Baxter

BAXTER HEALTHCARE PTY LIMITED TERMS AND CONDITIONS OF SALE
Effective 1 September 2011

1. OPERATION OF THESE TERMS

These Terms apply to Orders made by Customers directly to Baxter and do not apply to Orders for Products placed by Customers through agents or distributors, nor where other contractual arrangements are in place.

2. ORDERING

2.1 A supply of Product by Baxter to a Customer shall be initiated by an order in writing signed by a person authorised by the Customer, unless the order is made using Baxter's electronic ordering system or Customer Self-Service website ("**Order**"). Such Order shall allow for the required lead-time prior to the delivery date, unless it is an Urgent Order.

2.2 Orders may be sent by facsimile to: **1300 659 877**. For enquiries phone: **1300 789 646**.

2.3 The Customer acknowledges and warrants that it is entitled to purchase any Products for which it has placed an Order in accordance with any applicable legislation, statute or regulation, and the Customer indemnifies Baxter in relation to any action, loss or proceeding which may be brought against Baxter as a result of a breach of this warranty by the Customer.

3. DELIVERY LEAD TIMES

3.1 Delivery Lead Times for Orders placed will vary, depending on the type and quantity of Product, the time at which the Order is placed and the delivery location. Delivery Lead Times may be contained in a Delivery Plan provided by Baxter. Where no Delivery Plan is agreed, Orders received before 1:00pm on any Business Day will be dispatched on the next planned delivery day. Orders received after 1.00pm will be forwarded on the subsequent planned delivery day.

3.2 The Customer may request Urgent Orders. Baxter will give priority to Urgent 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 Place of delivery of the Products shall be advised by the Customer to Baxter at the time of placement of the Order for the Product.

4.2 The Customer shall have 48 hours following receipt of the Products to inspect the Products.

4.3 Orders are shipped via a transportation mode selected by Baxter.

4.4 Orders that are dispatched within the Delivery Lead Times will incur a freight charge. The freight charge will be as determined by Baxter on the following basis:

(a) $15 for delivery within a metropolitan area;
(b) $30 for delivery outside a metropolitan area, other than delivery to a remote area; and
(c) $100 for delivery to a remote area.

4.5 Title and risk in the Product shall pass to the Customer following delivery by Baxter. The Customer will be deemed to have accepted the Products as delivered unless it has notified Baxter within 2 Business Days of receipt of the Products that they are defective or otherwise do not match the Order given by the Customer to Baxter.

4.6 Scheduled deliveries will be made at no cost (other than the Price) to Customers on Baxter's renal home delivery service. This includes deliveries to Customer's Australian or New Zealand travel or holiday destinations. Any unscheduled deliveries will incur a freight charge as determined by Baxter on the following basis: $65 for delivery within a metropolitan area; $85 for delivery outside a metropolitan area, other than delivery to a remote area; and $100 for delivery to a remote area.

5. ADDITIONAL DELIVERY AND HANDLING CHARGES

5.1 Each Order with a total value of less than $350 will be subject to a handling fee of $60.00. This excludes spare parts ordered direct from Baxter Technical Services and orders placed using Baxter's electronic ordering system or Customer Self-Service website.

5.2 Urgent Fees will be invoiced to the Customer in addition to the Price, freight and other charges for Urgent Orders outside Baxter's normal delivery plan as follows:

(a) $60 for all Urgent Orders other than deep frozen products;

(b) $100 for Urgent Orders of deep frozen products.

5.3 Additional freight charges will be invoiced to the Customer in addition to the Price and freight charges as follows:

(a) for delivery outside of the Delivery Lead Times; and

(b) where delivery to the delivery address nominated by the Customer cannot be made, in which case the Customer will incur freight charges for both delivery and return to Baxter.

5.4 Where Product is delivered on Baxter pallets, a pallet charge may apply, which is fully refundable upon pallet return.

5.5 For orders outside of the Delivery Lead Times freight charges will be as determined by Baxter on the following basis:

(a) $50 for delivery within a metropolitan area;

(b) $80 for delivery outside a metropolitan area, other than delivery to a remote area; and

(c) $200 for delivery to a remote area.

5.6 Any urgent deliveries requiring work outside business hours will also incur a $250 call out charge plus freight and handling charges.

5.7 Baxter reserves the right to charge a fuel surcharge in relation to any delivery. The surcharge will be calculated in accordance with Baxter's listed fuel surcharge rates from time to time.

