

**BAXTER HEALTHCARE CORPORATION THROUGH ITS  
BIOSCIENCE BUSINESS (“BAXTER”) ORTHOBIOLOGICS  
CONSIGNMENT TERMS AND CONDITIONS**

THESE ORTHOBIOLOGICS CONSIGNMENT TERMS AND CONDITIONS (“TERMS AND CONDITIONS”) APPLY TO THE PURCHASE OF BAXTER’S ORTHOBIOLOGICS PRODUCTS (“PRODUCTS”) PROVIDED UNDER BAXTER’S HOSPITAL CONSIGNMENT PROGRAM. FOR DIRECT PURCHASE OF PRODUCTS (NON-CONSIGNMENT) PLEASE REFER TO BAXTER’S STANDARD ORTHOBIOLOGICS TERMS AND CONDITIONS. ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, WHICH ARE ACCEPTED BY THE CUSTOMER UPON PLACING OF AN ORDER FOR ORTHOBIOLOGICS PRODUCTS WITH BAXTER WHICH ORDER IS CONFIRMED BY BAXTER. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON BAXTER UNLESS AGREED TO IN WRITING AND SIGNED BY AN AUTHORIZED EMPLOYEE OF BAXTER, OR UNLESS A SEPARATE ORTHOBIOLOGICS PRODUCT PURCHASE AGREEMENT OR OTHER APPLICABLE SALES DOCUMENT HAS BEEN SIGNED, IN WHICH CASE, SUCH SALES DOCUMENT SHALL GOVERN IN THE EVENT OF AN EXPRESS CONFLICT WITH THESE TERMS AND CONDITIONS.

BAXTER RESERVES THE RIGHT AT ANY TIME TO AMEND THESE TERMS AND CONDITIONS. IT IS CUSTOMER’S RESPONSIBILITY TO REVIEW THESE TERMS AND CONDITIONS PRIOR TO SUBMITTING EACH ORDER. BAXTER HAS NO RESPONSIBILITY TO NOTIFY CUSTOMER OF ANY CHANGES PRIOR TO THE EFFECTIVE DATE OF THE CHANGES. CUSTOMER SHALL BE DEEMED TO ACCEPT SUCH AMENDED TERMS AND CONDITIONS BY ORDERING PRODUCT AFTER THE DATE OF SUCH AMENDMENT.

- 1. Consignment Inventory.** Baxter agrees to consign Products in the quantities and at the location as agreed to by the parties in a signed Consignment Inventory Quantities/Location form in substantially the form attached hereto as Exhibit 1. Baxter reserves the right, in its sole discretion to modify the quantities and Product mix of such consignment Product inventory.
  
- 2. Product Storage; Security; Handling.** Customer shall maintain, at its sole cost and expense, a secure consignment storage area for the consigned Products. Access to the secured Product storage area shall be kept controlled at all times. “Controlled” means that only those authorized may have access to the area in which the consigned Products are stored. If and/or when Customer handles the consigned Products, Customer agrees to handle the consigned Products in an appropriate manner to ensure the consigned Products and their packaging are not damaged. No Products may be used by Customer for which the packaging does not bear the original label and markings affixed by Baxter, including its identification and lot number, or which has passed the expiration dates identified on the packaging, provided, however, that Customer shall be required to use the Products in inventory with the most recent expiration dates prior to removing any Products with later expiration dates.

Customer shall ensure that the consigned Products are stored and handled in such a manner to maintain the integrity of the packaging of such Products and that the storage area is maintained at the appropriate temperature for the consigned Products as indicated on each respective Product label and as such label may be modified in the future (Table 1 below lists the Product label storage conditions as of the Effective Date).

**Table 1 – Product Label Storage Conditions**

<b>Products</b>	<b>Lower limit °C</b>	<b>Upper limit °C</b>
Actifuse MIS	5°C (41°F)	25°C(77°F)
Actifuse ABX	5°C (41°F)	32°C (90°F)
Actifuse Shape	5°C (41°F)	32°C (90°F)
Actifuse granules/microgranules	15°C(59°F)	40°C(104°F)
Actifuse E-Z-Prep/Easy Prep	15°C(59°F)	40°C(104°F)
<b><u>Temperature Common to all products</u></b>	<b><u>15°C(59°F)</u></b>	<b><u>25°C(77°F)</u></b>

Customer shall defend, indemnify and hold harmless Baxter and its affiliates, as well as their respective officers, shareholders, directors and employees, agents, representatives, successors and assigns from and against any and all liabilities, damages, judgments, costs, losses and expenses (including, but not limited to bodily injury or property damage, reasonable attorney's fees and expenses necessary to consider, advise and defend) arising out any breach of the representations and warranties and assurances made in this Section 2 by Customer.

