

# DIRECT PURCHASES TERMS AND CONDITIONS OF SALE

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## Baxter Healthcare Corporation Medication Delivery Division

One Baxter Parkway  
Deerfield, IL 60015  
847-948-2000

Baxter's Medication Delivery business offers a single source for medication delivery products and services, including drug delivery systems, intravenous solutions, sets, infusion pumps, parenteral nutrition products, anesthesia devices and pharmaceutical agents.

### DIRECTORY OF SERVICES

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#### Customer Service / Order Entry

(Hours: 7:00am-6:00pm CT)

One Baxter Parkway 1-888-229-0001  
Deerfield, IL 60015 Fax: 1-888-229-0020

**Note:** Orders are required to be placed electronically.  
Call 1-877-334-2298 to speak to an eCommerce representative.

#### Sales Inquiries

Contact your local Sales Representative  
To locate your Sales Rep: 1-888-229-0001, #1

#### Hardware Parts & Service

**Infusion Systems** 1-800-THE-PUMP  
Includes repairs, technical support and 1-800-843-7867  
training inquiries.

**Nutrition Compounder Hardware Support** 1-800-626-2667  
(AUTOMIX, MICROMIX) Fax: 1-602-678-0180

#### Product and Technical Inquiries

**Medication Delivery** (excluding Nutrition) 1-800-933-0303  
Product Information Center Fax: 1-888-229-0030

**Nutrition** 1-800-422-2751  
Clinical & Software Support Fax: 1-847-948-4969

#### Quality Management / Product Surveillance

1-800-437-5176  
Fax: 1-847-270-4022

#### Hardware Billing

Equipment rental and leasing inquiries  
Contact your local Sales Representative.

#### Credit & Collections

One Baxter Parkway 1-888-270-3189  
Deerfield, IL 60015 Fax: 1-847-948-3354

**Note:** Invoices are required to be received by Customer electronically.  
Call 1-877-334-2298 to speak to an eCommerce representative.

#### Customer Operations

Invoice and credit issue inquiries 1-888-270-3189

#### Electronic Commerce

Customer Setup, Inquiries and Training 1-877-334-2298,  
Opt. 1

#### To locate your Sales Representative

1-888-229-0001

**ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, WHICH ARE ACCEPTED BY THE CUSTOMER UPON PLACING OF AN ORDER FOR PRODUCT(S) WITH BAXTER WHICH ORDER IS CONFIRMED BY BAXTER. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON BAXTER UNLESS AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED EMPLOYEE OF BAXTER. THESE TERMS AND CONDITIONS CAN ALSO BE FOUND ON** ([http://www.baxter.com/products/medication\\_management/how\\_to\\_order/terms\\_of\\_sale\\_final.pdf](http://www.baxter.com/products/medication_management/how_to_order/terms_of_sale_final.pdf))

Baxter reserves the right at any time to amend these Terms and Conditions. It is Customer's responsibility to review the Terms and Conditions prior to submitting each order. Baxter has no responsibility to notify you of any changes prior to effective date of the changes. Customer shall be deemed to accept such amended Terms and Conditions by ordering products offered after the date of such amendment.

THESE TERMS AND CONDITIONS SHALL NOT APPLY TO ANY PRODUCTS THAT ARE GOVERNED BY THE TERMS AND CONDITIONS SET FORTH IN THE WHOLESALE PRODUCT CATALOG, DATED DECEMBER 26, 2006 (OR IN ANY SUBSEQUENT REVISION THEREOF) PUBLISHED BY BAXTER'S ANESTHESIA & CRITICAL CARE DIVISION.

## **DEFINITIONS**

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The following definitions apply to these Terms and Conditions of Sale:

AGREEMENT means these Terms and Conditions of Sale.

ALTERNATIVE PROVIDER is any health care provider other than a Hospital.

CUSTOMER means a Hospital or Alternative Provider located within the 50 United States and District of Columbia and to which Baxter is approved to sell Products pursuant to this Agreement.

DISPOSABLE means any product other than Equipment and related Parts, software, peripherals and accessories, to include base solutions, pharmaceuticals, drug delivery systems, and IV access systems that is manufactured or sold by Baxter.

EQUIPMENT means durable medical equipment that is manufactured or sold by Baxter for its intended use.