6. PAYMENT TERMS

6.1 Payment shall be made to Baxter by the end of the month following the month of invoice. Baxter reserves the right, in the event of payment in full not being received within 7 days of the due date, to charge the Customer at 1.5% per month or the highest rate allowed by law, whichever is lower, on any amount outstanding, calculated on a daily basis from the invoice date for payment to the actual date of payment. Any queries due to perceived discrepancies on the invoice must be made within 14 days of date of invoice to ensure eligibility of credit. Should perceived discrepancies on the invoice remain unresolved on the due date for payment of the invoice, the Purchaser must pay the undisputed portion of the invoice.

6.2 For Customers without an existing account with Baxter, a credit card payment may be required with each order and the merchant fee will be charged to the Customer.

7. PRICING

7.1 All Prices are exclusive of GST. If GST is payable by Baxter on any sale the Customer will pay to Baxter an amount equal to the GST. Baxter will supply all Customers with a tax invoice showing the GST component and any other charges incurred by the Customer under these Terms.

7.2 The Prices and specification of Products are subject to change without notice.

7.3 The Price shall include the cost of packaging, storage insurances and any other expenses unless otherwise stated in these Terms or agreed between the parties.

8. RETURN OF PRODUCTS FOR CREDIT

8.1 Subject to clauses 8.2 and 8.3, Baxter will accept return of Products for credit in circumstances where:

(a) the Product was delivered in error by Baxter and the Customer notifies Baxter within 2 Business Days of receipt;

(b) the Product was damaged in transit – the damage must be noted on the Customer's copy of the delivery documentation and countersigned by the delivery driver;

(c) the Product is defective and the Customer has notified Baxter within 2 Business Days of receipt.

8.2 Baxter will only accept return of Products for credit where the following criteria has been met:

(a) the Customer must obtain prior authorization by requesting Baxter to issue a unique returned goods authority ("**RGA**") number;

(b) an RGA number must accompany each Product being returned for credit. Any Product received by Baxter without an RGA number, or which does not 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;

(c) the Customer must complete a storage condition certificate (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). Baxter will provide the certificate for completion at the time it arranges the pick-up of the Product to be returned; and

(d) a Baxter Quality Assurance representative will inspect all Products returned to authorize return of defective or contaminated Products.

8.3 Baxter **will not accept** a return of a Product for credit in the following circumstances:

(a) the Product is returned in packaging that is damaged, written upon or otherwise marked and/or is in an unsalable condition;
(b) the Product is returned more than 5 Business Days after the RGA number was issued;
(c) the Product is returned in opened packages/cartons;
(d) the Product has a remaining expiry dating of six months or less;
(e) the Product has been made or labelled to a specific order;
(f) the Product has had patient contact or has been delivered to a home patient environment; and/or
(g) any other requirement in this clause 8 has not been satisifed.

9. INSPECTION AND PROOF OF DELIVERY

9.1 The Customer shall inspect the Product immediately upon receipt. 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 fourteen (14) days from the date of statement, and proof of the delivery shall constitute proof of the total delivery indicated on Baxter's delivery documents.

9.3 Provision of authority to leave by the Customer to Baxter in writing enables Baxter to leave Product without inspection and eliminates the need for a signature from the Customer. The risk for the Product passes to the Customer immediately upon delivery.

10. WARRANTIES

10.1 Baxter warrants that:

a. All Products supplied to the Customer under these Terms:
   (i) comply with the Order or any amended Order for the Products; are fit for the purpose for which they are intended;
   (ii) are of merchantable quality;
   (iii) are free from defects;
   (iv) are new; and
   (v) will be supplied free from all encumbrances.
b. in complying with these Terms Baxter will at all times:
   (i) exercise all care, skill, attention and diligence and will employ techniques of a high standard in accordance with best industry practice; and
   (ii) ensure that every person utilised by Baxter is competent, appropriately qualified and is, where relevant, registered with or licensed by the appropriate statutory or professional body; and
   (iii) comply with all law.
c. Baxter shall keep up to date and accurate records and statistical information to show the Products provided by Baxter pursuant to this Agreement

10.2 A Product distributed by, but not manufactured, by Baxter is warranted by its manufacturer. Each unit of equipment supplied by Baxter shall be subject to the warranties notified to the Customer at the date of the purchase of the equipment.

10.3 Except to the extent required by law, Baxter makes no other express or implied warranties or guarantees. To the maximum extent permitted by law, Baxter's liability pursuant to:

(a) any warranty, term or condition expressed or implied in these Terms; and
(b) any other rights (including, for the avoidance of doubt, section 274 of the *Australian Consumer Law* or any similar or successor provision),

shall be limited, at Baxter's option, to (i) replacement of the Products or supply of equivalent products (ii) repair of the Products (iii) payment of the cost of replacing the Products or acquiring equivalent products or (iv) payment of the cost of having the Products repaired. Baxter shall not be liable for proximate, incidental, indirect or consequential loss or damages or for any loss of profits.

