

BAXTER HEALTHCARE STANDARD TERMS AND CONDITIONS OF SALE PRODUCTS AND SERVICES

AUSTRALIA & NEW ZEALAND

Effective 17 October 2017

1. OPERATION OF THESE TERMS

- 1.1 These Terms apply to Orders made by Customers directly to Baxter and do not apply to Orders for Products or Services placed by Customers through distributors. Where other contractual arrangements are in place between the Customer and Baxter, these Terms apply to the extent not inconsistent with those contractual arrangements.
- 1.2 No modification, amendment or replacement of these Terms is effected by or results from the receipt, acceptance, signing or other acknowledgement by Baxter of any purchase order, confirmation, invoice, shipping document or other business form issued by the Customer in response to or in connection with the sale of any Product or Service (irrespective of what may be stated in such document). If any terms are proposed by a Customer, those terms are deemed void and of no effect and Baxter is deemed, by delivering a Product or Service, to have made a counter-offer to sell that to the Customer subject only to these Terms. By accepting delivery of the Product or Service, the Customer accepts that counter-offer.

2. ORDERING

- 2.1 The supply of a Product or Service by Baxter to a Customer is initiated by an order in writing signed by a person authorised by the Customer, unless:
 - (a) the order is made using Baxter's electronic ordering system or Customer Self-Service website; or
 - (b) the Customer has a current account with Baxter, in which case an order may be placed by 'phone in accordance with the account terms,

(each an "Order"). For enquiries about establishing an account or for any Product or Service, please phone: **1800 BAXTER** (1800 229 837) (Australia) or **0800 BAXTER** (0800 229 837) (NZ).

- 2.2 Any Order must comply with these Terms (including, without limitation, allowing for relevant lead-times prior to delivery). At a minimum, any Order must specify the Customer's purchase order number, place for delivery of the Product or Service and a contact name and 'phone number. Where an Order is in writing, it may be sent by facsimile to: **1300 659 877** (Australia – unless a Product involves Aseptic Compounding) or **0800 229 329** (NZ). Where a Product involves Aseptic Compounding, the Order:
 - (a) is subject to and must also comply with the further terms in Part A of Schedule 2; and
 - (b) if sent by facsimile in Australia, must be sent to the relevant facsimile number specified in Part B of Schedule 2.
- 2.3 Any Orders, whether based upon quotations or not, are subject to acceptance by Baxter, in writing or by performance.
- 2.4 Baxter reserves the right to accept any Order in whole or in part or to decline any Order. Where Baxter makes a part delivery in respect of any Order, each such delivery constitutes a separate sale. Delivery details including quantity of Products or relevant Services supplied by Baxter are confirmed in Baxter's tax invoice or, where applicable, the delivery note / POD accompanying the Product or Service.
- 2.5 If Baxter advises the Customer that it will be unable to deliver any or all of the Products or Services the subject of an Order then, upon receipt of such notice by the Customer, any contractual obligation of Baxter in respect of such Product or Service is terminated without any liability of Baxter.
- 2.6 By placing an Order, the Customer acknowledges and warrants it is entitled to purchase any Products or Services the subject of that Order in accordance with any applicable legislation, statute or regulation, and the Customer undertakes to indemnify Baxter in relation to any action, loss or proceeding which may be brought against Baxter as a result of a breach of this warranty.

3. DELIVERY LEAD TIMES

- 3.1 Delivery Lead Times for Orders placed will vary, depending on the type and quantity of Product or Service, the time at which the Order is placed and the delivery location. Delivery Lead Times are as indicated in Part A of Schedule 1 in the absence of a Delivery Plan. Where a Product involves Aseptic Compounding, additional Delivery Lead Times under Part C of Schedule 2 also apply. Products that are, or are dependent on, indented products will be supplied consistent with lead times communicated to Baxter by the supplier.
- 3.2 The Customer may request Special Orders. Baxter will endeavour to give priority to Special Orders and will aim to dispatch them to the Customer as soon as possible.

3.3 Preparation and delivery requirements for non-standard Products required by the Customer will be agreed between the parties.

4. DELIVERY TERMS

4.1 Subject to clauses 4.2 and 4.3 or the terms of any Order, Products will be delivered DDP to the Customer's premises (or, where relevant, to the premises of a Home Patient). Unless otherwise agreed, Baxter will select the mode and route of shipment of the Products. Any specification of delivery time is indicative only. Provision of an ATL enables Baxter to leave Product without inspection by or any need for a signature from the Customer or a Home Patient.

4.2 The Customer must accept delivery of all Products the subject of an Order placed by it. Any additional costs incurred by Baxter as a result of a Customer's failure to accept delivery of any Product in accordance with an Order will be a debt due and payable by the Customer to Baxter.

4.3 Orders for Products will incur a freight charge as specified in Part B of Schedule 1, in addition to any handling or other applicable charges as specified in that Part B. The Customer may request that Baxter send the Products to it in a specific manner. If Baxter agrees to this, the Customer will bear all additional freight costs as specified in Baxter's tax invoice or, where applicable, the delivery note / POD accompanying the Product. The Customer may request that Baxter deliver the Products to more than one location. If Baxter agrees to this, the Customer must bear any additional expense (as determined by Baxter and specified in Baxter's tax invoice or, where applicable, the delivery note / POD accompanying the Product). Baxter will not deliver to a third party customer account.

