



BAX[®] System

Placement Agreement # SE-220909-Pathotrak

Collaborative Research

Qualicon Diagnostics LLC

200 Powder Mill Road
Wilmington, DE 19803
Phone: 800-863-6842
Email: Diagnostics.Support@Hygiena.com

DATE: September 9, 2022

ACCEPTANCE PERIOD: 30 days

TO: Dr. Javier Atencia
Pathotrak, Inc.
4467 Technology Drive, Suite 2122
College Park, MD 20752
Phone: 410-900-4485

Email: jatencia@pathotrak.com

Evaluation Agreement # Pathotrak-08162021

Representative	Shipping Method	F.C.A. Point	Payment Terms
J. David Luedeke	Best way	Wilmington DE USA	See attached Terms and Conditions

QUOTATION

QTY	PART #	DESCRIPTION	PRICE
BAX[®] SYSTEM Q7 PLACEMENT SYSTEM			
1	ASY2018 (D12535562) (120v)	PLACEMENT SYSTEM WITH ANALOG HEATING BLOCKS <u>Equipment:</u> One BAX [®] System Q7 cycler/detector with tube holders; two analog BAX [®] System heating blocks with inserts and thermometer, computer workstation, monitor, software <u>Peripherals:</u> Mouse pad, memory stick, USB cable <u>Supplies:</u> Two capping/decapping tools (cluster tubes, PCR tubes) Pipettes - one multi-channel (8 channels; 5-50 µL); two adjustable (one 20-200 µL and one 5-50 µL); one repeating Three cooling block assemblies (one PCR and two lysis) Cluster tubes with caps and racks (for 96 tests) Extra PCR tube caps (for 96 tests) Holder tray for PCR tubes Footed holder tray for low profile tubes Tips for pipettes (for 96 tests) Two fuses Powder-free nitrile gloves (for 96 tests) User documentation package	Included with placement

1	ASY2016 (D14982588) (120v and 220v)	PLACEMENT SYSTEM WITH AUTOMATED HEATING BLOCK <u>Equipment:</u> One BAX® System Q7 cycler/detector with tube holders; one Automated Thermal Block unit with metal tube holders; computer workstation, monitor, software <u>Peripherals:</u> Mouse pad, memory stick, USB cable <u>Supplies:</u> Two capping/decapping tools (cluster tubes, PCR tubes) Pipettes - one multi-channel (8 channels; 5-50 µL); two adjustable (one 20-200 µL and one 5-50 µL); one repeating One PCR cooling block assembly Cluster tubes with caps and racks (for 96 tests) Extra PCR tube caps (for 96 tests) Holder tray for PCR tubes Footed holder tray for low profile tubes Tips for pipettes (for 96 tests) Two fuses Powder-free nitrile gloves (for 96 tests) User documentation package	Included with placement
EXTENDED SERVICE AGREEMENT			
	F8SERV	Service on the BAX® System Q7 cycler/detector, computer and monitor (includes unlimited 800# phone support). Includes licensed software upgrades. See <i>attached ESA Terms & Conditions</i> . ESA is applied to instrument # XXX Customer initial: _____	Included with placement

Note: Customer is required to retain all shipping materials, as the instrument must be shipped in its original packaging if returned. If packaging is lost or damaged, customer will be charged for the replacement of shipping materials if shipment of the instrument back to Qualicon Diagnostics LLC, a Hygiena company ("Qualicon") is needed.

For all returns: Customer must complete the Return Authorization and Decontamination form and include it when shipping instrument back to Qualicon.