11. CUSTOMER OBLIGATIONS

11.1 The Customer will be solely responsible for the proper use and administration of all Products, including the decision to use them. Nothing in these Terms shall imply that Baxter is in any way responsible for ensuring the appropriateness or correctness of the clinically prescribed dosage or product specifications of any Products.

11.2 The Customer will be responsible for the complete management of Home Patients, and for ensuring that the Home Patient or the Home Patient's legal caregiver:

(a) is trained on the proper use, storage and care of any materials and equipment provided by the Customer;

(b) is trained on the proper procedures and methods for administration of the materials and equipment provided by the Customer; and

(c) retains the original carton and packing materials for the equipment, to be used when the equipment is returned to Baxter.

11.3 Baxter is the owner of the equipment and at the end of the loan period the Customer must ensure that the equipment is returned to Baxter in the same condition as delivered (allowing for normal wear and tear).

12. PHARMACOVIGILANCE

12.1 If the Customer receives any reports or information related to a complaint about a Product or an Adverse Event, it will 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 shall 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 shall resend the information or source documents with a request for acknowledgement of receipt by Baxter.

12.2 Baxter is responsible for reporting to the Therapeutic Goods Administration regarding complaints and Adverse Events and for coordinating any action required in relation to such complaints or Adverse Events. The Customer agrees to cooperate with any reasonable request made by Baxter in meeting its obligations under this clause.

12.3 The parties shall immediately inform each other upon receiving any information or communication regarding any possible safety actions related to the Product, including but not limited to, communications with the Therapeutic Goods Administration. The parties shall provide a copy of any written communication to each other within two (2) Business Days of receipt of the communication. The parties shall work together to respond to such communications. If specific safety measures are to be taken, Baxter will co-ordinate such actions and the Customer will co-operate in implementing same.

12.4 Notice to Baxter in relation to Adverse Events or safety actions should be made to:

Pharmacovigilance Manager
Telephone: +61 2 8845 1574
Facsimile: +61 2 8845 1655
Email: ANZ_Product_Safety@baxter.com
Address: 1 Baxter Drive, Old Toongabbie, NSW 2146.

13. CONFIDENTIAL INFORMATION

13.1 Neither party shall use Confidential Information for any purpose not contemplated by these Terms. Each party shall restrict access to any information supplied in relation to these Terms to personnel within its organisation or other third parties such as consultants, who need such access in order to perform their duties and receive it under obligations and confidentiality.

13.2 The Receiving Party agrees that any of the Confidential Information disclosed to it shall be used for the sole and exclusive purpose of fulfilling its obligations in relation to these Terms. The Receiving Party shall not, without the written consent of the Disclosing Party, disclose any such Confidential Information to any other person or entity other than those of its employees or agents who must have access to such Confidential Information for the sole and exclusive purpose of fulfilling its obligations under these Terms. All such employees shall be bound to maintain such Confidential Information in confidence and the parties will take such reasonable steps to require its employees to preserve such trust and confidence. The Receiving Party shall be responsible for any breach of these obligations by its employees.

14. DISPUTE RESOLUTION

14.1 If any dispute or difference shall arise between the parties as to:

(a) Either party being unable to pay its debts as they fall due, becoming insolvent, appointing a receiver or entering into a formal arrangement with creditors; or
(b) Either party committing any breach of these Terms where the breach is not capable of being remedied,

the party claiming there is a dispute or difference ("**Issue**") must provide written notice to the other party.

14.2 Within ten (10) Business Days of receipt of the notice of the Issue, the parties' nominated representatives must meet in good faith to attempt to resolve the Issue.

14.3 If the Issue cannot be resolved at the meeting between the parties' nominated representatives, either party may require that the Issue is referred to mediation. The mediator shall be agreed between the parties, or otherwise appointed by the President of the New South Wales Law Society.

14.4 Each party will bear their own respective legal costs (as between solicitor and client) of the enforcement or attempted enforcement of respective rights, remedies and powers under these Terms, including referral of any Issue under these Terms to mediation.

