

## **GENERAL TERMS AND CONDITIONS FOR SUPPLY**

### **1. Scope**

These General Terms and Conditions for Supply (the "Conditions") apply to and are deemed to be incorporated in all quotations and/or contracts for the sale of equipment and/or the supply of services by The Baker Company Benelux B.V.<sup>1</sup> and/or their correspondent purchase orders. No addition or variation or waiver of these Conditions has any legal effect except as specifically agreed by in writing. These Conditions shall prevail over terms and conditions stipulated by the Client. The issuance of any order, purchase order or similar by the Client means the waiver by the Client to its own general conditions of purchase and express acceptance of these Conditions.

### **2. Definitions**

"Client" includes any principal or agent or subcontractor of the Client.

"Good(s)" means any equipment, machinery, systems or associated parts or components designed and manufactured or assembled by

Baker at the Baker facilities, or sourced elsewhere at Baker's discretion.

### **3. Quotations and Acceptance**

3.1 Prices and terms of supply quoted by Baker shall exclude the cost of freight and packing for Goods and replacement parts.

3.2 Prices do not include retention tax, withholding tax, any local or municipal tax and VAT which shall be paid by the Client. In no case Baker should be required to pay any tax, duty and/or fee by any authority in the country of the Client, in relation to the Goods and/or the supply governed by these Conditions; the Client shall refund any cost borne by Baker and Baker shall be entitled to charge them at the rates ruling at the date of the relevant invoice, including, for the avoidance of doubt, any retention applicable in the country of the Client to any service associated to the Goods.

3.3 Prices quoted by Baker shall remain valid for a period of 60 calendar days from the issuance of the latest offer unless otherwise agreed or unless Baker costs increase for reasons beyond its control.

3.4 If the Client specifies a currency other than that in which Baker quotes, Baker reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the currency of the quotation and the specified currency arising between the time of quotation and acceptance of the order and/or invoicing.

3.5 The obligations of Baker hereunder are subject to the prior receipt by Baker of any export licenses required in connection with the shipment of the Goods. In addition, nothing contained herein shall be deemed to require Baker to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Baker failure to take any such action shall not be deemed a breach hereunder.

3.6 No obligation shall be binding on Baker unless and until received and accepted by Baker in writing.

### **4. Schedules and Delays**

Baker shall during the design and manufacture or assembly of the Goods provide the Client with progress schedules and notify the Client of any projected delays in delivery. Notification of any delay shall give Baker's best estimate of the date on which dispatch (or any other relevant milestone) is projected.

### **5. Inspection, Testing and Validation**

5.1 Prior to delivery Baker will conduct the appropriate inspection and acceptance tests (if any) of the various components and sub-assemblies as it deems desirable to facilitate efficient assembly on arrival at the Client's plant (or other delivery place agreed by the parties). Such inspections and acceptance tests shall be conducted at the principal place of manufacture or any other place at Baker sole discretion. Baker shall give the Client prior notice of such inspections and tests, indicating time and place of execution and the Client shall be invited to witness such inspections and tests. In the event that the Client fails to respond or declines to attend to witness such inspections or tests, Baker will perform the tests and the Goods will be deemed accepted in the Client's absence.

5.2 Unless otherwise agreed, the Client is responsible for drawing up documentation and obtaining validation from the local Pharma Authorities and/or any other relevant regulatory authority, if applicable.

### **6. Delivery and Shipment**

6.1 Unless otherwise agreed in written by the parties, delivery shall take place EXW (Incoterms 2010) at the principal place of manufacture or other place as stated in advance by Baker.

6.2 Although Baker shall endeavor to supply the Goods within the time specified, no liability can be accepted for delays in delivery due to any cause beyond Baker's reasonable control, or for any other reason unless specifically agreed in writing. If work is delayed or interrupted by the Client, the Client shall pay Baker for all additional resulting charges, in addition to the price of the Goods.

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<sup>1</sup> Hereinafter referred to as "Baker".

6.3 If, by the end of the warranty period, as stated at paragraph 11 herein, the Goods were not collected by the Client from the principal place of manufacture or any other place as stated in the Purchase Order or in Baker's quotation or in the other place indicated by Baker and/or agreed in writing, Baker shall be entitled to dispose of the Goods at its sole discretion.

