



## Additional General Terms and Conditions

This Purchase Agreement (The "Agreement") is made by and between S.A. Baxter LLC, a New York Limited Liability Company with offices at 37 Elkay Drive, Suite 33, Chester, New York 10918 ("S.A. Baxter") and the "Customer" and sets forth the terms and conditions under which Customer agrees to purchase and S.A. Baxter agrees to sell the product (the "Product") in the quantity described on the signed SA Baxter quotation.

### 1. PAYMENT AND INVOICING

Customer shall pay the entire purchase price indicated on the signed quotation (the "Purchase Price"). The Purchase Price shall be paid as follows: fifty percent of the Purchase Price shall be paid with transmittal of the Agreement signed by the Customer to S.A. Baxter. The remaining fifty percent of the Purchase Price must be paid upon completion of the production of the Product and prior to shipment of the Product to the Customer. All payments are nonrefundable. In no event shall S.A. Baxter produce any Product until fifty percent of the Purchase Price is paid. In no event shall any Product be delivered to the Customer until the Customer has paid the Purchase Price in full plus all taxes, shipping or any other charges related to the sale and delivery of the Products.

Payment shall be by cash or check unless S.A. Baxter approves another form of payment. Such approval may be granted or denied in the sole discretion of S.A. Baxter. All payments are to be remitted to S.A. Baxter LLC, 37 Elkay Drive, Suite 33, Chester, New York 10918.

Any portion of the Purchase Price unpaid on any due date shall be considered delinquent and thereafter subject to a FINANCE CHARGE of one and one-half percent per month or the highest rate permitted by law, whichever is less. The FINANCE CHARGE will accrue daily on all past due amounts.

### 2. DELIVERY & STORAGE

All shipments are F.O.B. S.A. Baxter's foundry located at 37 Elkay Drive in Chester, New York. Risk of loss shall pass to the Customer upon delivery.

S.A. Baxter reserves the right to make partial or installment deliveries. Defective delivery or non-delivery under this Agreement shall be a severable breach and shall not give the customer the right to treat the entire contract as breached.

Shipments will be made using the most expeditious and economical means available to S.A. Baxter. Upon collection by the shipping company, shipments become the property of the Customer who assumes all risk for loss or damage in transit. Claims for loss or damaged shipments must be made immediately upon delivery confirmation between the Customer and the shipping company.

The Customer may elect to have an order stored at the S.A. Baxter foundry. For periods beyond 15 business days after the agreed ship date, weekly storage charges will apply and are payable in advance of the eventual ship-date.

International shipments may be subject to duty or tax charges. Any duty or tax assessed by customs agents is the sole responsibility of the Customer.

The Customer should unpack and inspect your order immediately on delivery. Within five days of delivery, S.A. Baxter must be notified in writing if any of the goods are not in accordance with the written order, damaged or defective.

### 3. Price and Term Quotations

The Product price quoted by S.A. Baxter shall be valid for ninety days from the date of the quote set forth on the front of this form. After ninety days, prices and terms are subject to change without notice.

All quotations, orders, or agreements, or modifications thereof, are contingent upon and subject to any and all occurrences beyond S.A. Baxter's control, including but not limited to, strikes or boycotts (whether occurring at S.A. Baxter's factory or the plant or factory of any supplier), accident, thefts, fires, war, shortage of materials or equipment, casualty, or acts of God, and S.A. Baxter shall not be liable for failure to perform any agreement for such causes.

### 4. SALES TAX

Customer shall pay to S.A. Baxter all State, County, and other applicable sales tax due upon the purchase of the Product or provide to S.A. Baxter proof of exemption from sales tax. Such proof may include, but is not limited to, a resale certification.

## 5. CONTRACT ACCEPTANCE

This Agreement is binding upon the Customer at the time of the Customer's execution of this Agreement and delivery of the executed Agreement to S.A. Baxter or at the time the Customer otherwise manifests its intent to be bound by this Agreement, which ever occurs first. This Agreement is binding upon S.A. Baxter at the time S.A. Baxter accepts this Agreement in writing and has received the initial payment from the Customer due under this Agreement. Neither Customer nor S.A. Baxter may terminate this Agreement without cause. S. A. Baxter shall have 10 days from receipt of the Agreement executed by the Customer together with the initial payment to accept the Agreement.

S.A. Baxter reserves the right to suspend and/or terminate its obligations to produce or deliver Product under this Agreement for the Customer's: (a) failure to pay amounts due under this Agreement when due, (b) refusal to accept delivery of the Product when ready, or (c) other material breach of this Agreement by Customer. If S.A. Baxter terminates this Agreement pursuant to the terms described in this Item 5, or if Customer terminates this Agreement for any reason other than a material breach of this Agreement by S.A. Baxter, Customer shall pay S.A. Baxter: (a) any unpaid portion of the Purchase Price, and (b) any third party cancellation/termination charges or any out-of-pocket charges incurred by S.A. Baxter related to such cancellation or termination.