4.4 For the avoidance of doubt, Products may be sold and delivered in the course of providing a Service. Unless otherwise expressly provided by an Order as accepted by Baxter, Baxter may change or modify any specifications and substitute materials, equipment or Personnel used in the provision of a Service from time to time, with or without notice to the Customer.

5. RISK & TITLE IN PRODUCTS

5.1 Risk in the Product passes to the Customer upon delivery by Baxter.

5.2 Title in the Product passes to the Customer when Baxter has received (in cash or cleared funds) the price for the Product in full together with any additional charges as set out in the relevant invoice and any interest due.

5.3 The Customer may use or resell the Product before title has passed to it solely on the basis that any such use or sale:

- (a) is effected in the ordinary course of the Customer's business or undertaking; and
- (b) where a sale, is at arm's length and is a sale of Baxter's property on the Customer's own behalf, where the Customer must hold the Proceeds on account for Baxter.

5.4 The Customer will be deemed to have accepted the Products as delivered unless it has notified Baxter in accordance with clause 8 that the Products are defective or otherwise do not match the Order given by the Customer to Baxter.

6. PAYMENT TERMS

6.1 Products will be invoiced on dispatch and Services on commencement, or (in either case) at any later time determined by Baxter. Payment must be made to Baxter:

- (a) by a Customer in Australia, within 30 days following the date of invoice; and
- (b) by a Customer in NZ, by the 20th of the month following the month of invoice.

Subject to clause 6.3, payment must be made to Baxter without set-off or deduction of any kind.

6.2 In the event of payment in full not being received within 7 days of the due date, all amounts then owing to Baxter may be declared by Baxter to be and upon such notice to the Customer will become immediately due and payable. Irrespective of whether Baxter makes any such declaration, Baxter reserves the right to charge the Customer interest on all overdue amounts, calculated on a daily basis from the due date for payment to the actual date of payment, at the rate that is 4% above the Interbank Overnight Cash Rate.

6.3 Any queries due to perceived discrepancies or errors in an invoice must be made by the Customer to Baxter in writing within 14 days of the date of invoice to ensure eligibility for a credit. Should any such issues remain unresolved on the due date for payment of the invoice, the Purchaser must pay the undisputed portion of the invoice.

6.4 Where a Customer does not have an existing account with Baxter, a credit card payment may be required with each Order and, if so, the Merchant Fee may be charged to the Customer.

7. PRICING

- 7.1 Unless otherwise agreed in writing, Products or Services will be invoiced in accordance with Baxter's prevailing price lists on Baxter's ordering processing system applicable at the time that Baxter generates the relevant Order or delivery note / POD to accompany the Product or Service on its system.
- 7.2 All Prices are exclusive of GST unless expressly indicated to the contrary. If GST is payable by Baxter on any sale the Customer must pay to Baxter an amount equal to the GST at the same time as payment is due on the invoice for the Product. Baxter will supply all Customers with a tax invoice showing the GST component and any other charges incurred by the Customer under these Terms.
- 7.3 The Prices and specifications of Products or Services are subject to change without notice.

8. RETURN OF PRODUCTS FOR CREDIT

- 8.1 Subject to clauses 8.2, 8.3 and 8.4, Baxter will accept return of Products for credit in circumstances where:
- (a) the Product was delivered in error by Baxter;
 - (b) the Product was damaged in transit and the damage is patent from a visual inspection – the damage must be noted on the Customer's copy of the delivery documentation and countersigned by the delivery driver; or
 - (c) the Product is defective and the Customer has notified Baxter within 2 Business Days of inspection in accordance with clause 9.
- 8.2 Baxter will only accept return of Products for credit where each of the following criteria has been met:
- (a) the Customer must obtain prior authorization by requesting Baxter to issue a unique RMA number and that RMA number must accompany each Product being returned for credit; and
 - (b) the Customer must complete a storage condition certificate as provided by Baxter at the time it arranges the pick-up of the Product to be returned or, if being returned by other means, must be decontaminated or shipped as a dangerous good as appropriate.

By provision of an ATL, the Customer waives any right to return a Product for credit under clause 8.1(b).

- 8.3 Any Product received by Baxter without an RMA number, or which does not otherwise comply with the requirements of the Code, will be destroyed by Baxter in accordance with the Code and no credit will be issued by Baxter. Without limitation, Baxter **will not accept** return of a Product for credit where the Product:
- (a) subject only to clause 8.1(b), is returned in packaging that is damaged, written upon or otherwise marked and/or is in an unsalable condition;
 - (b) is returned more than 5 Business Days after the RMA number was issued;
 - (c) subject only to clause 8.1(c), is returned in opened packages/cartons;
 - (d) has a remaining expiry dating of six months or less;
 - (e) is non-standard or has been made or labelled to a specific Order;
 - (f) has had patient contact or has been delivered to a Home Patient environment (unless the damage or defect is attributable to Baxter); or
 - (g) evidences damage by the Customer or its Personnel,
- or where any other requirement in this clause 8 has not been satisfied.

- 8.4 The credit of any amount to the Customer's account is conditional upon a Baxter Quality Assurance representative having inspected all Products returned to authorise, in their discretion, such return as being defective or contaminated Products entitling the Customer to a credit. In the event the Customer returns non-defective Product, Baxter reserves the right to charge a restocking fee on the Product returned in an amount that is the greater of the Base Return Rate or 10% of the invoiced cost of the relevant Product.