6.4 Unless otherwise agreed, any discrepancy in, or damage to the Goods must be notified to Baker in writing within twenty four (24) hours from delivery. Failure by the Client to give such notice timely shall constitute unqualified acceptance and a waiver of all such claims by the Client. Any claim to Baker shall be accompanied by the carrier's delivery note, pictures of the damaged Good(s) and the Good(s)' packaging. In the absence of such notification or description of damages in the carrier's delivery note, or due to the lack of the Good(s)' packaging, the Good(s) shall be considered to be accepted by the Client without any objection.

6.5 Baker, at its sole decision, may decide to be present at the time which the Goods are received by the Client at the place of delivery.

6.6 The Client shall be responsible for transportation from the place of delivery. Baker may accept, at the Client's request and expense, to arrange carriage and insure the Goods against normal transit risks but in the event of loss or damage whether or not caused by the negligence of Baker or its carrier or any other person, Baker liability shall be limited to passing on to the Client the benefit of such insurance. Baker reserves the right to make partial shipments at its own discretion or convenience.

6.7 If, in case Baker is instructed by the Client to arrange carriage according to paragraph 6.6 above, instructions for dispatch are not received properly and/or in case the Client otherwise fails to collect the Goods after delivery and/or if the Client requires Baker to delay delivery beyond any agreed delivery date, Baker shall be entitled to make arrangements for storage of the Goods and to charge the Client accordingly and the Client shall become responsible for the risk of loss of or damage to the Goods and for paying the price of the Goods as if they had been delivered and/or shipped according to the original terms and condition herein or in Baker's quotation.

6.8 The Client shall be required to procure at its own expense any import licenses or related documentation required for the country of destination and any intermediate destination to which the Goods are to be dispatched or delivered. The Client shall be responsible for any import duties.

## **7. Installations and related services**

7.1 If requested, Baker and its employees or subcontractors will provide supervisory services or perform installation and/or start up and/or erection and/or commissioning services on the Goods. These services shall be supplied for an agreed period and

for a specified function and the Client shall pay for the provision of a representative at the specified rate per day plus living and travel and any other ancillary expenses that may be incurred by reason of performing these services. For this purpose, one day shall be deemed to mean eight (8) hours. Additional hours per day shall be charged at a premium.

7.2 If such services are required for a number of days in excess of the period agreed, the Client shall inform Baker in writing of the requirement and Baker reserves the right to request the Client

to pay for additional days in the same manner as specified in paragraph 7.1 above plus any additional costs or expenses incurred by reason of the extension of the period of service.

7.3 Installation and/or start up and/or erection and/or commissioning services shall take place on the dates agreed by Baker and the Client. Any cost and liability, deriving from the will of the Client to postpone the installation and/or start up and/or erection and/or commissioning services shall be borne by the Client.

7.4 The Client shall prepare, on time for the installation, a location and facilities suitable for the Goods according to specifications to be issued by Baker upon completion of its design of the Goods. If Baker is not satisfied with preparatory work, it reserves the right to charge for costs caused by delay.

7.5 The Client shall be responsible for obtaining all necessary consents and licenses and for supplying Baker with all necessary information and drawings about the installation site and shall provide at its own expense such ancillary services and facilities as Baker may reasonably require fulfilling the installation.

7.6 Unless otherwise agreed, Baker shall not be responsible for off-loading of the Goods, provision of and connection to services and utilities.

7.7 The Client shall ensure safe and adequate access to the site for Baker and its employees and subcontractors and shall be responsible for the safe custody of all Goods, materials and other property left on site by Baker in the course of installation. The Client shall be liable for any injury suffered by Baker or its employees or subcontractors except to the extent injury is caused by their own negligence. At this respect, Client shall contract and execute a liability policy covering those Baker's employees or subcontractors rendering their work in the location where the installation shall take place, with an insurance company of known reputation. Baker may request delivery of a copy of such policy and a copy of proof of payment thereof.

7.8 In order to guarantee the safety of the product the maintenance needs to be done by Baker. The Clean Air Cabinet requires specific maintenance knowledge which only can be guaranteed if this is executed by the Baker service engineers or under the control of Baker. The source codes of the systems are



owned by Baker and will not be released without indemnification.

## **8. Payment**

8.1 The payment will be agreed on a case by case basis at the Purchase Order and/or included in the relevant contract for sale of Goods or Supplies.

8.2 Baker reserves the right to pass on to the Client any increases in costs arising for reasons beyond its control.

8.3 Full payment must be made to Baker within 30 calendar days of invoice. The Goods shall remain the property of Baker until the Client has made full and unconditional payment. If any payment is overdue, Baker shall be entitled to suspend further deliveries, and after giving notice to the Client, may enter the premises, where it believes its Goods to be, for the purpose of recovering them.