3. **Permitted Uses and Location(s); FCA.** Customer acknowledges and agrees that the consigned Products shall be used: (i) solely by Customer; and (ii) solely for business purposes in the regular course of its business. Customer shall comply with all laws, rules and regulations (from Baxter or otherwise), with respect to the maintenance and operation of the consigned Products; shall not move the consigned Products out of the consigned Product storage area or other appropriate usage areas; or shall not make any modifications or alterations to the consigned Products without Baxter's prior written consent. Customer agrees to reasonably cooperate with Baxter in the event that a field corrective action is required.
4. **Inventory Audit.** Customer agrees to provide Baxter, its employees and its authorized representatives reasonable access to the consigned Product storage area during business hours to access the consigned Product inventory and/or to conduct a physical count. In the event that inventory shortages are found, Baxter shall be entitled to treat the affected Product as having been withdrawn from the inventory and to invoice Customer for such Products.
5. **Inventory Replacement.** After Baxter's receipt of a bill and replace purchase order (pursuant to section 7) demonstrating withdrawal of consigned Product from inventory, Baxter will ship replenishment consignment Product to Customer in the quantities listed on such bill and replace purchase order. Customer may request that additional consignment Product inventory be shipped or held by contacting Baxter's Customer Service Department at 1-800-423-2090. Baxter reserves the right, in its sole discretion to withhold requests for Products if the Customer is not in good standing.
6. **Title; Risk of Loss; Insurance.** Title to any consigned Product inventory under these Terms and Conditions will pass from Baxter to Customer upon opening of the consignment Product packaging. Customer shall bear all risks of loss or damage to the consigned Products inventory (and all associated costs or expenses) from any cause from the date of delivery to Customer until return to Baxter, except to the extent that such loss or damage arises out of or results from the negligent or wrongful acts of Baxter, its employees or agents or the breach by Baxter of its obligations under these Terms and Conditions. At all times under these Terms and Conditions,

Customer shall maintain such policies of insurance as are adequate to fully insure against damage to or loss of the consigned Products.

7. **Ordering.** Within five (5) business days after Product packaging has been opened, Customer is responsible for submitting a Purchase Order for such opened Products to Baxter's Customer Service Department. This submitted Purchase Order must include a hospital purchase order, Product lot number, Product quantity, Product price, Product date of usage, Surgeon's Name, and patient or other hospital-defined identifier which is mutually acceptable to Baxter. Purchase Orders must be faxed into Baxter's Customer Service Department at 1-877-285-3173. Consignment Purchase Orders cannot be processed via EDI transmission.

Furthermore, when Product is used or otherwise removed from its secure consignment storage area, Product shall be deemed to have been purchased by the Customer. Any Product determined by inventory by Baxter to be lost, damaged or destroyed while in the possession of the Customer or that is returned to Baxter that is not re-saleable pursuant to the Returns language within the terms and conditions shall be considered purchased by the Customer.

8. **Payment Terms.** Payment terms are net thirty (30) days from date of invoice ("Due Date"). Baxter must receive payment at the "Remit To" address listed on the invoice on or before the Due Date to be considered as received on time. Customer shall pay Baxter a service charge of 1-1/2% per month (18% per year) or the highest amount allowed by law, if lower, on all past due amounts. In the event Customer is delinquent in payment of any amounts to Baxter, whether or not related to these Terms and Conditions, Baxter may, at its option declare all amounts owed to it under all agreements as due and payable immediately, and terminate these Terms and Conditions.

Baxter offers eCommerce solutions giving customers flexible invoice and payment options.

- a) Invoice Options. Customer can receive invoices (1) electronically using Baxter's e-Services Center website, (2) through EDI 810 invoice transactions, or (3) by mail.
  - b) Payment Options. Payment to Baxter can be made either electronically (preferred method) or by check. In the event that an electronic payment is made, each transaction must include a remittance.
9. **Condition of Sale; Licenses.** Customer agrees to purchase the Products for use within the United States for the benefit of patients for whom a doctor has ordered its use. Customer agrees to maintain all licenses necessary for the purchase and dispensing of the prescription Products (e.g., state pharmacy license, physician's license, etc.) and will forward a copy of such license to Baxter upon request. The Products under these Terms and Conditions are not for resale, barter or trade to other purchasers of such products or for export.
  10. **Taxes.** Customer shall be responsible for payment of all applicable state and/or local sales, use, and/or gross receipts tax receipts resulting from its transactions with Baxter. A Customer that is exempt from taxation is required to provide valid certification to Baxter's Customer Master Team supporting its claim of exemption.
  11. **Shipping Charges.** Notwithstanding anything in the foregoing to the contrary, Baxter may implement a shipping charge for any of the Products. Additional charges for emergency or overnight deliveries will be the responsibility of Customer and will be added to the invoice.
  12. **Proof of Delivery.** Proof of delivery will be provided if a request is received within ninety (90) days of date of shipment. Due to the expenses involved in obtaining proof of delivery, requests are subject to a \$50.00 service fee.