9. INSPECTION AND PROOF OF DELIVERY

- 9.1 The Customer must inspect each Product:
- (a) for damage that is patent from a visual inspection, immediately upon receipt; and
 - (b) for any other defect:
 - (i) immediately upon opening of the packaging in which that Product was delivered; or
 - (ii) where a Product involves Aseptic Compounding, within 2 Business Days of receipt of that Product.

Thereafter quantity, description, date, time and place of delivery of the Product as indicated on Baxter's invoice or delivery docket or copies thereof shall be conclusive evidence of quantity, description, date, time and place of delivery of the Product.

- 9.2 Requests by the Customer for proof of delivery will only be accepted by Baxter within thirty (30) days from the date of Baxter's invoice, and proof of the delivery shall constitute proof of the total delivery indicated on Baxter's delivery documents.

10. WARRANTIES

10.1 Subject to clause 10.2, Baxter warrants that:

- (a) all Products supplied to the Customer under these Terms:
 - (i) comply with the Order for those Products;
 - (ii) are of merchantable quality;
 - (iii) are free from defects in material or manufacturing; and
 - (iv) will be supplied free from all encumbrances,and,
 - (v) where a Product involves Aseptic Compounding, will be manufactured using aseptic compounding techniques which conform to good industry practice and cGMP; and
 - (vi) where the Product is a spare part for equipment, will carry a 90 day warranty period from the date of delivery to the Customer;
- (b) in delivering Services under these Terms, Baxter will at all times:
 - (i) exercise due care, skill, attention and diligence and will employ techniques of a reasonable standard in accordance with good industry practice;
 - (ii) ensure that every person used by Baxter is competent and appropriately qualified; and
 - (iii) comply with all laws applicable to Baxter; and
- (c) it will keep up to date and accurate records in relation to Products and Services provided by Baxter pursuant to these Terms.

10.2 Where a Product (such as equipment) is supplied, but not manufactured, by Baxter, the warranties in clause 10.1 do not apply to that supply; however, its manufacturer may warrant that Product.

10.3 To the maximum extent permitted by law, Baxter makes no express (except as set out in these Terms) and excludes all implied (whether by common law, statute or otherwise) representations, warranties, terms, conditions and guarantees of any kind whatsoever. Baxter is not liable to any person, including any Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms, any Order or the supply of any Product or Service, for any proximate, incidental, indirect, special or consequential loss, liability, expense, cost, damage or claim, even if Baxter has been advised of, or should have reasonably contemplated, the possibility of such loss, liability, expense, cost, damage or claim, or for any loss of sales, revenue, profits, goodwill or opportunity.

10.4 Subject to clauses 10.3, 10.5 and 10.6, but otherwise to the maximum extent permitted by law, Baxter's:

- (a) liability pursuant to or for:
 - (A) any representation, warranty, term, condition or guarantee expressed or implied in these Terms; and
 - (B) any other rights or remedies of a Customer or any third party claiming through that Customer,shall be limited, at Baxter's option, to (i) replacement of the Products or resupply of the Services (or supply of equivalent products or services) (ii) repair of the Products (iii) payment of the cost of replacing the Products or resupplying the Services (or acquiring equivalent products or services) or (iv) payment of the cost of having the Products repaired or Services made good; and
- (b) Baxter's total maximum liability under or in connection with these Terms, any Order or supply of any Product or Service, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is limited to the amount paid by the Customer to Baxter under the relevant Order.

10.5 When purchased by a Consumer, the Products or Services come with consumer guarantees that cannot be excluded under the relevant Consumer Law. In such case, subject to the relevant Consumer Law, the Customer may be entitled to a replacement or refund for a major failure of any Product and for compensation for any other reasonably foreseeable loss or damage, as well as to cancel a Service. The Customer may,

subject to the relevant Consumer Law, also be entitled to have the Product repaired or replaced if the Product fails to be of acceptable quality and the failure does not amount to a major failure.

- 10.6 Nothing in these Terms is intended to exclude, restrict or modify any rights that the Customer may have under the relevant Consumer Law or any other applicable legislation which may not be excluded, restricted or modified by agreement.
- 10.7 Notwithstanding any other provision of these Terms, the liability of Baxter for any loss, liability, expense, cost, damage or claim sustained, incurred or suffered by the Customer is reduced to the extent that such loss, liability, expense, cost, damage or claim is contributed to or caused by any breach of contract, negligent act or omission, unlawful conduct or other misconduct by the Customer or its Personnel.
- 10.8 The Customer must use reasonable efforts promptly to mitigate any loss, liability, expense, cost, damage or claim that is likely to be, or is actually, sustained, incurred or suffered by the Customer.
- 10.9 For the purposes of section 5D of the FTA (NZ) and section 43 of the CGA (NZ), to the extent permitted by law:
- (a) the Products or Services provided to the Customer under or in connection with these Terms are being provided and acquired in trade;
 - (b) if the FTA (NZ) and/or the CGA (NZ) applies to the supply of the Products or Services to the Customer under or in connection with these Terms, in respect of all matters under or in connection with these Terms, the parties are contracting out of the CGA (NZ) and sections 9, 12A and 13 of the FTA (NZ); and
 - (c) it is fair and reasonable for the parties to be bound by this clause 10.9.
- 10.10 Where a Customer acquires or holds itself out as acquiring the Products for a business purpose in New Zealand, the Customer will include in its conditions of sale a clause to the effect that the CGA (NZ) will not apply. The Customer will indemnify Baxter against all losses, costs, expenses, damages or liabilities that Baxter may suffer, incur or be liable to pay arising out of the Customer's failure to take the action required under this clause 10.10.

