

BAXTER HEALTHCARE LTD ("BAXTER").

GENERAL CONDITIONS OF PURCHASE OF GOODS AND SERVICES ("Conditions")

From time to time, Baxter may place Purchase Orders with the Supplier, which will supply Products and/or Services to Baxter as specified in the Purchase Order and subject to these Conditions. The terms and conditions of the Supplier will not apply unless expressly agreed by Baxter in writing. No course of dealings between Baxter and the Supplier will add to or replace any of these Conditions.

1. INTERPRETATION

In these general conditions of purchase ("**Conditions**") the following words have the following meanings:

- (a) "**Contract**" means a contract between Baxter and the Supplier for the supply of goods or products ("**Products**") and/or services ("**Services**") of which these Conditions form part;
- (b) "**Delivery Address**" means the address specified for delivery of the Products on the Purchase Order;
- (c) "**Purchase Order**" means an order for the Products and/or Services placed by Baxter with an official purchase order number;
- (d) "**Supplier**" means the supplier of the Products and/or Services specified on the Purchase Order.

2. ACCEPTANCE

- 2.1** Baxter will not be liable for any order or commitment unless it is issued or confirmed by a Purchase Order. Baxter will assume that the Supplier has accepted the Purchase Order unless it receives written notice from the Supplier within 2 business days of issue of the Purchase Order.
- 2.2** If Baxter has provided a forecast to the Supplier, but a Purchase Order is not issued within the timeframe provided in the forecast, Baxter expects the Supplier to contact the relevant Baxter buyer to verify whether a Purchase Order is pending.
- 2.3** No modification or amendment to the Conditions shall be effected by or result from the receipt acceptance, signing or acknowledgement of either party's purchase orders, confirmations, invoices, shipping documents or other business forms issued by either party.
- 2.4** No substitution or modification of any goods, component parts, tooling, sources of raw materials, processes, or manufacturing sites may be made without Baxter's prior written consent.

3. WARRANTIES, LIABILITY AND INSURANCE

- 3.1** Supplier warrants that the Products (i) comply with the Product Specifications set forth in the Purchase Order in all respects, (ii) are fit and safe for their intended purpose as approved, (iii) are not misbranded or mislabeled as defined by any competent regulatory authority relevant to the Products, (iv) are free from defects in material, workmanship and manufacture, and (v) are free from defects in design unless the design was supplied by Baxter.
- 3.2** The Supplier must provide all Services using suitably skilled experienced and qualified staff.
- 3.3** The Supplier warrants that all Products and Services will comply with or be performed in accordance with all applicable laws and regulations.
- 3.4** The Supplier warrants that it and its employees

will comply with Baxter's Code of Practice, supplier standards, site safety and security rules, and any other rules which may be provided by Baxter from time to time, as appropriate.

- 3.5** The Supplier warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens or encumbrances.
- 3.6** All these warranties and other warranties as may be prescribed by law shall extend to Baxter, its successors, assigns, and customers and to users of the Products or Services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of one (1) year after delivery of the Products/Services to Baxter. Claims under these warranties must be made within the applicable period prescribed by statute.
- 3.7** The Supplier will indemnify Baxter against all claims, liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Baxter as a result of or in connection with (i) any actual or alleged breach of any warranty given by the Supplier, (ii) any act or omission by the Supplier or its employees, agents or sub-contractors in supplying, delivering or installing the Products or performing the Services, (iii) any actual or alleged claim that the Products or Services infringe, or their importation, use or resale infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person anywhere in the world, (iv) any actual or alleged defect in the Services or in the design, manufacture, or material of the Products, (v) any failure of the Supplier to deliver the Products or Services on a timely basis, or (vi) failure of the Products or Services to meet the requirements of the law. This sub-clause shall not be construed to indemnify Baxter for any loss to the extent it is attributable to Baxter's design, specification, or negligence.
- 3.8** The supplier shall maintain in force a policy of insurance satisfactory to Baxter in respect of its liabilities under the Contract and will provide Baxter with evidence of such insurance on request.
- 3.9** In the event of a claim under clause 3 of these Conditions, Baxter may at its discretion terminate any Purchase Order or defer acceptance of the balance of the Products or Services ordered until the claim is resolved. If Baxter is prevented from using the Products, the Supplier shall at Baxter's option, either procure for Baxter the right to continue using the Products, replace the Products with substantially equivalent products, modify the Products so as to be usable by Baxter, or repurchase the Products at the price contained in the Purchase Order.