QTY	PART #	DESCRIPTION	PRICE
STARTUP TRAINING			
		Lab set-up, equipment validation, procedural instruction	\$2,000.00
ADDITIONAL TRAINING			
		Technical Sales Manager Visit Includes travel within continental U.S. and Canada, training and materials. Must schedule at least 30 days in advance	\$2,000.00
ADDITIONAL EQUIPMENT			
	MCH2014 (D11676874) (120v)	Analog BAX® System analog heating block (one unit with 2 inserts)	\$800.00
	MIS2021 (D11648317)	Analog BAX® System heating block insert (one insert)	\$80.00
	MCH2023 (D14614252) (120v and 220v)	Automated Thermal Block (one unit, two metal tube holders and power supply)	\$4,000.00
	MIS2066 D14615330	Automated Thermal Block metal tube holder (one holder)	\$600.00
	MCH2011 (D12522123) (120v)	BAX® System Cell Disruptor for Yeast and Mold	\$495.00
	KIT2026 (D12778652)	Q7 CALIBRATION KIT	\$1550.00
REAGENT KITS			
This Placement Agreement is for collaborative research.			
Real-Time PCR Assays			PRICE
	KIT2006 (D14306040)	BAX® System Real-Time PCR Assay for <i>Salmonella</i> PCR tubes with tablets, extra PCR caps, lysis buffer, protease (96 tests)	\$960.00
	KIT2000 (D14203648)	BAX® System Real-Time PCR Assay for <i>E. coli</i> O157:H7 PCR tubes with tablets, extra PCR caps, lysis buffer, protease (96 tests)	\$960.00
	KIT2039	BAX® System Real-Time PCR Assay for <i>E. coli</i> O157:H7 Exact PCR tubes with tablets, extra PCR caps, lysis buffer, protease (96 tests)	\$960.00
	KIT2019 (D15131113)	BAX® System Real-Time PCR Assay for Genus <i>Listeria</i> PCR tubes with tablets, extra PCR caps, lysis buffer, protease (96 tests)	\$960.00
	KIT2005 (D15134303)	BAX® System Real-Time PCR Assay for <i>L. monocytogenes</i> PCR tubes with tablets, extra PCR caps, lysis buffer, protease (96 tests)	\$960.00
	KIT2021 (D14642964)	BAX® System Real-Time PCR Assay for <i>STEC Screening (stx and eae)</i> (96 tests)	\$864.00
	KIT2008 (D14642970)	BAX® System Real-Time PCR Assay for <i>STEC Panel 1 (E. coli O26, O111, O121)</i> PCR tubes with tablets, extra PCR caps, lysis buffer, protease (48 tests)	\$432.00
	KIT2009 (D14642987)	BAX® System Real-Time PCR Assay for <i>STEC Panel 2 (E. coli O45, O103, O145)</i> PCR tubes with tablets, extra PCR caps, lysis buffer, protease (48 tests)	\$432.00

MEDIA			
Bulk Powder			
	MED2003 (D12404925)	BAX® System MP Media (2.5 kg)	\$200.00
FREIGHT FOR BAX® SYSTEM START-UP PACKAGE			\$700.00
SHIPPING AND HANDLING FOR REAGENTS			<\$5M = 5% \$5M-10M = 3.5% >\$10M = 2%
TOTAL			\$0.00

† One 10-mL tube of 24 LEB buffer supplement is used for each sample tested. The buffer supplement is only required for certain matrices. See BAX® System User Guide or 24E assay package insert for details.

*ACTERO™ MediaBox™ products are not generally stocked, because of reduced shelf life versus dehydrated media. 4 week lead time for initial orders may be required.

*Prices are in U.S. dollars or as otherwise agreed. Quoted prices do not include taxes, excise or other charges that Qualicon may be required to pay to any government (national, state or local) upon the sale, production or transportation of the products sold. Customer shall reimburse Qualicon for any of these taxes, excises or charges.

Quotation is firm through the Acceptance Period. Thereafter, it may subject to change or withdrawn without notice, unless specifically guaranteed in writing. Qualicon has the right to change pricing at its discretion. This Quotation with the attached Terms and Conditions and

Limitation of Warranty and Liability constitute the complete Purchase Agreement between Customer and Qualicon when signed by them. Any additional or different terms in purchase order forms are material alterations and hereby rejected.