11. CUSTOMER OBLIGATIONS

- 11.1 The Customer is solely responsible for the proper use and administration of all Products, including the decision to use them. Nothing in these Terms implies that Baxter is in any way responsible for (i) ensuring the appropriateness or correctness of the clinically prescribed dosage or product specifications of any Products, or (ii) the medical management of any patients. Where a Product involves Aseptic Compounding, Baxter's only responsibility is the correct preparation of the Products in accordance with specifications provided to Baxter by the Customer under these Terms.
- 11.2 Where an Order involves Product or Services for a Home Patient, the Customer is responsible for the complete management of the Home Patient, including responsibility for ensuring that the Home Patient or the Home Patient's legal caregiver:
- (a) is trained on the proper use, storage requirements and care of any Product and any other materials and equipment provided by or at the request of the Customer for use in conjunction with that Product or related therapy; and
 - (b) is trained on the proper procedures and methods for administration of the Product (as relevant) using materials and equipment provided by or at the request of the Customer.
- 11.3 Where an Order is for Services that include training, installation, maintenance or patient support, the Customer:
- (a) acknowledges that the Services only involve technical instruction in support of appropriate use of a Product or any related equipment and in no circumstances constitute provision of advice of a professional, medical or clinical nature; and
 - (b) confirms that any Baxter Personnel involved in patient training will, unless otherwise agreed by Baxter, be accompanied by a healthcare professional (or other officer of the Customer approved by Baxter) for purposes of delivering technical Product training.
- 11.4 Baxter is not required to specify or charge a Price for these Terms to apply to any Products or Services provided by it.
- 11.5 Where delivery of a Service requires access by Baxter's Personnel at a Customer's site or at any other premises, the Customer must afford those Personnel free and unrestricted access and support at all relevant times to enable provision of the Service (including, where relevant, adequate parking, work space, information, security clearance or accompaniment, technical aid and use of facilities required for providing the Services) free of charge. The Customer must also ensure that all necessary workplace health, safety and

environment and other precautionary measures are taken to protect those Personnel in the discharge of the Service.

- 11.6 For the avoidance of doubt, these Terms do not apply to any loan of equipment by Baxter to the Customer, whether for use by a Home Patient or otherwise. Any such loan is subject to and made in accordance with the equipment loan terms and conditions accessible electronically on Baxter's web site at www.baxterhealthcare.com.au/healthcare_professionals/doing_business_with_us/index.html and clicking on the 'Equipment Loan Terms' tab for Australia and New Zealand.

12. PHARMACOVIGILANCE

- 12.1 If the Customer receives any reports or information related to an Adverse Event, it must forward the unassessed case information or source documents to Baxter in accordance with this clause within one (1) Business Day of first becoming aware of the report or information. Baxter will endeavour to acknowledge receipt within three (3) Business Days. If the Customer fails to receive acknowledgement of receipt from Baxter within three (3) Business Days, the Customer must resend the information or source documents with a request for acknowledgement of receipt by Baxter.

- 12.2 Notice to Baxter in relation to Adverse Events or safety actions is to be made to:

Pharmacovigilance Department

Telephone: +61 2 9848 1574

Facsimile: +61 2 9848 1022

Email: ANZ_Product_Safety@baxter.com

Address: 1 Baxter Drive, Old Toongabbie NSW 2146

13. CONFIDENTIAL INFORMATION

- 13.1 The Customer must not use Confidential Information for any purpose not contemplated by these Terms in conjunction with an Order.

- 13.2 The Customer must not disclose any Confidential Information except:

- (a) to personnel within its organisation or other third parties, such as consultants, who need that access in order to perform their duties and who receive it under obligations of confidentiality;
- (b) if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 275(1) of the PPSA (Australia) unless section 275(7) of that PPSA applies); or
- (c) if the Customer is required to do so in connection with legal proceedings relating to the Products or Services, or any related contractual arrangements with Baxter.

- 13.3 The Customer will be responsible for any breach of these confidentiality obligations by its Personnel or any third parties to which it makes disclosure under clause 13.2(a), as if any such breach was a breach by the Customer itself.

- 13.4 Until otherwise agreed by Baxter in writing, any information disclosed to Baxter during discussions regarding an Order or otherwise is disclosed by the Customer on a non-confidential basis and Baxter does not accept on a confidential basis any information, suggestion or idea belonging to the Customer. Baxter will have no liability to the Customer should it disclose any such information, suggestion or idea, except liability for infringement of any valid patent that may be issued in respect of that material.

14. DISPUTE RESOLUTION

- 14.1 If a dispute arises between the parties in connection with a contract incorporating these Terms or any Order, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including by escalating the dispute to executive level) before resorting to any other remedy.

- 14.2 If the dispute cannot be resolved at meetings between the parties' representatives, either party may require that the dispute is referred to mediation. The mediator shall then be agreed between the parties, or otherwise appointed by the President of the New South Wales Law Society at the request of a party (if in Australia) or the President of the New Zealand Law Society (if in NZ).

- 14.3 Each party will bear its own respective legal costs (as between solicitor and client) incurred in any enforcement or attempted enforcement of its rights, remedies or powers under these Terms, including through the referral of any dispute under these Terms to mediation.