4. AUDITS

4.1 Baxter may during normal business hours and upon reasonable prior written notice:

- (a) Send an inspector, representative or agent to test Products at any reasonable time at the Suppliers or its sub-contractor's facilities; and
- (b) Inspect and audit any of the Supplier's manufacturing or storage facilities utilised and any relevant documents in connection with the Product to ensure compliance with all applicable laws and regulations, including where relevant Current Good Manufacturing Practices or other applicable regulatory standards.

4.2 The Supplier will provide Baxter with test certificates or other documentation as Baxter may reasonably require. Conduct of an audit by Baxter does not relieve the Supplier of any liability, nor does it imply acceptance of the Products concerned.

5. DELIVERY/TRANSPORT/PACKING

5.1 All Products must be delivered to the Delivery Address and on the delivery/completion date specified in the Purchase Order. Time is of the essence, and Baxter does not waive its rights with respect to a delay in delivery or completion unless agreed in writing. Any failure to comply with delivery instructions may result in delivery being refused and/or the Purchase Order being cancelled, and the Supplier will be responsible for any additional costs resulting.

5.2 Should Baxter cancel an order for Product that is not received by it at the Delivery Address on the delivery/completion date specified in the Purchase Order, the Supplier shall refund any amount paid for such order, including shipping and handling costs incurred by Baxter, if any.

5.3 The Supplier must ensure that all Products supplied are protected against damage and deterioration in transit and delivered DDP (Incoterms), unless otherwise specified in the Purchase Order, and bear the description, quantity of contents and the Purchase Order number on each package.

5.4 The Supplier will not charge for packing, crating, boxing, or storage, unless agreed with Baxter in writing and stated by Baxter in the Purchase Order.

5.5 Baxter assumes no obligation for Products shipped in excess of the quantity ordered in the Purchase Order, unless agreed in writing prior to delivery. Shipments in excess of the quantity ordered and not accepted by Baxter will be returned to the Supplier, and the Supplier will pay Baxter for all expenses thereby incurred.

5.6 Products purchased under a Purchase Order are subject to Baxter's reasonable inspection, testing, and approval at the Delivery Address or any other Baxter facility. Baxter reserves the right to reject and refuse acceptance of Products which are not in accordance with a Purchase Order or the Supplier's representation or warranties, expressed or implied. Baxter will charge the Supplier for the cost of inspecting rejected goods. Rejected Products may be

returned to the Supplier, or held by Baxter, at the Supplier's risk and expense. Payment for any Products under a Purchase Order shall not be deemed acceptance of the Products.

5.7 In the event that a recall of the Products is necessitated by a defect, a failure to conform to the specifications, applicable laws, or any other reason within the Supplier's control, the Supplier shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning Products, lost profits, and other expenses incurred to meet obligations to third parties.

6. DOCUMENTATION

6.1 The Supplier will provide Baxter free of charge with all working drawings, operating instructions, plans, specifications and information reasonably necessary to enable Baxter to use the Products/Services for their intended purpose. The Supplier will also provide Baxter with all certificates of origin, quantity, quality, insurance and compliance with industry requirements or standards and in such form as Baxter may from time to time reasonably request.

6.2 The Supplier must send on delivery of each consignment a separate advice note and invoice including details of the Products supplied to the Delivery Address and must mark the Purchase Order number on all packages, packing notes, invoices, monthly statements and all other correspondence or documents relating to Purchase Order.

7. TITLE AND RISK OF LOSS

Risk of loss or damage to Products will not pass to Baxter until Products have been delivered into Baxter's possession and Baxter confirms them to be in accordance with the Purchase Order. Title to the Products will pass to Baxter when the Products are delivered to the Delivery Address, unless payment is made prior to delivery in which case title will pass upon payment. The Supplier will immediately upon receipt of payment, appropriate the Products to Baxter and keep them separate from all other goods and clearly mark Products as the property of Baxter. Passing of title shall not prejudice a right of rejection or other legal right.