Period of Agreement: Minimum Period of Agreement is 24 months which begins on the date of the last signature. This agreement shall continue after the 24th month Minimum Period and ends upon receipt of written notice of termination by one party from the other after the 24 month Minimum Period expires.

Option to Purchase: Customer may elect to purchase the Equipment at any time during the Term of this Agreement for \$52,000.00 or as mutually agreed, plus all applicable taxes, pursuant to the terms and conditions of the standard Purchase Agreement.

Special Notes: This Placement Agreement is for collaborative research.

AGREED

Pathotrak, Inc.

☐ Tax-exempt # _____

Signature Date

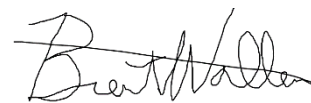
Name (print)

Position (print)

Purchase order # _____

Qualicon Diagnostics LLC

A Hygiene Company



September 9, 2022

Signature Date

Brent Wallen
Name (print)

National Sales Director
Position (print)

SHIPPING AND INVOICE INFORMATION

To ensure that we have the information required for shipping and invoicing, we ask that you complete the following information:

Sold to address: (office placing all purchase orders)	
Bill to address: (office that should receive invoices)	
Ship to address: (location to receive goods)	

TERMS AND CONDITIONS OF BAX® SYSTEM PLACEMENT

Field of use: Data obtained from the BAX® System should not be used for human diagnostic or human treatment purposes. Equipment is not approved by the United States Food and Drug Administration or any other U.S. or non-U.S. regulatory agency for use in human diagnostics or treatment. The BAX® System should not be used as the sole basis for assessing the safety of products for release to consumers. The information generated is only to be used in conjunction with the user's regular quality assurance program. Not approved for clinical diagnosis. Use for research and development, quality assurance and quality control under supervision of technically qualified persons. Read the Limitation of Warranty and Liability before using product.