15. TERMINATION

15.1 Either party will have the right to terminate these Terms immediately by notice in writing in the event of:
(a) Either party being unable to pay its debts as they fall due, become insolvent, appoints a receiver or enters into a formal arrangement with creditors;
(b) Either party committing any breach of these Terms where the breach is not capable of being remedied;
(c) By mutual agreement of the parties with a minimum period of 30 days notice to both parties;

15.2 Termination of this Agreement shall not relieve Baxter or the Customer of its obligations to pay all money owed by it to the Customer or Baxter respectively, on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of these Terms shall be without prejudice to any rights and remedies of the Customer or Baxter that accrued prior to the date of termination and shall not relieve Baxter or the Customer respectively from liability arising from any antecedent breach of these Terms.

16. PERSONAL PROPERTY SECURITIES ACT 2009

16.1 The following provisions with respect to the *Personal Property Securities Act* 2009 ("**PPSA**") shall apply (terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA):
(a) The Customer grants to Baxter a security interest in all Products supplied by Baxter to the Customer 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.
(b) The Customer agrees to do anything that Baxter may require to ensure that Baxter has an enforceable, perfected, maintained and otherwise effective purchase money security interest in the Products, or to exercise any of Baxter's rights in connection with the security interest or under these Terms.
(c) The Customer shall reimburse Baxter for all costs and/or expenses incurred or payable by Baxter in relation to registration of any financing statement or any other document in respect of the Products.
(d) Baxter may allocate all amounts received from the Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Products.
(e) While the Products continue to secure the Customer's indebtedness, the Customer must store the Products separately and clearly identify the Products as being subject to Baxter's security interest.
(f) The Customer waives its rights to receive a copy of any verification statement(s) or financing change statements under the PPSA and, as between the Customer and Baxter, the Customer agrees it will have no rights under sections 95, 118, 121 130, 132, 135, 142 and 143 of the PPSA.
(g) The Customer must advise Baxter immediately of default or any action by third parties (including any of its creditors) affecting Baxter's security interest in the Products.

(h) The Customer agrees that Baxter is under no obligation to dispose of or retain any secured property Baxter seizes within a reasonable time under section 125 of the PPSA.
(i) 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 LAWS

Any dispute that arises under this Agreement shall be dealt with in accordance with the law of New South Wales, and any claim or dispute arising hereunder shall be subject to the jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

18. FORCE MAJEURE

Neither party shall be liable for any failure or delay or default in performance of the obligations if such failure or delay or default is caused by conditions beyond its control including but not limited to acts of god, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

19. DEFINITIONS

19.1 "**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 unfavorable 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 including the following events which may be reportable to the Therapeutics Goods Administration or equivalent international regulatory authorities according to adverse event reporting regulation, whether or not considered causally associated with drug or biologic treatment:
(a) drug or biologic overdose, whether accidental or intentional drug or biologic abuse;
(b) an event occurring from drug or biologic withdrawal;
(c) any failure of expected pharmacological action;
(d) exposure to a drug or biologic during pregnancy;
(e) inadvertent or accidental drug or biologic exposure;
(f) unexpected therapeutic or clinical benefit from the drug or biologic product; and
(g) medication errors;

19.2 "**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;

19.3 "**Business Day**" means a day that is not a Saturday, Sunday or public holiday in New South Wales or any other State or Territory in which these Terms operate;

19.4 "**Customer**" means any party placing an Order under these Terms.

19.5 "**cGMP**" means Current Good Manufacturing Practices as that term is defined in the *Therapeutic Goods Act 1989* (Cth), and Regulations and Orders made pursuant to it, and includes compliance with all requirements for inclusion of therapeutic goods in the Australian Register of Therapeutic Goods, and any other similar law regulation or guidance that may be in effect in the Territory;

19.6 "**Code**" means the Australian Code of Good Manufacturing Practice (GMP) for Medicinal Products issued by the Therapeutic Goods Administration;

19.7 "**Confidential Information**" means any information which relates to the business, assets or affairs of either party which is made available by that party ("**Disclosing Party**") to the other party ("**Receiving Party**") or is otherwise obtained by the Receiving Party and which is by its nature confidential or the Receiving Party 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 Receiving Party or any of its officers, employees or agents;
(b) received by Receiving Party from a third-party who had a legal right to provide it; or
(c) or was developed by Receiving Party independently of the other Party and any of its officers, employees or agents;

19.8 "**Delivery Lead Time**" means the lead times contained in these Terms or in any Delivery Plan provided by Baxter to the Customer.

19.9 "**GST**" means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

19.10 "**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;

19.11 "**Price**" means the price for each Product sold to a Customer under these Terms;

19.12 "**Product**" means products manufactured or distributed by Baxter and supplied under these Terms of Sale;

19.13 "**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;

19.14 "**Urgent Orders**" means Orders which do not meet the Delivery Lead Times.