionally by accident, flood, water, fire or other hazard. If Disposable Product is not used in accordance with manufacturer's instructions, Disposable Products warranties are void and of no effect. There are no other express or implied warranties, including any warranty of merchantability or fitness for a particular purpose. Baxter shall not be liable for proximate, incidental, or special damages.

All warranties in these Terms and Conditions shall be construed to comply with the warranty Safe Harbor found at 42 C.F.R. 1001.952(g).

THE WARRANTY IN THIS SECTION SHALL BE IN LIEU OF ANY OTHER WARRANTY EXPRESSED OR IMPLIED OR STATUTORY RESPECTING DISPOSABLE PRODUCT, AND BAXTER MAKES NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN CONTRACT, TORT OR UNDER ANY OTHER THEORY AGAINST BAXTER WITH RESPECT TO DISPOSABLE PRODUCT AND ITS USE SHALL BE THE REPLACEMENT OR REPAIR OF THE DISPOSABLE PRODUCT AND NO OTHER REMEDY OR DAMAGES THAT ARE OR INCLUDE LOST REVENUES, LOST PROFITS, COST OF REPLACEMENT OR COMMERCIAL LOSS, OR ANY OTHER PROXIMATE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES SHALL BE AVAILABLE TO CUSTOMER. BAXTER SHALL HAVE NO FURTHER OBLIGATION OR LIABILITY WITH RESPECT TO DISPOSABLE PRODUCT, OR ITS SALE,

OPERATION AND USE, AND BAXTER NEITHER ASSUMES, NOR AUTHORIZES THE ASSUMPTION OF, ANY OBLIGATION OR LIABILITY IN CONNECTION WITH SUCH DISPOSABLE PRODUCT.

## 6.2 EQUIPMENT WARRANTY

Baxter will, at its option, replace or repair, at no charge to Customer, any Part of the Baxter Prismaflex Dialysis Control Unit which is found to be defective in factory material or workmanship during the twelve (12) months from date of installation or six thousand (6,000) hours of operation, whichever comes first.

Baxter will, at its option, replace or repair, at no charge to Customer, any Part of the Baxter PHOENIX Dialysis System which is found to be defective in factory material or workmanship during the first twelve (12) months from the date of installation, regardless of the hour meter reading.

Baxter will, at its option, replace or repair, at no charge to Customer, any Part of other Equipment not listed above which is found to be defective as a result of manufacturing defects only. In no event shall this warranty apply should Baxter determine in good faith that Parts or Equipment has been abused, misused, neglected, tampered with or damaged intentionally.

Optional feature components that are installed after a machine has been placed in service are subject to a separate warranty applicable to such components.

Certain components, such as fuses, bulbs, and filters, which are subject to normal wear, are not covered by this limited Equipment warranty. In addition, this Equipment warranty does not include replacement or repair of any Part that fails because of misuse, accident, neglect, or failure to use and maintain the unit in accordance with instructions provided in the applicable operator's manual, or because of alterations made by other than Baxter authorized service personnel. Repairs required as a result of abuse or misuse of the Equipment, as determined by Baxter in good faith, will be charged to the owner.

Parts installed that have been purchased from vendors other than Baxter shall void all applicable warranties.

Performance of scheduled preventive maintenance procedures, as described in the operator's manual, is the responsibility of Customer and is not covered by this Equipment warranty. Failure to perform preventative maintenance procedures will invalidate this Equipment warranty.

The applicable manufacturer under the manufacturer's warranty will cover Equipment and/or Parts not manufactured by Baxter, and Baxter provides no warranty for EQUIPMENT and/or Parts not manufactured by Baxter.

**THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL BAXTER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OF THE EQUIPMENT AND/OR PARTS.** Some states may not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights, which vary from state to state.

To request service under this Equipment warranty, please call the Technical Service Response Center at the telephone number below. The caller should be ready to provide the name, model number and serial number of the Equipment.