1. **Equipment:** "Equipment," means equipment as listed in the Price Quotation under the heading "EQUIPMENT" on the first page of this Agreement. EQUIPMENT may be new or refurbished, and will remain at the Customer site for the duration of the Agreement period. Once installed, Customer agrees not to alter or modify the EQUIPMENT in any way or move the EQUIPMENT to any other location (either on or off the premises) without first obtaining the consent of Qualicon Diagnostics LLC, a Hygiena company ("Qualicon").
2. **Customer** is responsible for providing, at its own cost, preparations for EQUIPMENT, including but not limited to environmental, power and air supply requirements as described in the *Site Prep Checklist*. Qualicon is responsible only for installing the EQUIPMENT in the Customer's laboratory. Qualicon is not obligated to incorporate any design, engineering or performance change after delivery of EQUIPMENT to the Customer or to configure the EQUIPMENT in any way other than as provided in the *Site Prep Checklist*.
 Customer agrees that the BAX® System and EQUIPMENT will be operated only by its employees or other persons who are familiar with the BAX® System and EQUIPMENT operation and product labeling and literature, or who have completed training by Qualicon. Customer agrees not to alter or modify the BAX® System in any way or move the system to any other location (either on or off the premises) without authorization. If Customer wishes to move the BAX® System, Qualicon will arrange for relocation at Customer's expense.
 The EQUIPMENT will be physically identified as Qualicon property, and title to and ownership of the EQUIPMENT shall be and remain at all times exclusively with Qualicon. Customer agrees to keep the EQUIPMENT free from all liens and encumbrances or other adverse claims of title. If Qualicon requests, Customer agrees to execute Uniform Commercial Code financing statements to evidence the ownership interest of Qualicon in the EQUIPMENT and to execute and/or furnish to Qualicon any further instruments and assurances reasonably requested to protect the interest of Qualicon in the EQUIPMENT, including any landlord(s) and/or mortgagee(s) waiver of any interest in the EQUIPMENT.
 Customer agrees to be responsible for loss or damage to the EQUIPMENT and shall procure and maintain insurance for the full replacement cost of the EQUIPMENT against loss or damage due to fire, theft, casualty and other risks so long as the EQUIPMENT is in Customer's possession or under its control. Customer agrees to indemnify, defend and hold Qualicon harmless from and against any claim, loss, damage, cost or fees (including reasonable attorneys' fees and costs) with respect to loss of, or damage or title to, the EQUIPMENT.
 Customer agrees to be responsible for loss or damage to all shipping materials so long as EQUIPMENT is in Customer's custody under this Placement Agreement. Customer agrees to retain all shipping materials so long as EQUIPMENT is in Customer's custody under this Placement Agreement.
 Customer agrees to promptly notify Qualicon of any accidents, spills or theft associated with the EQUIPMENT and to give Qualicon authorized representatives reasonable access to the EQUIPMENT in the case of emergency, upgrade, repair or removal.
 Qualicon will replace any parts that have failed due to manufacturing defect. Replacement parts will be shipped to Customer as expeditiously as reasonably practicable. Customer agrees to return failed parts to Qualicon at the time of replacement but no later than thirty (30) days thereafter. Failure to return replaced parts shall result in Customer being liable for the list price of the replaced part(s). In all other circumstances Customer will be responsible and pay for all replacement parts, service and repairs with respect to the EQUIPMENT.
3. **Reagent Kits:** The BAX® System EQUIPMENT is designed to operate only with BAX® System PCR assays and reagent kits (each a "Reagent Kit", and collectively "Reagent Kits"). All product claims, performance parameters, warranties and licenses are only valid when the EQUIPMENT is operated with BAX® System Reagent Kits.
4. **Reagent Kit Minimum Purchase Requirements:** Customer shall purchase from Qualicon during each six (6) month period during the Term of this Agreement, commencing with the month of the Effective Date, not less than the quantity of Reagent Kits which equals the Annual Kit Volume Commitment set forth on the first page of the Price Quotation divided by two (2) (such quantity to be purchased each six (6) month period hereinafter referred to as the "Minimum Purchase Requirement") at the price set forth in the Price Quotation corresponding to the respective Reagent Kit listed in the Price Quotation. Customer may purchase additional Reagent Kits above the Minimum Purchase Requirement at the prices set forth in the Price Quotation corresponding to the respective Reagent Kit set forth in the Price Quotation. In the event Customer does not purchase a quantity of Reagent Kits from Qualicon in any six (6) month period during the Term of this Agreement equaling or exceeding the Minimum Purchase Requirement, Qualicon may, in its sole discretion and at its sole election:
 - (a) allow Customer to place a non-cancelable order for Reagent Kits in a quantity equal to the difference between the quantity of Reagent Kits purchased by the Customer in the respective six (6) month period and the Minimum Purchase Requirement (the "Reagent Kit Shortfall"), or in the discretion of Qualicon, ship the Reagent Kit Shortfall and invoice the Customer for the aggregate purchase price of the Reagent Kit Shortfall, plus shipping and handling; or

- (b) notwithstanding any other provision of this Agreement to the contrary, unilaterally amend this Agreement and increase the prices under the Price Quotation applicable to all future orders of Reagent Kits to reflect pricing based upon the quantities actually purchased by Customer.

The amount invoiced to the Customer by Qualicon for the Reagent Kit Shortfall, in the event the Minimum Purchase Requirement is not met by the Customer, shall not be deemed a penalty, but is an amount agreed upon between Qualicon and Customer to compensate Qualicon for providing the use of the EQUIPMENT, the BAX® System supplies, and the BAX® System training and instruction materials.

Customer shall have the responsibility of monitoring its purchases of Reagent Kits with respect to meeting the Minimum Purchase Requirement for each six (6) month period. Qualicon will provide to Customer from time to time trend/volume to date updates with respect to quantities of Reagent Kits purchased, either orally, by email or in writing.