EXCESS STOCK shall have the meaning given in EXCESS STOCK – DISPOSABLES of this Agreement.

FROZEN ONLY 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.

HOSPITAL means any acute care hospital.

PARTS means any components manufactured or sold by Baxter for use in connection with Equipment.

PRODUCTS means Equipment, Disposables or both.

## **WARRANTIES AND LIMITATION OF LIABILITY**

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### **Products Manufactured by Baxter**

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Product warranties extend only to the original Customer, and are not assignable or transferable by Customer.

Products manufactured by Baxter will be sold to the Customer under a warranty or warranties contained in Baxter's label or insert accompanying the Product (the "Warranties"), which state the nature and duration of Baxter's obligation to the Customer. Customer's remedies are limited to replacement (for Disposables, or either repair or replacement of Equipment at the sole discretion of Baxter) of defective Products as provided herein. Notwithstanding the foregoing, in the absence of a more specific warranty, with respect to Products manufactured by Baxter, such Products are warranted to conform to Baxter's specifications for the Product in effect at the time of shipment. The warranty period will be measured from Baxter's shipment date. The Product warranty period is twelve (12) months, except for Products with a shelf life of less than twelve (12) months and batteries. For products with a shelf life of less than twelve (12) months, the warranty period is the shelf life period. For batteries, the warranty period is six (6) months.

Baxter's warranty set forth above is conditioned upon proper storage, installation, use and maintenance in accordance with applicable written recommendations of Baxter. Baxter warranties under this Agreement will be void and of no effect if: (i) 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 according to Baxter's approved procedures). Without limiting the foregoing, the warranties set forth in WARRANTIES AND LIMITATION OF LIABILITY by Baxter do 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.

THE WARRANTY SET FORTH UNDER WARRANTIES AND LIMITATION OF LIABILITY OF THIS AGREEMENT, AS LIMITED IN THE ABOVE PARAGRAPH, 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 (AND BAXTER HEREBY DISCLAIMS ANY IMPLIED WARRANTY). ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED BY STATUTES OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED.

BAXTER'S SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT BAXTER'S OPTION, TO REPAIR OR REPLACE THE PRODUCT, OR TO REFUND THE PURCHASE PRICE BY CREDITING CUSTOMER'S ACCOUNT. Baxter shall not be liable to Customer or any third party or entity with respect to Product ordered/sold under this Agreement, under any equity, common law, tort, contract, negligence, strict liability or other theory for any (a) proximate, accidental, special, punitive, incidental consequential, or indirect damages or (b) business damages (including without limitation, loss of profit or use, opportunity, or goodwill), even if the remedies provided for herein fail of their essential purpose and even if Baxter has been advised of the possibility of any of the foregoing damages.

### **Other Products Sold by Baxter**

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Products distributed by Baxter, but not manufactured by Baxter, are warranted by the Product's manufacturer. (More specific manufacturer's warranties may accompany individual Products). BAXTER EXTENDS NO EXPRESS OR IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO PRODUCTS WHICH ARE NOT MANUFACTURED BY BAXTER.

Notwithstanding the foregoing disclaimer, in the event that Baxter determines that a third-party manufacturer's Product distributed by Baxter to Customer pursuant to this Agreement does not conform to the Product manufacturer's warranty, Baxter agrees to reimburse Customer for its documented costs of returning the defective Product(s), as well as all risk of loss or damage to such defective returned Product(s) while in transit. Customer must contact Baxter for a Returned Goods Authorization number. In the event that no defect or breach of warranty is discovered by Baxter upon receipt of any returned Product(s), such Product(s) will be returned to Customer at Customer's expense and Customer must reimburse Baxter for the transportation charges, labor and associated charges incurred in testing the allegedly defective Product(s).

BAXTER'S SOLE OBLIGATION WITH RESPECT TO DEFECTIVE PRODUCT UNDER OTHER PRODUCTS SOLD BY BAXTER, WILL BE TO REPAIR OR REPLACE, AT BAXTER'S OPTION, ANY DEFECTIVE COMPONENT OR PRODUCT AND TO PAY TRANSPORTATION EXPENSES FOR SUCH REPLACEMENT. Baxter shall not be liable to Customer or to any third party or entity with respect to Product ordered/sold under this Agreement, under any equity, common law, tort, contract, negligence, strict liability or other theory for any (a) proximate, accidental, special, punitive, incidental consequential, or indirect damages or (b) business damages (including without limitation, loss of profit or use, opportunity, or goodwill), even if the remedies provided for herein fail of their essential purpose and even if Baxter has been advised of the possibility of any of the foregoing damages.