8. PRICE AND PAYMENT

8.1 The price shall be as stated in the Purchase Order and unless otherwise stated shall be exclusive of GST. Unless otherwise specified, the prices stated in the Purchase Order include all charges for packing, hauling, storage, and transportation to point of delivery. No additional charges will be paid unless agreed by Baxter in writing in advance. Any variation of the price requires of Baxter's agreement in writing.

8.2 The Supplier warrants that the prices stated in the Purchase Order are no greater than those currently charged to any other buyer for similar quantities of Products or Services. Any price reduction extended to others by the Supplier prior to delivery shall also be extended to Baxter.

8.3 All payments are contingent on the Products conforming to the Purchase Order or performance of the Services and receipt of

complete, accurate documentation. Baxter has the right to set-off and deduct any amounts the Supplier may owe to Baxter.

- 8.4 Unless specified in a separate written agreement payment terms are 30 days after month of invoice.

9. INTELLECTUAL PROPERTY

- 9.1 The Supplier acknowledges that in connection with any Services which it carries out for Baxter, the Supplier may develop works and/or materials, including documents, models, prototypes, software, data, formulae, specifications, inventions, concepts, processes, techniques, analyses, compilations, studies, reports, graphic designs, three dimensional designs, moulds, photographs, names or logos ("**Works**"). In connection with all Works the Supplier assigns to Baxter, with full title guarantee and without restriction, the legal and beneficial ownership of all intellectual property rights (including copyright, database rights and design rights by way of an assignment of future rights) subsisting in or relating to any Works. To the extent that any intellectual property rights are not capable of being assigned at the date of any Purchase Order, the Supplier agrees to assign to Baxter, with full title guarantee and without restriction, such intellectual property rights at Baxter's request. The Supplier agrees, at Baxter's request and cost, to do all things necessary to vest in Baxter the full benefit of all intellectual property rights subsisting in or relating to any Works. Baxter, or where relevant its affiliates, are and will be deemed to be the proprietor of all Baxter trade marks and all associated goodwill. The Supplier acknowledges that the Supplier will not gain any right, title or interest in such trade marks or goodwill and shall not make any use of the same without Baxter's prior written approval.
- 9.2 Any permission to reproduce trade marks on any Products or Works is solely for the Contract and will expire once the Contract is fulfilled or cancelled whichever occurs earlier. Any Products or Works supplied to Baxter by the Supplier incorporating Baxter trade marks or trade marks belonging to Baxter affiliates are supplied on a sole and exclusive basis. The Supplier must not supply the same or similar goods or works to any other party or dispose of them in any way whatsoever other than to Baxter, unless otherwise specified in the Purchase Order.
- 9.3 The Supplier warrants that Products and Works will not infringe any third party intellectual property rights.
- 9.4 The Supplier will not do anything likely to damage any trade marks, or the name or reputation of Baxter or any Baxter affiliates or those of their products, and will procure that its employees and subcontractors waive all of moral rights described in Copyright Act 1994 in respect of any of the Works.
- 9.5 Any excess Products produced bearing Baxter names or trade marks which are not supplied to Baxter must be promptly notified to Baxter and destroyed, unless otherwise requested by Baxter in writing.

10. OUR PROPERTY

All tools, materials, or other items of equipment ("**Equipment**") and all drawings, specifications and other data or papers ("**Documents**") provided, commissioned, or owned by Baxter, or created for Baxter in connection with the Contract, together with all copies or reprints, will remain the property of Baxter at all times. Equipment and Documents must only be used to fulfil the Contract and must be returned to Baxter on completion, cancellation or termination of the Contract. The Supplier must make no further use, either directly or indirectly of any Documents, or of any information that comes from any Documents without Baxter's written consent.

11. CONFIDENTIALITY

- 11.1 In the course of business dealings between the Parties, it is anticipated that Supplier will learn of information that Baxter regards as confidential or proprietary. Supplier will keep confidential this information and any other information which Supplier may acquire with respect to Baxter's business, including, but not limited to, information developed by Supplier and information relating to new products, customers, pricing, know-how, processes, and practices, unless and until Baxter consents to disclosure, or unless such knowledge and information otherwise becomes generally available to the public through no fault of Supplier. Supplier will not disclose to others, without Baxter's consent, the fact that it is acting on behalf of Baxter and will not publish on the subject of this consulting relationship without first providing Baxter with the opportunity to review and offer reasonable objection to the contemplated publication. This undertaking to keep information confidential will survive the termination of this Agreement. Baxter may require that each of Supplier's employees performing Services execute Baxter's Non-employee Security Agreement.
- 11.2 All information disclosed to Baxter in connection with the Purchase Order is furnished as part of the consideration for Baxter's placement of the Purchase Order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Baxter, its assigns, or customers, for its disclosure or use.