5. **Returns:** BAX® System reagent kits and other temperature-sensitive products are neither refundable nor exchangeable. Return of EQUIPMENT for service requires the prior consent of Qualicon. Upon approval, Qualicon will issue a Return Authorization and Decontamination form, which must accompany all returns of EQUIPMENT.
6. **Payments:** Payment terms are net 30 days from date of invoice, pending credit approval, or as otherwise stated on the invoice. Checks should be made payable to Qualicon Diagnostics LLC and reference the invoice number. Remit payment to Qualicon at the address on the invoice, or contact Qualicon for instructions on wiring payment.
In the event Customer fails to fulfill the terms of payment, or in case Qualicon has any doubt at the time as to Customer's financial responsibility, Qualicon may decline to make further deliveries except upon pre-payment or a "cash on delivery" basis, or upon the furnishing of security satisfactory to Qualicon. Customer shall pay all costs of collection of unpaid invoices, including reasonable attorneys' fees and court costs.
7. **Shipping:** Shipments are made FOB, Wilmington prepay and add (U.S.), and FCA prepaid and add (outside U.S.). EQUIPMENT cannot be returned to Qualicon without prior permission from Qualicon, and then according to the manner prescribed by Qualicon.
These commodities, technology or software are exported from the U.S. in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.
8. **Termination of the Term of this Agreement:** Qualicon may terminate this Agreement at any time by written notice sent to Customer. Qualicon shall have all other rights and remedies provided at law, in equity and under this Agreement, and all of the rights and remedies of Qualicon shall be cumulative and none shall be considered the exclusive remedy of Qualicon. Upon the termination of the Term of this Agreement, Customer shall immediately return the EQUIPMENT to Qualicon in the same condition as originally delivered to Customer, normal wear and tear excepted, in the manner prescribed by Qualicon. Alternatively, at the option of Qualicon, Customer agrees to allow access to Qualicon representatives to remove EQUIPMENT. Customer agrees that Qualicon shall be entitled to specific performance as a remedy in a legal action based on Customer's failure to return the EQUIPMENT as required. The provisions of this Section 7, the Limitation of Warranty and Liability, and the other terms of this Agreement which by their nature require them to be fulfilled or performed, in whole or in part, after the termination of the Term of this Agreement, shall survive the termination of the Term of this Agreement where applicable.
9. **Option to Purchase:** As set forth in the Placement Agreement.
10. **Credits:** If BAX® System results are lost due to some fault of the BAX® System under warranty, Customer is entitled to a BAX® System reagent kit credit, the amount of which will be based on the nature and cause of the fault as determined solely by Qualicon.
11. **Software:** Qualicon grants to Customer/end user a non-exclusive, non-transferable right to use one (1) copy of the BAX® Software on one (1) BAX® System Q7 cyclen/detector or its associated cpu at the Customer's location for the purpose of microbial detection in the fields of food/water testing and industrial microbiology only and subject to the following conditions. This non-exclusive license does not include the right to upgrades, updates or other enhancements to the BAX® Software, except and unless provided by Qualicon. All title, trade secrets and copyrights in and to the BAX® Software and the accompanying printed materials are owned by Qualicon and are protected by copyright laws and international laws and treaties. This license confers no title or ownership in the BAX® Software, any associated source code or in any other intellectual property of Qualicon. Customer/end user agrees not to disassemble, decompile, decrypt, or reverse engineer the BAX® Software except, and only to the extent, where permitted by applicable law, which permission cannot be contractually waived. BAX® Software may not be exported in violation of U.S. export restrictions. BAX® Software is delivered and licensed as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June, 1995) or as or as a "commercial item" as defined in FAR 2.101(a), "Restricted Computer Software" as defined in FAR 52.227-19 (June 1987) (or any equivalent agency regulation or contract clause), as appropriate. Customer agrees that it has only those rights provided for such BAX® Software by the applicable FAR or DFARS clause or the BAX® Software related terms in this Agreement. Limitations of Warranties and Liability with respect to the BAX® Software shall continue in force even after any termination of the Term of this Agreement.
12. **Jurisdiction:** This Agreement shall be interpreted with and governed by the laws of the State of Delaware as applied to agreements entered into and to be fully performed within the State of Delaware and the courts of Delaware shall have personal jurisdiction and venue with respect to the parties to and actions or proceedings arising from, related to or in connection with this Agreement. This Agreement, the sale of Reagent Kits and the use and/or sale of the EQUIPMENT shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.
13. **Transfer:** This Agreement is not assignable or transferable by Customer, in whole or in part, except with the prior written consent of Qualicon. This Agreement is assignable and transferable by Qualicon.
14. **Not an insurer:** By selling BAX® System products or services, Qualicon or its representative do not become an insurer of Customer/User's business. Qualicon or its representatives do not and cannot know all of the potential consequences to Customer/User's business of a failure