Parts manufactured by Baxter and labor provided by Baxter are subject to thirty (30) business days' warranty. Any warranties on parts manufactured by third parties will be passed to the Customer to the extent transferable.

## INDEMNIFICATION

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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, 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) incurred by Baxter, arising from, in connection with or as a consequence of (i) any negligent, or wrongful act or omission by Customer; and/or (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 express warranty(ies).

## ORDERING INFORMATION

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**Purchase Orders.** We recommend that all orders, with the exception of warranty replacement orders, require a purchase order and are placed electronically. Baxter currently supports EDI, Global Healthcare Exchange (GHX), and its own eServices Center Website. Contact Baxter at 1-877-334-2298 or visit the eCommerce website at [http://www.baxter.com/about\\_Baxter/doing\\_business\\_with\\_baxter/customers/e\\_commerce/index.html](http://www.baxter.com/about_Baxter/doing_business_with_baxter/customers/e_commerce/index.html) for more information regarding our eCommerce policy.

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
- Delivery date request
- Any special instructions

When using a purchase order form, only the above information shall be applicable to Baxter. Any purchase order terms and conditions, and/or modifications regarding pricing or general ordering information, shall not be effective. Customer acknowledges and agrees that the terms and conditions of this Agreement 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

All orders are subject to acceptance by Baxter. The Terms and Conditions of Sale shall be effective on the date of shipment.

**Licenses.** Customer agrees to maintain all licenses necessary for the purchase of prescription Products (e.g., state pharmacy license, physician's license, etc.) and will forward a copy of such licenses to Baxter upon request. Customer hereby represents and warrants that Customer has any and all current licenses required to purchase such products and agrees that this representation is material consideration to Baxter and that Baxter is relying on such representation.

**Selling Unit of Measure.** Order quantities must be in the selling unit of measure indicated. Pack factors are noted for ease of ordering.

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

- For unscheduled deliveries, Baxter requires a minimum of five (5) business days lead time from order placement to requested delivery date for Disposables orders.
- Frequency and mode of delivery will be based on specific volumes, as set forth in attached Schedule One incorporated herein by this reference.

- All orders are subject to credit approval and acceptance at our corporate office.
- Orders need to be received and processed prior to 12:00 noon local time in the time zone of your local Baxter distribution center, in order to be processed for next scheduled deliveries.
- Scheduled deliveries may be available for Customer based on Customer's geography, frequency and volume of purchases. Contact Baxter's Customer Service department to establish scheduled deliveries.

**Minimum Case Charge for Frozen Products.** Orders for Frozen Product of less than four cases will be assessed a minimum case charge of \$75.00.

**General Minimum Order Charge.** Orders totaling less than \$250.00 in total Product will be assessed a minimum order charge of \$40.00, excluding frozen product orders (see **Minimum Case Charge for Frozen Products**).

### **"Emergency" Orders**

Emergency orders at customer's request and placed during Baxter's regular business hours, if accepted, are subject to a \$150 handling fee plus all related shipping/delivery charges.

Emergency orders at customer's request and placed after Baxter's regular business hours or on weekends/holidays, if accepted, are subject to a \$250 fee plus all related shipping/delivery charges.

Baxter will attempt to ship all accepted "emergency orders" to Customer on an expedited basis based on Customer's request, but Baxter will not be liable for any loss or damage arising out of delay or failure of shipment or delivery.

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

- |   |       |
|---|-------|
| • Lift gate   | \$ 50 |
| • Inside delivery   | \$ 75 |
| • Custom Palletization  | \$ 75 |
| • Additional deliveries (in addition to standard deliveries under Schedule One) | \$150 |

## **SHIPPING INFORMATION**

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**Scheduled Delivery Dates.** Shipment dates, which may be provided to Customer, are approximate only and are estimated from the date of receipt of Customer's 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 to Customer within a reasonable time, but Baxter will not be liable for any loss or special, indirect, or consequential damages arising out of 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.