## **9. Overdue Payment**

If Baker does not receive full payment of amounts due by the agreed payment dates, it reserves the right to charge interest at commercial rates on all amounts overdue.

## **10 Patents, Design Rights etc.**

10.1 Any know-how, technical information, drawings, specifications or documents supplied in connection with these Conditions shall be kept confidential by the Client and shall not be disclosed to any unauthorized third party or used for any other purpose than for the purpose of these Conditions, without the prior written consent of Baker unless and until the same is or becomes public knowledge.

10.2 Ownership is retained by Baker and/or Baker Group of any patent, copyright, design right or other intellectual property right in its Goods supplied under these Conditions and in any technical information, know-how, drawings, specifications or any other documents supplied hereunder.

10.3 Baker warrants that any component incorporated as part of the Goods and which is of Baker standard manufacture is free of third party patent or any other intellectual property restrictions as and when supplied but Baker gives no other warranty against patent or other intellectual property infringement and no liability is accepted in respect thereof.

10.4 If Baker supplies Goods with variations to meet the Client's special requirements, or to the Client's own specification, or if Baker processes the Client's own equipment, goods or materials, no warranty is given and the Client shall accept full liability in respect of infringement of patents or other intellectual property rights and agrees to indemnify Baker against all claims, losses or costs arising therefrom.

10.5 No warranty is given that any particular use of any Good, or any technique employed therewith is

free of patent or other intellectual property restrictions. Any advice given by Baker in relation thereto is given without liability on Baker's part.

10.6 The trademarks and names of Baker and its associated companies shall not be used otherwise than as applied by Baker to Goods supplied under these Conditions.

## **11. Warranty**

11.1 Baker undertakes to replace or repair at its option, or to arrange replacement or repair by an authorized representative, any Good supplied to or work carried out for the Client if a defect in materials or workmanship arises under conditions of normal and proper use and maintenance (fair wear and tear and consumable parts excepted) provided that:

(a) in Baker's opinion, the Goods were purchased and used for a purpose for which they were suitable, were operated and maintained in accordance with Baker's operating instructions, and were not used in a way which was unsuitable;

(b) the claim is notified in writing to Baker within 10 calendar days of discovery and, if Baker so requires, the defective Good(s) or part is returned to Baker or delivered to its authorized dealer (or any other place as may be specified by Baker) with carriage, insurance and all charges paid; (c) the defect in the Goods occurs within twenty four (24) months from delivery;

(d) the Goods have not been repaired or modified by anyone other than Baker or at Baker's direction and/or the defect (s) or damage(s) arises due to any modification, repair or substitution of any Good's part which has been performed without Baker's written authorization

(e) in the case of Goods or parts not of its own manufacture, Baker's responsibility shall be limited to passing on to the Client the benefit of any guarantee or warranty given to Baker by the manufacturer for such Good or part;

(f) in the case of a claim in respect of work carried out on site, Baker's liability shall be limited to replacing defective materials and to remedying defects caused by the default or negligence of Baker and, in either case, arising within six months of completion of the work.

11.2 Baker may, at its option, elect to satisfy its liability under this paragraph by refunding the purchase price and retaking the Goods.

11.3 The warranty only covers those items expressly mentioned in Baker's quotation. The warranty does not cover damages or malfunctions of the Goods:

(a) in case the defect stems from materials and/or merchandise supplied by the Client and/or from the works or supplies assumed by the Client in accordance with these Conditions;

(b) due to any displacement of the Goods of the place where they had been originally installed; (c) due to normal wear and tear; or/and

(d) deriving from corrosion due to chemical agents employed by the Client.

11.4 For Goods sold and/or delivered or anyway located outside Baker's country : the warranty shall only cover the replacement of faulty pieces. The warranty excludes the labor hours, the shipping cost of any spare part and/or material and the expenses related to personnel travelling and accommodation and any other related expenses, which shall be at the Client's charge.

11.5 Within Baker's country the warranty will cover also the labor hours and the expenses related to personnel travelling and accommodation.

11.6 Any dispatch of spare parts, components and/or any other material that Baker shall make outside the relevant shipping country pursuant its warranty undertakings shall take place under conditions FCA (Incoterms 2010).