## 6. FINISHES

S.A. Baxter patina finishes are living finishes and or may rub off in areas due to frequency of use over time. S.A. Baxter considers this a normal process that enhances the naturally aging appearance of the metal. S.A. Baxter cannot guarantee product patina finishes nor will S.A. Baxter replace patina finishes without charging a fair fee to do so. S.A. Baxter products are finished by hand and slight variances in tonality are normal and acceptable.

Care instructions for our products can be found by visiting [www.sabaxter.com](http://www.sabaxter.com).

## 7. PROPRIETARY RIGHTS

Any designs created by S.A. Baxter at Customer's request ("Custom Designs") and any special tools, devices, and/or molds required to manufacture such Custom Designs which have been designed, built, and/or purchased by S.A. Baxter shall remain solely S.A. Baxter's property whether or not the Customer is charged with time and/or material in connection with creating the Custom Designs and/or fabricating the special tools, devices, and/or molds required to manufacture Custom Designs. This provision shall apply regardless of whether: (a) S.A. Baxter is solely responsible for the Custom Designs, (b) the Customer is solely responsible for the Custom Designs; or (c) both S.A. Baxter and the Customer share in responsibility for the Custom Designs.

Customer hereby represents and warrants that no third party has any patent, copyright, trademark, or other right in or with respect to any Custom Designs; and that there are no obligations (including royalty obligations), covenants or restrictions from third parties affecting the use, disclosure, enforcement, transfer, and/or licensing of the Custom Design. Customer shall indemnify, defend, and hold S.A. Baxter harmless from all loss, cost, damages, and expense (including without limitation reasonable attorneys fees) arising out of Customer's breach of the representations and warranties contained in this paragraph.

This Agreement shall not be in any way construed as a license or grant of any right in any of S.A. Baxter's intellectual property, including without limitation trade names, trade marks, service marks, patents, or patents pending.

## 8. LIMITED WARRANTY AND LIMITATIONS ON REMEDIES

**THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE S.A. BAXTER LIMITED WARRANTY, INCLUDING, BUT NOT LIMITED TO, THE LIMITED WARRANTY'S: (A) LIMITATIONS ON CUSTOMER'S REMEDIES AGAINST S.A. BAXTER, AND (B) DISCLAIMER OF ALL IMPLIED WARRANTIES. THE REMEDIES PROVIDED UNDER THIS AGREEMENT AND THE LIMITED WARRANTY SHALL BE THE SOLE AND EXCLUSIVE REMEDIES, AND S.A. BAXTER SHALL NOT BE LIABLE FOR ANY OTHER REMEDY OR DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, CONSEQUENTIAL AND SPECIAL DAMAGES.**

## 9. NON-DISCLOSURE

The Customer agrees not to use or disclose any information to a third party that the Customer now has or may acquire concerning designing, manufacturing, molding, or any other processes or procedures S.A. Baxter uses in its design and/or manufacturing of the Product. If the Customer violates any of the terms herein provided, the customer shall pay S.A. Baxter any actual and/or consequential damages arising out of such breach.

## 10. GOVERNING LAW; VENUE

All transactions between the parties shall be governed and construed in accordance with the laws of the State of New York. S.A. Baxter and Customer expressly agree that any dispute, controversy, or claim arising out of or relating to this Agreement, a breach thereof, or any Product delivered hereunder, shall be determined by a court of competent jurisdiction in the State of New York.

## **11. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties. Any changes, alterations, waivers, or modifications with respect either to the job performed or the terms of sale, or any other matter set forth herein must be in writing and signed by a duly authorized representative of S.A. Baxter.

No terms and conditions contained in any form or otherwise submitted to S.A. Baxter may modify or alter these Terms and Conditions or become a part of any agreement, and any acceptance by Customer is limited to these Terms and Conditions. To the extent these Terms and Conditions are interpreted to be an acceptance by S.A. Baxter of an offer by Customer, the acceptance is conditioned upon Customer's assent to all of these Terms and Conditions.

## **12. COSTS AND EXPENSES**

Customer shall pay all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by S.A. Baxter in enforcing the terms and conditions of this Agreement or incurred with respect to a breach by Customer of any of the representations, warranties, or covenants of Customer set forth in this Agreement.

## **13. EXECUTION**

This Agreement may be executed in multiple counterparts each of which shall be deemed an original. Signatures or other written acceptance delivered by fax, e-mail, or other electronic means shall be deemed originals for all purposes of this agreement.