Baxter Healthcare Corporation  
25212 West Illinois Route 120  
Round Lake, Illinois 60073  
1-800-525-2623

## 6.3 EXALIS™ SOFTWARE WARRANTY

Baxter warrants that the Exalis™ Software is free from defects in material and workmanship under normal use for a period of ninety (90) days following the delivery date.

Baxter makes no other express or implied warranty of any kind with respect to the Exalis™ software, and specifically disclaims all other warranties, express, implied or statutory, including, but not limited to, any implied warranties of merchantability; of fitness for a particular purpose; of accuracy, completeness or results; of workmanlike effort; of lack of viruses; and lack of negligence. Baxter makes no warranty of

title, quiet enjoyment, quiet possession, and correspondence to description, or non-infringement with regard to the Exalis™ software. If an implied warranty of condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you have an implied warranty of condition but only as to defects discovered during the period of this limited warranty (ninety (90) days). As to any defects discovered after the ninety (90) day period, there is no warranty of any kind.

If Baxter provides you with any enhancements after the expiration of the ninety (90) day limited warranty period, such enhancements are not covered by any warranty, express, implied or statutory.

Baxter shall not be responsible for any loss or damages to Customer or any third parties caused by the installation or use of the Exalis™ Software. Baxter shall not be liable for any direct, indirect, special incidental or consequential damages, whether based on contract, tort or any other legal theory, arising out of any use of the Exalis™ Software or any performance of any agreement relating to the Exalis™ Software, even if Baxter has been advised of the possibility of such damages.

Baxter's entire liability and Customer's exclusive remedy for breach of the foregoing limited warranty or any other Baxter obligations relating to the Exalis software shall be the replacement of any magnetic media not meeting the limited warranty set out herein. Baxter shall not be obligated to correct, cure or otherwise remedy any error or defect in the Exalis™ Software resulting from any (i) modification of the Exalis™ Software by any entity other than Baxter; (ii) accident, abuse, misapplication, abnormal use or a virus; or (iii) failure of Customer to notify Baxter of the existence and nature of such nonconformity or defect promptly upon its discovery. Any replacement software will be warranted for the remainder of the original warranty period or thirty (30) days from shipment of the replacement product, whichever is longer.

Customer specifically agrees that any liability on the part of Baxter arising from breach of contract, negligence, strict liability, or in tort shall not exceed the aggregate amounts paid by Customer to Baxter in connection with or related to the Exalis™ Software.

#### **6.4 PRISMAFLO IIS™ and PRISMATHERM II™ BLOOD WARMERS WARRANTY**

The warranties for PrismaFlo IIS™ and PRISMATHERM II™ blood warmers are provided by the manufacturer, STIHLER Electronic GmbH, Stuttgart, Germany.

STIHLER, will, at its option, replace or repair, at no charge to Customer, any part of the PrismaFlo IIS™ and/or Prismatherm II™ blood warmer which is found to have been defective in factory material or workmanship during the first twelve (12) months from date of Customer purchase.

Please contact STIHLER's authorized U.S. service representative, FUTUREMED America, Inc. for warranty service at (818) 830-2500.

#### **6.5 ROCKWELL PRODUCTS WARRANTY**

The warranty for Rockwell Products is provided by the manufacturer, Rockwell Medical. Rockwell Medical warrants that the Rockwell Products furnished to Customer will be of the kind and quality specified in the purchaser agreement between Baxter and Customer and will be free of defects. Rockwell Products will be within AAMI standards and manufactured within FDA approved GMP's (Good Manufacturing Practices).

### **7. 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 ("Baxter Indemnified Parties"), 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, and including claims for personal injury, death or property damage) (together, "Claims") incurred by Baxter, arising from, in connection with or as a consequence of (i) any negligent, or wrongful act or omission by Customer; (ii) Customer's transfer, use or sale of Product, except to the extent that such suit or demand arises out of the failure of Product to meet Baxter's express warranty(ies); and/or (iii) Customer's improper possession, operation, maintenance, delivery, return, handling or storage of Product.