of the BAX® System to perform as expected. That is why Qualicon does not agree to be responsible for Customer/User's incidental or consequential business losses in the event the BAX® System fails to perform as expected (please see the Limitation of Warranty and Liability which is a part of this Agreement). For additional protection against the risk of loss, Customer/User should consult an insurance broker and buy insurance suitable to the risks of its particular business.

15. **Final Writing and Amendments:** This Agreement (Price Quotation, Terms and Conditions and Limitation of Warranty and Liability) embodies the entire understanding of the parties regarding this Agreement and there are no agreements or understandings express or implied, which are not merged herein. Representations or warranties made by any person, including dealers and representatives of Qualicon, which are inconsistent or in conflict with the Price Quotation, Terms and Conditions or the Limitation of Warranty and Liability shall not be binding upon Qualicon unless reduced to writing, approved by Qualicon and signed by both parties.
16. **Force Majeure:** Qualicon shall not be liable to Customer for any delay in performing or failing to perform obligations, covenants or agreements under this Agreement if such failure or delay is caused by fire, explosions, accidents, the elements, weather disturbances, earthquake, flood, terrorism, public enemies, war, labor trouble or shortage, strike, inability to obtain suitable materials, equipment, fuel, power or transportation, act of God or other unforeseeable event or occurrence beyond the reasonable control of Qualicon.

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TERMS AND CONDITIONS OF EXTENDED SERVICE

Field of use: Data obtained from the BAX® System should not be used for human diagnostic or human treatment purposes. Equipment is not approved by the United States Food and Drug Administration or any other U.S. or non-U.S. regulatory agency for use in human diagnostics or treatment. The BAX® System should not be used as the sole basis for assessing the safety of products for release to consumers. The information generated is only to be used in conjunction with the user's regular quality assurance program. Not approved for clinical diagnosis. Use for research and development, quality assurance and quality control under supervision of technically qualified persons.