- 14.4 It is a condition precedent to commencement of any litigation proceedings by a party in respect of any such dispute that the party has complied fully with the resolution process under this clause 14, except where the dispute is in relation to a non-payment of monies due or:

- (a) the party seeks urgent interlocutory, injunctive or declaratory relief in respect of the dispute; or
- (b) the other party has failed to observe the requirements of this clause and the party seeks to enforce compliance with this resolution process as regards that dispute.

15. INDEMNITY

The Customer indemnifies and must hold harmless Baxter, its Affiliates, and its and their Personnel against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any breach of contract, negligent act or omission, unlawful conduct or other misconduct by the Customer or its Personnel relating to any contract incorporating these Terms or any Order or otherwise relating to the Products or Services.

16. PERSONAL PROPERTY SECURITIES ACT

- 16.1 Consistent with clause 5, the Customer grants to Baxter a security interest in all Products supplied by Baxter to the Customer and their Proceeds (as applicable) as security for payment of all the Customer's indebtedness to Baxter under these Terms from time to time and for the performance by the Customer of the Customer's other obligations from time to time to Baxter.
- 16.2 If Baxter determines that it wishes to register any security interest, the Customer agrees to do anything that Baxter may require (such as obtaining consents, authorities, signing and producing documents, getting documents completed and signed and supplying information) as necessary or desirable for purposes of:
- (a) ensuring that Baxter has an enforceable, perfected, maintained and otherwise effective purchase money security interest in the Products and their Proceeds (as applicable);
 - (b) enabling Baxter to apply for any registration, or give any notification, in connection with the security interest in the Products and their Proceeds (as applicable) so that security interest has the priority required by Baxter; or
 - (c) enabling Baxter to exercise any of its rights in connection with the security interest in the Products and their Proceeds (as applicable).
- 16.3 The Customer must, upon demand, immediately reimburse Baxter for all costs and expenses incurred, suffered or payable by Baxter in relation to registration or enforcement of any financing statement or any other document in respect of the Products and their Proceeds (as applicable).
- 16.4 Baxter may allocate all amounts received from the Customer in any manner it determines against secured moneys outstanding, including in any manner it considers most favourable to preserve a purchase money security interest in the Products and their Proceeds (as applicable).
- 16.5 While the Products continue to secure any Customer's indebtedness to Baxter, the Customer must not allow anything to be done or act in any way (or fail to act in any way) that might adversely affect Baxter's security interest in the Products and their Proceeds (as applicable), and must store the Products separately and clearly identify the Products as being subject to Baxter's security interest.
- 16.6 The Customer waives its rights to receive a copy of any verification statement or financing change statement under the PPSA and, as between the Customer and Baxter, the Customer agrees it will have no rights under:
- (a) in Australia, sections 95, 118, 121, 129, 130, 132, 135, 142 and 143 of the PPSA; and
 - (b) in NZ, sections 116, 117(1)(c), 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.7 Nothing in sections 114(1)(a), 133 and 134 of the PPSA (NZ) shall apply to these Terms.
- 16.8 The Customer agrees that Baxter does not need to give any notice to the Customer under the PPSA unless the notice is required by the PPSA and that requirement cannot be excluded.

17. APPLICABLE LAW

In Australia, these Terms are governed by the law of New South Wales, and the parties submit to the jurisdiction of the courts of New South Wales and any courts hearing appeals therefrom. In NZ, these terms are governed by the law of New Zealand, and the parties submit to the jurisdiction of the courts of New Zealand.

18. FORCE MAJEURE

Neither party shall be liable for any failure or delay or default in performance of the obligations (except payments of amounts due) to the extent that is caused by events or conditions beyond its reasonable control, including acts of God such as floods, fire and earthquakes, government restrictions, wars, insurrections and industry-wide strikes. In the event of any such event or condition, the party whose performance is excused will notify the other party as soon as practicable and will make diligent efforts to perform its obligations at its earliest opportunity.

19. GENERAL

- 19.1 (**notices**) Notices, consents and other communications in connection with a contract formed under these Terms must be in writing and hand-delivered, e-mailed, faxed or sent by pre-paid post to the other party's

representative identified by an Order if not otherwise stipulated by these Terms. Notices are given and take effect as follows:

- (a) by hand-delivery – at the time the delivery is made;
- (b) by e-mail – upon receipt (and, for Baxter when sent to australia_receivable@baxter.com);
- (c) by fax – upon receipt (and, for Baxter, when to the relevant fax number specified in clause 2.2); and
- (d) by pre-paid post – three Business Days after posting,

If a communication is given:

- (e) after 5.00pm in the place of receipt; or
- (f) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00am on the next day which is not a Saturday, Sunday or bank or public holiday in that place. The electronic communications system used by Baxter will serve as sole proof for the content and time of delivery and receipt of any electronic communications.