- 13. Return Goods Policy.** The request to return unopened consigned Products or reduce consignment inventory levels can be arranged by contacting Baxter's Customer Service Department at 1-800-423-2090 to obtain a Return Goods Authorization form. Baxter can accept for return only those Products with open packaging that (a) do not perform pursuant to Baxter's specifications for the Products, (b) may have been damaged during transportation, or (c) Customer may have received in error. Return of such Products must be authorized before any returns will be accepted. Customer shall contact Baxter's Customer Service Department at 1-800-423-2090 for instructions on the return procedure to be followed.
- 14. Warranty.** Baxter and its affiliates warrant that Products shipped or delivered to Customer will not, at the time of shipment by Baxter or its affiliates, be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, nor will such Products be an article which may not, under provisions of sections 404 and 505 of said act, be introduced into interstate commerce. Baxter and its affiliates further represent and warrant that all Products delivered to Customer when stored and used in accordance with the directions on the labeling, are fit for the purposes and indications described in the labeling. Unless the Products are used in accordance with their instructions, these warranties are void and of no effect. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BAXTER AND ITS AFFILIATES' SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT BAXTER'S OPTION, TO REPAIR OR REPLACE THE PRODUCTS. NEITHER BAXTER NOR ITS AFFILIATES SHALL BE LIABLE FOR PROXIMATE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF PROFITS, COST OF REPLACEMENT, OR COMMERCIAL LOSS) ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR THE PRODUCTS SOLD HEREUNDER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 15. Other Discounts.** Customer and Baxter intend that these Terms and Conditions shall be administered in accordance with the provisions of the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)). To the extent that any discounts and/or rebates are issued by Baxter and received by Customer with respect to products or services under these Terms and Conditions, such discounts and/or rebates may be considered "discounts or other reductions in price" under the Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)(3)(A)]. To the extent required by the Anti-Kickback Statute or the Discount Safe Harbor regulations, 42 C.F.R § 1001.952(h) et seq., Customer shall fully and accurately disclose such discounts and other reductions in price according to state or federal cost reporting requirements, including, without limitation, disclosing and accurately reflecting as appropriate, to the applicable reimbursement methodology. Baxter will provide Customer with sales and discount information to allow Customer to comply with this paragraph and the Discount Safe Harbor, including sufficient discount, rebate and/or other pricing information that may be applicable to enable Customer to accurately report its actual costs for all purchases of Baxter products and services made pursuant to these Terms and Conditions. The total charges for the products and services purchased under these Terms and Conditions shall be the contract price less any such discounts, rebates, and/or other reductions in price that may be applicable.
- 16. Termination.** These Terms and Conditions may be terminated by either party, without cause and without liability, upon fifteen (15) days prior written notice to the other party. In the event that these Terms and Conditions are terminated by either party, then Customer must within 14 days after the effective date of termination: (a) submit a purchase order pursuant to Section 7 above to purchase any remaining consigned Products, and/or (b) return remaining consigned Products to Baxter by contacting Baxter's Customer Service Department at 1-800-423-2090 to obtain a Return Goods Authorization form.
- 17. Confidentiality.** Customer agrees that it shall not disclose pricing for the Products as

communicated to Customer to any other person or entity outside its organization and affiliates or make any public announcement concerning such pricing, unless Customer receives the prior written approval of Baxter or such disclosure is required by law, subpoena or other judicial or administrative process or pursuant to Generally Accepted Accounting Principles. For purposes of this provision, an affiliate is an entity in which Customer maintains an ownership position in or a contractual relationship with, and the disclosure is required so that the Customer may fulfill its obligations hereunder.

**18. Governing Law.** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Delaware (excluding its conflicts of law provisions).

**19. Product Supply.** Baxter reserves the right in its sole discretion to stop offering any of the Products for sale without affecting these Terms and Conditions or the supply of other Products hereunder.

**20. Complete Agreement.** These Terms and Conditions contains the full and complete expression of the rights and obligations of the parties, and it shall cancel and supersede all other written or oral communications heretofore made by the parties (including their affiliates) related to the subject matter hereof.

**Exhibit 1**

Consignment Inventory Quantities and Location

**Each Facility/Location requiring consignment inventory will need a separate signed Exhibit 1.**

**Consignment Location**

**Facility/Location Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State Zip:** \_\_\_\_\_

**Facility Contact:** \_\_\_\_\_

**Baxter Account #:** \_\_\_\_\_

ACTIFUSE consignment inventory:

Product	Code	Existing Quantity Product	New Quantity Requested	Lot #

Department Representative Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

Baxter Contract Representative Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date Revised: \_\_\_\_\_