11.7 The warranty does not include the supply of any disposable, consumable, gaskets, sensor measuring instrument, oil, thermal and refrigerating fluid, gases, filter, fuses and or lamp.

11.8 Baker may decide at its sole discretion not to perform its duties as per the warranty undertaking if the Client has failed to perform any of its payment undertakings and/or any other Client's obligation, according to these Conditions or any other applicable documents including, but not limited to, any Purchase Order, order acknowledgement and/or contract or agreement in place between Baker and the Client.

11.9 No warranty undertaking shall apply before the Goods have been installed, commissioned and started-up, at least under the supervision of an engineer authorized by Baker.

11.10 Repairs made by Baker during the warranty period do not, in any case, extend Baker's warranty undertaking.

## 12. Safety

So far as reasonably practicable Baker has ensured that its Goods have been so designed and constructed as to be safe and without risks to health when properly installed and used in accordance with Baker's operating instructions. The Client is responsible for any risks to health or safety from Baker Goods in its possession or control and must ensure that persons who use, maintain or otherwise handle Goods supplied by Baker receive adequate training and safety literature. Safety literature will be supplied by Baker free of charge and may be photocopied by the Client as required.

## 13. Insurance and Liabilities

13.1 Baker states to be sufficiently ensured for civil liability to reasonably cover any risk under these Conditions and/or the Purchase Order.

13.2 Baker shall indemnify and hold the Client harmless from and against direct, actual, effectively incurred and justified costs and damages to the extent solely caused by Baker's act or omission in connection with the Goods provided under these Conditions as maximum, to 5% (five percent) of the purchase price for the relevant Good(s).

13.3 Baker's liability shall in no event extend, whether such liability arises out of contract, tort (including negligence), strict liability or any other cause or form of action whatsoever, to indirect, incidental, special, consequential or liquidated damages, including but not limited to the loss of opportunity, loss of use or loss of revenue or profit, or any other similar damage in connection with or arising out of these Conditions.

## 14. Compliance

14.1 The Parties represent and warrant to each other that they comply and will comply during all the term of these Conditions with all applicable laws and regulations, particularly each Party warrants that:

(a) it respects the natural environment and employs appropriate measures to contribute to its sustainability;

(b) it respects universal human rights and personal privacy;

(c) it rejects and does not use any type of "Child" labor (as used herein, the term "Child" means a person younger than sixteen years of age, or younger than the minimum age designated in the applicable jurisdiction for employees, if such minimum age is older than sixteen);

(d) all of its employees and sub-contractors, if any, are provided with a workplace environment that is safe, healthy, and in compliance with applicable laws;

(e) The Client and its sub-contractors, if any, comply with all applicable wage laws and fair employment practices, including but not limited to the practice of non-discrimination on the basis of race, religion, national origin, political affiliation, sexual preference, or gender (except when required by any applicable law to treat a specific group of individuals differently) and of nonviolence, harassment or abuse;

(f) it will not make and does not allow its employees and/or sub-contractors to make, whether directly or indirectly, any payments in cash, payments in kind or any other payments to individuals or through them to the bodies they represent to obtain or maintain business or other benefits; and

(g) it protects and makes protect confidential information and uses it in a proper manner and not for personal gain.

14.2 The Parties undertake to comply with the highest standards of regulatory compliance. Likewise the Parties state that each of them has implemented a Corporate Compliance Program with the purpose to prevent, detect and mitigate committing crimes within its organization, in accordance with current applicable legislation. In addition the Client, under the term of these Conditions and carrying out its obligations hereunder, undertakes to comply with the principles of conduct contained in the Code of Conduct of Baker, which can be found on the web page [www.cleanair.eu.com](http://www.cleanair.eu.com).

14.3 The Client undertakes to comply with the applicable legislation and rulings stating the regime for the control of exports of dual-use items and technology and commits not to re-export the Goods without the authorization of the relevant authorities of the exportation country and the country of origin of the merchandise and without obtaining the export licenses from the same authorities if necessary. Baker shall claim from the Client any sum Baker has had to pay with respect to any claims derived from the un-fulfillment of the Client of any provisions hereto. Should any competent authority not permit or withhold Baker the delivery of any Good, Baker shall freely terminate its relevant undertakings without any responsibility.