- 19.2 **(assignment)** The Customer is not entitled to assign any contract under these Terms or any part of that without the prior written consent of Baxter.
- 19.3 **(no exclusivity)** The relationship between the parties is not one of exclusivity.
- 19.4 **(waiver/amendment)** Baxter may from time to time alter these Terms as it reasonably determines necessary and post those amended terms and conditions to its website. Such alteration will not affect any Order that Baxter has accepted from the Customer prior to the alteration. Subject to clause 1.1, the provisions of these Terms may only be amended by an agreement of the parties in writing which specifically refers to this clause. Any variation to these Terms or representations about the Products or Services that does not satisfy this clause 19.4 shall have no effect. A waiver of rights under these Terms shall only be effective if given in writing to the other party and specifically referring to this clause 19.4.
- 19.5 **(exercise of rights)** Baxter may exercise a right, remedy or power in any way it considers appropriate. If Baxter does not exercise a right, remedy or power at any time, this does not mean that Baxter cannot exercise it later.
- 19.6 **(survival)** Any provision of these Terms survives the expiry, cancellation or termination of any contract arising under or incorporating them, if required to give effect to it.
- 19.7 **(severability)** If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Terms or is contrary to public policy.
- 19.8 **(no partnership)** Nothing contained or implied in these Terms or any contract arising under or incorporating them will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is the joint venturer, the partner, principal or the agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.
- 19.9 **(construction)** No rule of construction applies to the disadvantage of Baxter because Baxter was responsible for the preparation of, or seeks to rely on, these Terms or any part of them.

20. DEFINITIONS & INTERPRETATION

20.1 In these Terms, the following words have the following meanings:

“Adverse Event” means any untoward medical occurrence in a patient or animal administered a medicinal product, irrespective of any causal relationship with the Product, such as any unfavourable and unintended sign, symptom, disease or outcome of death temporally associated with the use of a medicinal product, whether or not considered associated with a Product, and which may include the following:

- drug or biologic overdose, whether accidental or intentional drug or biologic abuse;
- an event occurring from drug withdrawal;
- any failure of expected pharmacological action;
- exposure to a drug during pregnancy, intrauterine exposure and/or lactation exposure;
- inadvertent or accidental drug exposure;
- off-label use;
- drug interaction;
- reports of suspected transmission of an infectious agent via the Product;
- reports describing lack of effect;
- unexpected therapeutic or clinical benefit from the drug; and
- medication errors;

“**Affiliate**” has the meaning given to the term “related body corporate” in the *Corporations Act 2001* (Cth);

“**ATL**” means an authority to leave provided by the Customer or Home Patient to Baxter in writing authorising Baxter to leave Product at a Customer’s premises or at the Home Patient’s premises, or a location under its or their control (as relevant);

“**Aseptic Compounding**” means the preparation and delivery of drug formulations which are prepared using aseptic compounding techniques and any related or complementary services that Baxter may agree to provide;

“**Australian Register of Therapeutic Goods**” means the database established under the *Therapeutic Goods Act 1989* (Cth) of information about therapeutic goods for human use approved for supply in, or exported from, Australia;

“**Base Return Rate**” means the amount specified as such in Part B of Schedule 1;

“**Baxter**” means, in Australia, Baxter Healthcare Pty Ltd ABN 43 000 392 781 or, in NZ, Baxter Healthcare Limited Co. No. 104549;

“**Business Day**” means a day that is not a Saturday, Sunday or public holiday in the jurisdiction from which the Products will be despatched or Services provided by Baxter;

“**CGA (NZ)**” means *Consumer Guarantees Act 1993* (NZ);

“**Consumer**” has the same meaning as given by the Consumer Law;

“**Consumer Law**” means, as relevant, the *Australian Consumer Law* as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), the CGA (NZ) and/or the FTA (NZ);

“**Customer**” means any party placing an Order under these Terms;

“**Code**” or “**cGMP**” means, as relevant, the *Australian Code of Good Manufacturing Practice* (cGMP) for Medicinal Products issued by the Therapeutic Goods Administration or the current *New Zealand Code of Good Manufacturing Practice for Manufacture and Distribution of Therapeutic Goods* administered by Medsafe;

“**cGMP Contract**” means a contract between the Customer and Baxter, in form and substance satisfactory to Baxter, complying with the requirements of *The Therapeutic Goods Act 1989* (Cth) and *The Therapeutic Goods Regulations 1990* (Cth), Schedule 5A or the *New Zealand Code of Good Manufacturing Practice for Manufacture and Distribution of Therapeutic Goods Part 1: Manufacture of Pharmaceutical Products* administered by Medsafe (as applicable);

“**Confidential Information**” all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties and relating to Baxter’s business, technology or other affairs and includes any pricing arrangements or discounts discussed or agreed by the parties or information which is otherwise obtained by the Customer and which is by its nature confidential or the Customer knows (or ought to know) is confidential, but does not include information that is:

- (a) in or enters the public domain through no fault of the Customer or any of its Personnel;
- (b) received by the Customer from a third-party who had a legal right to provide it; or
- (c) was developed by the Customer independently of Baxter or any of its Personnel;

“**DDP**” has the meaning given to Delivered Duty Paid by the *International Commercial Terms* published by the *International Chamber of Commerce* (Incoterms® 2010) as came into effect on 1 January 2011;

“**Delivery Day**” means a day on which deliveries to the area in which the Customer is located is planned by Baxter under its standard operating procedures;

“**Delivery Lead Time**” means the lead times referred to in these Terms or in any Delivery Plan;

“**Delivery Plan**” means a document recording scheduled delivery dates or other timing arrangements in respect of an agreed range of Products, as provided by Baxter to the Customer;

“**Dollars**” or “**\$**” means legal tender in the jurisdiction from which the Products will be despatched or in which the Services will be delivered by Baxter;

“**FTA (NZ)**” means *Fair Trading Act 1986* (NZ);