**Delivery Delays/Nonperformance.** Without limiting the foregoing, Customer agrees that Baxter will not be liable for any loss or damages that may result from nonperformance and/or delays caused by a supply shortage of raw materials, manufacturing problems, delivery or labor problems, acts of regulatory agencies, discontinuation of a product line, acts of Customer, and/or by reason of any "force majeure event" more particularly described in ARBITRATION of this Agreement. 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 this Agreement) among all its customers without liability.

**Customer Inspection and Acceptance of Product at Delivery.** Customer must visually inspect and count all Product 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 signed by the Customer. The carrier should countersign the packing list and the carrier's freight bill or bill of lading. Baxter's Customer Service department must be notified of any delivery exceptions (e.g., shortage, damage, picking error, warehouse error, customer error, overage, labeling error, and order entry error) within two (2) business days of receipt of shipment for credit eligibility consideration under Baxter's Returned Goods Policy. SEE RETURNED GOODS POLICY for details.

## Shipping and Handling Charges

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Published prices for Disposables include regular shipping and handling charges (FOB destination).

Published prices for Equipment exclude shipping and handling; these charges are prepaid and billed separately.

Customer is responsible for freight and special handling for all Products when customer requires expedited order processing and delivery (not precipitated by Baxter). See SPECIAL SERVICES section for details.

**Proof of Shipment/Delivery.** Customer must maintain Baxter's invoice and packing list as your proof of shipment and delivery. Subject to availability and within 30 business days following the date of shipment, requests for additional documentation of shipment and delivery (e.g., carrier delivery logs or if requested in advance, delivery acceptance signatures) should be directed to Baxter's Credit and Collections department. Such requests will be subject to a \$40 service charge per shipment.

**Shipping Terms and Risk of Loss.** Disposable items are shipped FOB destination, and the risk of loss on any Disposable shall pass to a Customer when Customer receives the Disposable. Notwithstanding the foregoing, all Disposables shipped to Alaska and Hawaii will be subject to a 20% price premium above contracted price to cover shipping and handling charges. Published prices for Equipment exclude shipping and handling (FOB origin); these charges are prepaid and added to the invoice as separate line item charges. The risk of loss on Equipment passes to Customer upon Supplier's shipment from Supplier'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 request, Customer will provide Baxter with proof of such insurance.

## BILLING AND PAYMENT INFORMATION

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

**Taxes.** Published Product prices are exclusive of all taxes. Customer shall be responsible for payment of all applicable state and local sales tax, use, and/or gross receipt tax resulting from transactions with Baxter regardless of legal liability for the tax. Customer shall be responsible for maintaining current tax exemption documentation when applicable.

**Invoices.** Product is invoiced after it is shipped. Payment must be made within terms of sale as indicated on the invoice. Questions regarding invoices should be directed to Credit and Collections. Invoices are required to be received by Customer electronically. Questions regarding eCommerce should be directed to 1-877-334-2298 (Opt.1).

**Payment Terms.** Payment is to be made electronically to the "remit to" address indicated on the invoice. Subject to credit approvals, standard payment terms are net 30 days from invoice date for payments made by check, cash, or wire transfer. A service charge of 1 ½% per month (or the highest amount allowed by applicable law, if lower) shall be added to all amounts past due.

**Disputes Regarding Invoices.** All disputes regarding invoices, with the exception of delivery exceptions as defined in CUSTOMER INSPECTION AND ACCEPTANCE OF PRODUCT AT DELIVERY, 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 the 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 terms of sale. If Customer disputes an invoice or portion of an invoice and is incorrect, Customer will pay additional finance charges referenced above on any unpaid amounts in dispute and such charges will begin to accrue on the date payment was originally due.

**Returned Checks.** A \$50.00 service charge will be assessed for returned checks.

**Discounts.** Any discounts, rebates, incentives, or other reductions in price issued by Baxter to Customer under this Agreement 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 this Agreement. Baxter will report all discounts on the invoices, coupons or statements submitted to Customer and, or 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.

**eCommerce Billing & Payment Process.** In order to implement electronic invoicing and payment, Customer may contact Baxter at 1-877-334-2298 or visit Baxter's eCommerce website at [www.baxter.com/about\\_baxter/doing\\_business\\_with\\_baxter/customers/e\\_commerce/index.html](http://www.baxter.com/about_baxter/doing_business_with_baxter/customers/e_commerce/index.html).