1. **Term.** This Extended Service Agreement (ESA) is valid for the dates specified in the Coverage Period on the first page of this Agreement. Extended Service Agreements are renewable. If this Agreement expires without renewal, it cannot be renewed unless an authorized Qualicon representative inspects the BAX® System equipment at Customer's expense and determines that the equipment is eligible for ESA coverage.
2. **Payment.** Payment terms are net 30 days from date of invoice, pending credit approval, or as otherwise stated on the invoice. Checks should be made payable to Qualicon Diagnostics LLC, a Hygiene company ("Qualicon") and reference the invoice number. Remit payment to "Qualicon Diagnostics LLC" at the address on the invoice, or contact Qualicon for instructions on wiring payment.
In the event Customer fails to fulfill the terms of payment, or in case Qualicon has any doubt at the time as to Customer's financial responsibility, Qualicon may terminate this agreement for cause.
3. **Shipping.** Shipments are made FOB Wilmington (U.S.), and FCA prepay and add (outside U.S.). Equipment cannot be returned to Qualicon without prior permission from Qualicon, and then according to the manner prescribed by Qualicon.
These commodities, technology or software are exported from the U.S. in accordance with Qualicon and the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.
4. **What the ESA Covers:** Service to the cyclen/detector, computer and computer monitor installed or replaced while under the initial BAX® System end user warranty.
 - a. Customer agrees that the system will be operated only by its employees or other persons who are familiar with the system operation and product labeling and literature, or who have completed training by Qualicon.
 - b. Technical support will be provided by telephone or e-mail. Representatives are available by telephone during normal business hours (EST) to assist with questions or problems regarding system operation, specifications, reagents, sample preparation and upgrades. Customer may be required to perform minimal troubleshooting tasks to resolve problems.
 - c. If BAX® System results are lost due to some fault of the covered equipment, Customer is entitled to a BAX® System reagent kit credit, the amount of which will be based on the nature and cause of the fault as determined solely by Qualicon.
 - d. If Qualicon decides that replacement of covered original or replacement component is required, Qualicon will ship a new or a refurbished (repaired or rebuilt) functionally equivalent component for Customer's installation. Each replacement component will be warranted to be free of defects in materials and workmanship under normal use from the date you receive it for the duration of this ESA term or 30 days, whichever comes last.
 - e. Equipment cannot be returned to Qualicon without prior permission from Qualicon, and then according to the manner prescribed by Qualicon.
 - Qualicon will ship replacement component(s) from the nearest depot within three (3) business days, unless Customer orders and pays for special handling.
 - Customer must unpack and reinstall the replacement component(s), including any network connections. Qualicon telephone support is available for assistance.
 - Customer must repack and return replaced component(s) to Qualicon within 30 days of Qualicon authorization. Failure to do so will result in a charge to Customer for the price of the component(s). Qualicon will pay the cost of freight for authorized shipments.
 - Customer must decontaminate replaced component(s) prior to returning them to Qualicon.
 - Customer is responsible for backing up data prior to returning any component(s).
 - f. THIS REMEDY IS YOUR SOLE AND EXCLUSIVE REMEDY. Each replacement component will be warranted to be free of defects in materials and workmanship under normal use from the date Customer receive it for the term of this Agreement or 30 days, whichever is longer. QUALICON MAKES NO OTHER WARRANTY. QUALICON SPECIFICALLY EXCLUDES AND NEGATES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, WHETHER IN LAW OR FACT, AND INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **What the ESA Does Not Cover:**
 - a. The printer and any other equipment not specified above.
 - b. Externally caused failures, such as improper sample preparation, improper storage or loading of disposables, electrical outages, or out-of-specification environmental conditions, are not covered. Circumstances beyond the reasonable control of Qualicon, including acts of God, acts of terrorism, intervention of government, labor or material shortages, or acts of war are not covered.
 - c. Equipment failures caused by spills, abuse, misuse, negligence, improper operation, failure to provide specified environmental and/or electrical requirements, modifications, or service by parties other than a Qualicon authorized service provider.