“**GST**” means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the Goods and Services Tax under the *Goods and Services Tax Act 1985* (NZ), as applicable to an Order;

“**Home Patient**” means a patient who is treated by the Customer and/or administers products prescribed by the Customer at the patient’s place of residence;

“Interbank Overnight Cash Rate” means, where Products are despatched or Services delivered by Baxter in Australia, that rate as set by the Reserve Bank of Australia and, where Products are despatched or Services delivered in NZ, that rate as set by the Reserve Bank of New Zealand;

“Medsafe” means the *New Zealand Medicines and Medical Devices Safety Authority*, being the unit within the Ministry of Health responsible for regulation of therapeutic products in New Zealand and which administers the *Medicines Act 1981 (NZ)* and *Medicines Regulations 1984 (NZ)*;

“Merchant Fee” means the Baxter business’ cost of acceptance as advised by the provider of its merchant payment facilities, consistent with the *Competition and Consumer Amendment (Payment Surcharges) Act 2016 (Cth)*;

“New Pharmacy Product” means any specific formulation or new compounded pharmaceutical or other Product that Baxter identifies as such and produces following receipt of an Order from the Customer.

“Order” has the meaning given by clauses 2.1 and 2.2;

“Personnel” of a party includes an employee, servant, agent, officer or director of that party;

“POD” means a proof of delivery document, in physical or electronic format, generated by a person delivering the Products the subject of an Order on behalf of Baxter;

“PPSA” means, for a Customer in Australia, the *Personal Property Securities Act 2009 (Cth)* and, for a Customer in NZ, the *Personal Property Securities Act 1999 (NZ)*;

“Price” means the price for each Product sold or Service provided to a Customer under these Terms;

“Proceeds” has the meaning given to the term “proceeds” as defined in the PPSA;

“Product” means products manufactured or distributed by Baxter and supplied under these Terms;

“RMA” means Returned Materials Authorisation;

“Service” means any service offered by Baxter to or for the benefit of a Customer as specified in an Order (other than the delivery and return of Products as otherwise covered by these Terms), and includes Aseptic Compounding, ward delivery, renal system support, system and equipment maintenance / upgrades, technical training and Homecare services;

“Special Orders” means Orders which do not meet the Delivery Lead Times or are not otherwise placed in accordance with clause 3.1, are required on an urgent basis, or are for non-standard Products (including Orders for Product involving Aseptic Compounding);

“Storage Condition Certificate” means a certificate in a form provided by Baxter and completed by the Customer to certify that the Products have been stored in accordance with any instructions or technical information relating to the storage or stability of Products supplied with the Products or otherwise provided to the Customer in writing by Baxter; and

“Therapeutic Goods Administration” means the unit within the Commonwealth Department of Health and Ageing responsible for administering the *Therapeutic Goods Act 1989 (Cth)*, and the Regulations and Orders made pursuant to it, including evaluation and approval of medical products.

20.2 In these Terms:

(include) the verb “include” (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and the words “including”, “for example” or “such as” do not limit what else is included;

(person) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;

(successors) A reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(singular includes plural) The singular includes the plural and vice versa;

(headings) all headings in these Terms are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Terms;

(legislation) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it; and

(time) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

SCHEDULE 1: DELIVERY LEAD TIMES, HANDLING FEES, FREIGHT CHARGES & ADDITIONAL CHARGES

PART A: DELIVERY LEAD TIMES

AUSTRALIA

- (a) Orders received before 4:00pm on any Business Day for cold-chain Products or (where identified by the Customer) Products for acute patients will be dispatched the next Business Day;
- (b) Orders received after 4:00pm on any Business Day for cold chain Products will be dispatched on the next Delivery Day;
- (c) Orders received after 1.00pm on any Business Day for any other Products will be dispatched on the next Delivery Day; and
- (d) Orders received other than in accordance with paragraphs (a), (b) or (c) will be forwarded on the subsequent Delivery Day.

NEW ZEALAND

- (a) Orders received for a Product before 2.00pm on any Business Day will be dispatched the same day; and
- (b) Orders for a Product received other than in accordance with paragraph (a) will be forwarded on the subsequent Delivery Day.

PART B: HANDLING FEES, FREIGHT CHARGES & ADDITIONAL CHARGES

AUSTRALIA & NEW ZEALAND

Order Handling Fee:

Each Order with a total value of less than \$350 will be subject to a handling fee of \$60

Freight Charge (standard*):

Determined by Baxter on the following basis:

- (a) \$65 for delivery within a metropolitan area;
- (b) \$80 for delivery outside a metropolitan area, other than delivery to a remote area; and
- (c) \$120 for delivery to a remote area.

* Freight Charge for a **Home PD delivery** is twice the standard charge listed above.

Freight Charge (Orders outside of the relevant Delivery Lead Time, outside of Baxter usual business hours or on a Public Holiday, or any Special Orders):

Determined by Baxter on the following basis:

- (a) \$120 for delivery within a metropolitan area;
- (b) \$160 for delivery outside a metropolitan area, other than delivery to a remote area; and
- (c) \$300 for delivery to a remote area.

Pallet Charge:

Where Product is delivered on Baxter pallets, a pallet charge of \$35 / pallet may apply, which is fully refundable upon pallet return.

Special Order Charge:

Unless otherwise agreed with Baxter:

- (a) \$60 (other than for cold chain products); and
- (b) \$100 for cold chain products.