## RETURNED GOODS POLICY

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**General Return Requirements.** All Products must be handled, maintained and stored properly at all times to be eligible for return and/or credit. Without limiting the foregoing, at a minimum, all delivered Products must be handled and stored in accordance with the following requirements:

- Products must be stored at the originally delivered site, in the original, unopened, and undamaged carton or package.
- Products must be handled and stored in a sanitary manner.
- Products must be handled and stored to avoid contamination of any kind.
- Products must be stored at temperature indicated within Product packaging information.
- Products must be maintained in accordance with any and all other handling and storage recommendations and information provided in Product literature, labeling, packaging information and/or otherwise made available to Customer.

**Prompt Notice of Shipping Errors.** Customer will promptly notify Baxter's Customer Service department of any alleged shipment errors. **FOR ELIGIBILITY CONSIDERATION UNDER BAXTER'S RETURNED GOODS POLICY, BAXTER'S CUSTOMER SERVICE DEPARTMENT MUST BE NOTIFIED OF ANY ALLEGED SHIPPING ERRORS WITH RESPECT TO PRODUCT DELIVERED HEREUNDER WITHIN TWO (2) BUSINESS DAYS AFTER CUSTOMER'S RECEIPT OF PRODUCT, REGARDLESS OF THE ALLEGED PROBLEM OR CAUSE FOR RETURN.**

**Returned Goods Authorization Required.** In all cases, prior authorization (evidenced by a Returned Goods Authorization number) to return Product is required from Baxter's Customer Service department. Credit will not be issued without prior authorization of the return. BAXTER SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO CUSTOMER FOR PRODUCTS RETURNED WITHOUT BAXTER'S PRIOR WRITTEN AUTHORIZATION.



# DISPOSABLES

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**Disposables Not Eligible for Return.** Baxter will not authorize the return of the following Disposables under any circumstances:

- Frozen Premix drugs (2G codes);
- Products requiring temperature/refrigerated control storage (1A6012, 1A6013, 1A6019, 1A6023, 1A6024, 1A6028, 1A6029, 1A6053, 1T, 2K, 2T Codes); or
- Custom manufactured products (1C, 1T, 3C codes).

**Limitations on Return.** Further, Disposables **will not** be eligible for return and/or credit on return under the following circumstances:

- Disposables are returned without proper notification and/or prior written authorization from Baxter.
- Disposables are returned after ninety (90) days following receipt of shipment to Customer.
- Disposables returned with less than three (3) months remaining to expiration (exception are codes manufactured with four (4) months of dating.)
- Disposables sold on a no return basis.
- Disposables are not in their original packaging or are damaged or in opened cases. Resealed cartons are not eligible for return.
- Disposables are Baxter discontinued products.
- Disposables allegedly received with unacceptable dating but were not reported within thirty (30) days of receipt by Customer.
- Disposables are promotional sales products or samples.
- Disposables have deteriorated because of improper handling, abuse or other factors not due to Baxter.
- Disposables have been opened, partly used or the labels or seals have been removed or tampered.
- Disposables are special products made to Customer's specification.

**Disposables Shipped in Error by Baxter.** In the event that Customer believes that Baxter shipped Disposables to Customer in error, Customer will follow delivery, inspection and notification procedures set forth in PROMPT NOTICE OF SHIPPING ERRORS, RETURNED GOODS AUTHORIZATION REQUIRED AND DISPOSABLES for authorization and instructions regarding returns. Notwithstanding the foregoing, in all cases, Disposables eligible for return must be properly returned to Baxter within thirty (30) days after Customer's receipt thereof in order to qualify for 100% credit upon such return. Such Products may be returned freight collect payable by Baxter. Disposables returned after thirty (30) days of shipment will be considered Excess Stock under EXCESS STOCK – DISPOSABLES (below).