12. BREACH, TERMINATION ETC.

- 12.1 If Products/Services are not supplied/performed in accordance with the Contract, Baxter may, without prejudice to any other remedy, require the Supplier to supply replacement Products or re-perform Services within 7 days. If the Supplier fails to do so Baxter may cancel the Contract, require repayment of any part of the Contract price and claim damages.
- 12.2 Baxter may terminate the Contract immediately, by written notice without any liability to the Supplier, if the Supplier makes an arrangement with its creditors, becomes subject to an administration order, goes into bankruptcy, liquidation, or receivership, a trustee/liquidator is appointed over any of the Supplier's property, or the Supplier is unable to pay its debts as they become due, or ceases or

threatens to cease to carry on business, or Baxter reasonably considers any of the above events is about to occur.

12.3 On cancellation/termination of the Contract the Supplier must immediately return any of Baxter's property held by the Supplier, and Baxter may enter the Supplier's premises to recover its property. The rights set out in this clause are in addition and without prejudice to Baxter's other rights/remedies.

13. CANCELLATION

Baxter may at its option cancel the Contract in whole or in part with respect to any undelivered Products. Baxter's only obligation for cancelling a Contract will be to pay for Products shipped prior to cancellation. If Baxter cancels a Contract covering Products made to its specification and the Supplier is not in breach, subject to delivery of the same, Baxter will pay the Supplier the agreed price for Products completed, and also the direct and proven costs arising from the manufacture of the Products incurred by the Supplier before cancellation. The total payment upon cancellation will not exceed the total Contract price. Baxter will not be liable for any losses consequent upon such cancellation.

14. ASSIGNMENT AND SUBCONTRACTING

Baxter may assign the Contract and its rights and obligations to another affiliated company. The Supplier may not without Baxter's written consent assign, mortgage, charge or dispose of any of its rights or obligations, or sub-contract or otherwise delegate performance of its obligations. The Supplier will remain fully responsible for any Products/Services provided by a sub-contractor. The Supplier will on request provide Baxter with full details of any subcontractor used by the Supplier in connection with Products/Services which are intended to be incorporated in Products/Services supplied to Baxter.

15. MISCELLANEOUS

15.1 Nothing in these Conditions or in any Contract or Purchase Order will create a partnership or the relationship of principal and agent or employer and employee between Baxter and the Supplier.

15.2 The Contract and these Conditions contain the entire agreement between the parties relating to the subject matter, and may only be modified in writing signed by authorised representatives of both parties. The Supplier acknowledges that in entering into a Contract, the Supplier has not relied on any representation or provision except as set out in the Purchase Order.

15.3 Baxter may from time to time alter these Conditions as it reasonably determines necessary. Such alteration will not affect any Contract that Baxter has entered into with the Supplier prior to the alteration.

15.4 If any provision of a Contract or these Conditions is held by any Court or other competent authority to be void or unenforceable in whole or part, the Contract and Conditions will continue to be valid as to

their other provisions.

15.5 Any notice required or authorised under these Conditions must be given by delivering it by hand or sending it by pre-paid recorded delivery post to the other party at its registered office and marked for the attention of the Company Secretary or to such other address as may be agreed from time to time, or sending it by facsimile transmission. Any notice sent by facsimile will be deemed to have been received immediately provided that the transmission slip is retained and the original is sent by recorded delivery post within 24 hours of transmission.

15.6 These Conditions and any Contract of which these Conditions form part will be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

Supplier Name:	
Trading Name:	
ABN #:	

I am authorised to agree the above terms & conditions on behalf of the Supplier.

Name:	
Position:	
Signature:	
Date:	

Please make a copy of this Agreement for your own records and return the original signed document to Baxter Healthcare Ltd.

For Baxter Accounts Payable Use Only	
Date Received:	
Vendor Number:	