6. **Reagent kits:** The BAX® System with automated detection is designed to operate only with BAX® System reagent kits. All product claims, performance parameters, warranties and licenses are only valid when the BAX® System is operated with BAX® System reagent kits. Reagent kits are neither refundable nor exchangeable.
7. **Software:** In return for your use of the BAX® Software, Qualicon grants to Customer/end user a non-exclusive, non-transferable right to use one (1) copy of the BAX® Software on one (1) BAX® System or its associated CPU at the end user's location for the purpose of microbial detection in the fields of food/water testing and industrial microbiology only and subject to the following conditions. This license does not include the right to upgrades, updates or other enhancements to the BAX® Software, except and unless provided by Qualicon. All title and copyrights in and to the BAX® Software and the accompanying printed materials are owned by Qualicon and are protected by copyright laws and international laws and treaties. This License confers no title or ownership in the BAX® Software, any associated source code or in any other intellectual property of Qualicon. Customer/user agrees not to disassemble, decompile, decrypt, or reverse engineer the BAX® Software except, and only to the extent, where permitted by applicable law, which permission cannot be contractually waived. BAX® Software may not be exported in violation of U.S. export restrictions BAX® Software is delivered and licensed as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June, 1995) or as or as a "commercial item" as defined in FAR 2.101(a), "Restricted Computer Software" as defined in FAR 52.227-19 (June 1987) (or any equivalent agency regulation or contract clause), as appropriate. User agrees that it has only those rights provided for such Software by the applicable FAR or DFARS clause or the BAX® Software terms in this Agreement. Limitations of Warranties and Liability shall continue in force even after any termination.
8. **Jurisdiction:** This Agreement shall be interpreted and governed by the laws of the state of Delaware USA and the courts of Delaware shall have exclusive jurisdiction. This Agreement shall not be governed by the U.N. convention on Contracts for the International Sale of Goods.
9. **Transfer:** This Agreement is not assignable or transferable by Customer, in whole or in part, except with the written consent of Qualicon.
10. **Termination:** Notwithstanding anything contained herein to the contrary, Qualicon may, without prejudice to any of its other rights and remedies, terminate this Agreement by giving a written notice to Customer with immediate effect, if there is a change of control of Customer or the BAX® System.
11. **Disclaimer:** Because of the large number of factors over which Qualicon has no control, Qualicon makes no promise or guarantee of the accuracy of or results obtained from the use of the BAX® System. In particular Qualicon disclaims any warranty or liability and assumes no responsibility whatever for the failure of the BAX® System due, in whole or in part, to user's failure to: (a) properly maintain equipment, (b) maintain specified operating or storage conditions, (c) follow the specified instructions, or (d) use the proper microbiological techniques consistent with the standard of care accepted in the industry for the proper collection, storage, handling and preparation of the sample.
12. **Limitation.** CUSTOMER/USER ASSUMES ALL RISKS IN USING THE BAX® SYSTEM AND QUALICON OR ITS REPRESENTATIVES SHALL HAVE NO LIABILITY TO CUSTOMER/USER OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFIT, LOST OR DAMAGED DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS EVEN IF CAUSED BY THE NEGLIGENCE OF QUALICON OR ITS REPRESENTATIVES AND/OR IF QUALICON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND/OR IF THEY ARE FORESEEABLE. NO CLAIM OF ANY KIND, AND WHETHER OR NOT BASED ON NEGLIGENCE, SHALL BE GREATER IN AGGREGATE AMOUNT THAN THE AMOUNTS PAID BY CUSTOMER/USER TO QUALICON UNDER THE ESA. CUSTOMER/USER SHALL NOTIFY QUALICON OF ANY CLAIM WITHIN THIRTY (30) DAYS THEREOF AND SHALL COMMENCE ANY ACTION AGAINST QUALICON AND ITS REPRESENTATIVE WITHIN ONE (1) YEAR OF THE CAUSE OF ACTION OR OTHERWISE BE BARRED FROM ANY REMEDY. QUALICON SHALL NOT BE RESPONSIBLE FOR COST, LOSS OR LIABILITY THAT ARISE FROM CUSTOMER/USER'S OPERATION OF ITS BUSINESS, AND CUSTOMER/USER AGREES TO INDEMNIFY, DEFEND AND HOLD QUALICON AND ITS REPRESENTATIVES HARMLESS FROM SUCH COST, LOSS OR LIABILITY. THE MAXIMUM AGGREGATE LIABILITY OF QUALICON AND ITS REPRESENTATIVES TO CUSTOMER/USER SHALL NOT EXCEED THE AMOUNT(S) PAID BY CUSTOMER/USER TO QUALICON UNDER THIS AGREEMENT.
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