**Disposable Products Ordered in Error by Customer.** If Disposables are ordered in error, Customer may receive a 50% credit for eligible Disposables that are properly returned by Customer following the procedures set forth in PROMPT NOTICE OF SHIPPING ERRORS, RETURNED GOODS AUTHORIZATION REQUIRED AND DISPOSABLES. Notwithstanding the foregoing, in all cases, Disposables eligible for return must be properly returned to Baxter within thirty (30) days of Customer's receipt thereof in order to qualify for credit. Customer will be responsible for all costs incurred by Baxter related to the return of Disposables ordered in error by Customer. Disposables returned after thirty (30) days of shipment will be considered Excess Stock under EXCESS STOCK – DISPOSABLES (below).

**Pick-up Charge.** If Baxter arranges for pick-up of Disposables that are eligible for return under DISPOSABLE PRODUCTS ORDERED IN ERROR BY CUSTOMER, a \$95.00 returned goods pick-up charge will be applied to each purchase order. If applicable, the pick-up charge may be applied against any credit due to Customer. Any portion of the \$95.00 charge that is not covered by a credit will be invoiced to Customer.

**Excess Stock – Disposables.** Unless subject order of Disposables was erroneously placed and/or shipped by Baxter, such Disposables will be considered "Excess Stock" if authorized for return later than thirty (30) days after shipment. Any disposable returned as excess stock will incur a \$95.00 pick-up fee and will be eligible for 50% credit. Disposables are not eligible for return after ninety (90) days from date of shipment.

**Equipment.** Purchased Equipment cannot be returned for credit unless shipped in error by Baxter or ordered in error by Customer, as provided below.



**Equipment Shipped in Error by Baxter.** In the event that Customer believes that Baxter shipped Equipment to Customer in error, Customer will follow delivery, inspection and notification procedures set forth in PROMPT NOTICE OF SHIPPING ERRORS, RETURNED GOODS AUTHORIZATION REQUIRED AND DISPOSABLES for authorization and instructions regarding such returns. Notwithstanding the foregoing, in all cases, eligible Equipment must be properly returned to Baxter within thirty (30) days of Customer's receipt thereof in order to qualify for 100% credit upon such return. Such Products may be returned freight collect payable by Baxter.

**Equipment Ordered in Error by Customer.** If Equipment is ordered in error, Customer may receive a full (100%) credit for new Equipment in its original unopened packaging and properly returned by Customer following the procedures set forth in PROMPT NOTICE OF SHIPPING ERRORS, RETURNED GOODS AUTHORIZATION REQUIRED AND DISPOSABLES. Notwithstanding the foregoing, in all cases, Equipment must be properly returned to and received by Baxter within ninety (90) days after the shipping date of such Equipment in order to qualify for such credit. Customer will be responsible for all costs incurred by Baxter related to the return of such Equipment ordered in error by Customer. Customer will ensure that such Equipment is properly packed and will bear all risk of loss related to its return.

**No Credit for No Charge Product.** For the avoidance of doubt, Product provided at no charge is not eligible for return for credit under any circumstances.

## FORCE MAJEURE

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Baxter shall not 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, shortage, 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 which is beyond the commercially reasonable control of Baxter. 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 this Agreement) among its customers.

## ARBITRATION

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**Election of Mediation and Arbitration.** The parties shall attempt to resolve any and all disputes, claims or controversies arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. If such disputes, claims or controversies are not resolved through such negotiation, then they shall be submitted for final and binding arbitration pursuant to the arbitration clause set forth below. Either party may initiate arbitration with respect to the matters submitted to negotiation by filing a written demand for arbitration at any time following the initial negotiation session.

**Arbitration Process.** To the extent not resolved by mediation, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Chicago, Illinois, in the language in which the contract was written. The arbitration shall be administered by the International Institute for Conflict Prevention & Resolution (CPR) pursuant to its Arbitration Rules and Procedures. References herein to any arbitration rules or procedures mean such rules or procedures as amended from time to time, including any successor rules or procedures, and references herein to the CPR include any successor thereto. The arbitration shall be before three (3) arbitrators. Each party shall designate one arbitrator in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules. The two party-appointed arbitrators will select the third, who will serve as the panel's chair or president. All three (3) arbitrators shall have experience in resolution of commercial disputes. This arbitration provision, and the arbitration itself, shall be governed by the laws of Illinois and the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

**Arbitration Discovery.** Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents on which the producing party may rely in support of or in opposition to any claim or defense. At the request of a party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of five per party and shall be held within 45 days of the grant of a request. Additional depositions may be scheduled only with the permission of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of one day's duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. The parties shall not utilize any other discovery mechanisms, including international processes and U.S. federal statutes, to obtain additional evidence for use in the arbitration. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrators. All costs and/or fees relating to the retrieval, review and production of electronic discovery shall be paid by the party requesting such discovery.