## 15. Force Majeure

Without prejudice to any other terms hereof

Baker shall not be liable for any failure to fulfil its obligations under these Conditions if the carrying out of any obligation is hindered or prevented by any event or circumstance beyond Baker's reasonable control or, without prejudice to the generality of the foregoing, strike, lock-out or industrial dispute or failure of breakdown of plant, supplies, transport or equipment. If the delivery of the Goods or completion of any work should be delayed for more than six months, the Client shall be entitled to cancel the Purchase Order or the remainder thereof on payment of a reasonable sum for part performance but shall not be entitled to any other damages or compensation whatsoever.

## 16. Cancellation

The Client may not cancel the Purchase Order or any part thereof except by giving written notice which must be acknowledged by Baker. On cancellation, the Client may be charged for all work done and materials provided up to the time of cancellation plus a charge for the overheads and loss of profit. On cancellation, the Client may be charged according to paragraph 17.3.b below.

## 17. Suspension and Termination

17.1 If the Client commits any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation (except for the purpose of reconstruction or amalgamation) or commits any breach of any provision of these Conditions, then all sums due hereunder shall immediately become due and payable and Baker may, notwithstanding any previous waiver, terminate any agreement governed by these Conditions forthwith by written notice, but without prejudice to any prior right of either party.

17.2 In the event of payment failure by the Client, Baker shall have the right to terminate any agreement governed by these Conditions and to be indemnified for all cost and damages caused by the termination.

17.3 In no event shall the Client be entitled to suspend or terminate any agreement governed by these Conditions without Baker's prior written consent. Notwithstanding, in case any of such events occurs:

(a) with regards to suspension, the Client shall bear any costs, expenses and damages suffered by Baker as a result of the suspension of the Purchase Order; and

(b) in the event of termination of any agreement governed by these Conditions without Baker's consent, the Client shall pay Baker all pending amounts already invoiced or pending to be invoiced but related to works and/or services already performed and, as termination fee, an amount equivalent to 25% of the amounts pending to be invoiced by Baker as if the agreement would have been fully executed.

## 18. Returns

18.1 If the reason for return lies entirely with Baker, the goods are fully credited, the customer is responsible for proper packaging to prevent damage, Baker will supply a RMA number.

18.2 If the reason for return lies outside of the responsibility of Baker:

(a) HEPA filters are excluded from returns.

(b) any discrepancies or defects in the delivered goods must be reported to Baker in writing within two business day of the delivery date. Complaints submitted after this period or without RMA number will not be processed.

(c) return will only be accepted if the goods are unused and in their original undamaged packaging.

(d) Returns must be delivered to Baker carriage paid.

(e) Special items/goods that were manufactured for or at the customer's request, will not be accepted for return.



(f) costs for restocking the goods will be charged (25% of the net goods value, excl VAT). If applicable any credit note issued may be offset against outstanding or future invoices of the Client.

#### **19. Governing Law**

The Purchase Order and these Conditions are governed by the laws of The Netherlands.

#### **20. Jurisdiction**

20.1 The Parties submit any controversy on the execution of the Purchase Order or the interpretation of these Conditions to the Courts and Tribunals of Utrecht (The Netherlands).

20.2 Notwithstanding, Baker shall be entitled to file any lawsuit to the Court and Tribunals having jurisdiction *ratione loci* and *ratione materiae* according to the applicable law, limitedly to disputes regarding any unpaid invoices and amount due by the Client whatsoever.

#### **21. Governing Language**

These Conditions were made in English. All documentation provided by Baker shall be in English. Notwithstanding the existence or the sharing of documents in different languages, the English version of the documentation will be the valid one in case of any conflict.

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#### **22. Nullity**

If any provision of this document is declared null, invalid or illegal, for any reason, such nullity, invalidity or illegality will not reach the remaining terms and provisions, which will remain in full force and effect.

#### **23. Waiver**

The failure of Baker to exercise, and/or any delay in exercising any right or remedy under the terms of this document shall be deemed waiver of the same, nor partial or single exercise of any right or remedy preclude the future exercise thereof or the exercise of any other right or remedy which is granted by this document or any related document or by law. **24.**

**Binding Effect.** Assignment These Conditions and the rights and obligations of parties under the present cannot be transferred, assigned or subrogated, in whole or in part, by any party hereto without prior written consent of the other, but shall be binding upon and ensure the appropriate benefit and be enforceable by the parties that signed this document and any successor, permitted assigns or legal representative.

#### **25. Survival**

Notwithstanding the termination of any agreement governed by the present Conditions, either full or by mutual agreement or at the request of either party, the impact on the commissions and charges and/or liquidation of the same shall be maintained until full compliance.