Urgent Deliveries:

Any urgent delivery requiring work outside business hours (9:00am – 5:00pm) will incur a \$400 call out-charge or, if the Product involves Aseptic Compounding, a \$750 call-out charge, in addition to all other applicable freight and handling charges.

Base Return Rate: means \$65 per item of non-defective Product returned.

SCHEDULE 2: COMPOUNDING PHARMACY

PART A: ADDITIONAL PHARMACY TERMS & CONDITIONS

- A. Supply of any Product involving Aseptic Compounding is conditional on the Customer having a cGMP Contract with Baxter for the entirety of the term of the Service or as otherwise agreed between the parties. The Customer acknowledges that, even where there is a valid cGMP Contract in place, specific clinical circumstances relating to a particular Order may require that the Customer enter into another cGMP Contract relating to that Order if required by Baxter. For the avoidance of doubt, the Customer acknowledges that Baxter will be unable to supply Products or Services involving Aseptic Compounding under these Terms until a binding cGMP Contract has been executed by both parties.
- B. A Customer Order may not conflict with its cGMP Contract. Baxter may rely on market practice or established use in the interpretation and discharge of an Order.
- C. Drug formulations requiring Aseptic Compounding in their production that are listed on the Australian Register of Therapeutic Goods are not included under the scope of this Schedule 2.
- D. Irrespective of the delivery location specified by an Order, the Customer retains full responsibility for the Product contained in that Order as the dispensing pharmacist.
- E. Baxter may from time to time provide the Customer with technical information relating to the storage or stability of certain Products. The Customer acknowledges that such information is proprietary to Baxter, is Confidential Information, and that Baxter may require individual Personnel of the Customer who will have access to such Confidential Information sign individual confidentiality agreements as a precondition to Baxter disclosing such Confidential Information to them. Baxter may, at its discretion, provide only limited access to such Confidential Information.
- F. The Customer acknowledges that Baxter stocks a limited range of brands of specific component drugs for purposes of its Service and Baxter has the right to select any brand at its sole discretion for purposes of a Product. In reaching any such decision, Baxter may take into consideration price, vial sizes, and any other information which it considers relevant.
- G. Baxter is entitled to charge the Customer for any duplicate Orders sent in error, or for Product resulting from other errors contained in an Order, where the error is not discovered prior to manufacture of the Product. Changes to an Order can only be accepted up until the time that Baxter commences manufacture of Product against the Order; this includes requests for formulation changes for standing Orders.
- H. Notwithstanding clause 6.1, where a standing Order is in place for a Product, Baxter reserves the right to invoice the Customer for Orders in advance of manufacture of that Product.
- I. The Customer acknowledges that Baxter is responsible for Product release, including assigning shelf life to a Product. In the event that the parties form different opinions in relation to conflicting stability data, Baxter reserves the right not to supply a New Pharmacy Product to the Customer.
- J. Where the Customer places an Order for a New Pharmacy Product, further Delivery Lead Times are required of at least:
- (a) 5 Business Days for procurement of any new drug agent involved; and
 - (b) 20 Business Days (or such greater period as Baxter advises) for suitability assessment and testing of any new container system involved,
- in addition to any Delivery Lead Times specified in Part C of this Schedule 2.

PART B: PHARMACY ORDER FAX NUMBERS

Pharmacy / Territory	Fax Number
Brisbane / Queensland	(07) 3874 6522
Melbourne / Victoria & Tasmania	(03) 9381 1997 or 1300 859 099
Sydney / NSW & ACT	(02) 9848 1155
Perth / WA	(08) 9334 9339
Adelaide / SA & NT	(08) 8351 5974

PART C: ASEPTIC COMPOUNDING DELIVERY LEAD TIMES

CHEMOTHERAPY ORDERS		
	METROPOLITAN	REGIONAL
RECEIVE ORDER BY (Day 1)	DELIVERY BETWEEN	DELIVERY BETWEEN
10.00 am	3.00 pm – 5.00 pm (Day 1)	
12.00 noon	8.00 am – 11.00 am (Day 2)	9.00 am – 12.00 am (Day 2)
5.00 pm	11.00 am – 2.00 pm (Day 2)	
Baxter Pharmacy Services reserves the ability to advise a longer lead-time for Orders greater than 15 items		
ANTIBIOTIC ORDERS		
	METROPOLITAN	REGIONAL
RECEIVE ORDER BY (Day 1)	DELIVERY BETWEEN	DELIVERY BETWEEN
10.00 am	8.00 am – 11.00 am (Day 2)	8.00 am – 11.00 am (Day 2)
5.00 pm	8.00 am – 11.00 am (Day 3)	8.00 am – 11.00 am (Day 3)
ANALGESIC ORDERS		
	METROPOLITAN	REGIONAL
RECEIVE ORDER BY (Day 1)	DELIVERY BETWEEN	DELIVERY BETWEEN
5.00 pm	1.00pm – 5.00pm (Day 3)	1.00pm – 5.00pm (Day 4)

For purposes of this table:

- **“Day”** refers to Business Days
- **“METROPOLITAN”** delivery areas are only those as specified below:
 - QLD Brisbane, including Redcliffe, Ipswich and Logan
 - VIC Melbourne, including Mornington Peninsula
 - NSW Sydney, including Penrith, Camden, Sutherland and Hornsby
 - WA Perth, including Joondalup and Mandurah
 - SA Adelaide
- **“REGIONAL”** is any delivery area other than METROPOLITAN