**Arbitrator Powers.** The panel of arbitrators shall have no power to award non-monetary or equitable relief of any sort. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. Each party expressly waives and foregoes any right to consequential, punitive, special, exemplary or similar damages or lost profits. The arbitrators shall have no power or authority, under the CPR Rules for Non-Administered Arbitration or otherwise, to relieve the parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement. The award of the arbitrators shall be final, binding and the sole and exclusive remedy to the parties. Either party may seek to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction. The cost of the arbitration, including the fees of the arbitrators, shall be borne by the party the arbitrator determines has not prevailed in the arbitration.

**Appealable Awards.** If an arbitral award does not impose an injunction on the losing party or contain a money damages award in excess of \$250,000 dollars USD, then the arbitral award shall not be appealable and shall only be subject to such challenges as would otherwise be permissible under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. In the event that the arbitration does result in an arbitral award, which imposes an injunction or a monetary award in excess of \$250,000 dollars USD, such award may be appealed to a tribunal of appellate arbitrators via the CPR Arbitration Appeal Procedure.

**Confidential Process.** Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

## **A D D I T I O N A L   O B L I G A T I O N S   O F   C U S T O M E R**

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**Safe Medical Devices Act.** If any of the Products 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.

**Products for Customer's Own Use; No Reselling.** Customer represents and warrants that all purchases made by Customer under this Agreement are for its "own use" under *Abbott Laboratories v. Portland Retail Druggists Association*. Customer agrees that it will not resell or otherwise transfer any Products to any reseller, distributor or end-user.

**No Export or Transfer.** Customer will not export, re-export or otherwise transfer, directly or indirectly, any Products.

**No Prohibited Use of Products.** Customer will not knowingly use, resell 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.

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# SCHEDULE ONE

## STANDARD DELIVERY SCHEDULES

For Customers located fewer than 150 miles from local Baxter Distribution Center		Number of Weekly Deliveries from Local Distribution Center				
	900 + cases	1	2	3	4	5
Weekly minimum number of cases of Disposable Products from local Baxter distribution center	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				
	1,600 + cases	1	2	3	4	5
Weekly minimum number of cases of Disposable Products from local Baxter distribution center	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				

## DISTRIBUTION CENTER LOCATIONS

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<b>Baxter Designator</b>	<b>Location</b>	<b>State</b>
AK	Anchorage	AK
BG	Bessemer	AL
PN	Tempe	AZ
SF/LF/BF	Dixon	CA
LA/JL/BV/HV/HI	SCDC Ontario	CA
DV/LD/QD	Denver	CO
MA	Weston	FL
TA/ET/BX/DB	Tampa	FL
JX	Jacksonville	FL
AT/LK/BM	Morrow	GA
HO	Hawaii	HI
MG/EM/MB	MWDC - Chgo	IL
IN/IQ	Indianapolis	IN
NO/LO	Hammond	LA
BT	Bedford	MA
JE	Baltimore MD	MD
DT/LE/BY	Romulus Harrison	MI
MN/LM/DQ	Champlin	MN
SL/LW/BI	Earth City	MO
KC	Kansas City	MO
CH/EC/CQ	Charlotte	NC
RH	Durham	NC
OM/LQ	Omaha	NE
BN/LB	Bridgeport/ Swedesboro	NJ
GL/LL	DePew	NY
BW/EE/BJ/HJ	NEDC Mntgmry	NY
CV/JC	Solon	OH
MW	Obetz	OH
CI/LY	Cincinnati	OH
PO	Wilsonville	OR
PB/LP/AQ	Pittsburgh	PA
NH	La Vergne	TN
CJ/JM/BQ	Memphis	TN
DL/ED/BH	Dallas	TX
HU/JU/BU	Houston	TX
SA	San Antonio	TX
EP	El Paso (PW)	TX
AD/RQ	Salt Lake City	UT
RM/JR	Richmond	VA
SE/EK	Fife	WA