

# GlaxoSmithKline Consumer Healthcare Australia Pty Ltd

(ABN: 68 603 310 292)

## TERMS AND CONDITIONS OF SALE

(Effective as at 7<sup>th</sup> September 2015)

### 1. DEFINITIONS

In these terms and conditions:

- (1) Adverse Event: Any untoward medical occurrence in a patient or clinical investigation subject or consumer, temporally associated with the use of a Supplier's product, whether or not considered related to the product.
- (2) Customer means the entity or its Representative acquiring the goods or services upon these terms and conditions;
- (3) GST means any tax including any additional tax imposed on the supply of or payment for goods or services imposed or assessed under any GST Law;
- (4) GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth), and all related and auxiliary legislation;
- (5) Human Safety Information means any information relating to:
  - (a) the death, serious injury or illness of a person that may have been caused by the use or misuse of a Supplier's product (a serious injury or illness includes any acute physical injury or illness requiring medical or surgical treatment by, or under the supervision of, a doctor or nurse); or
  - (b) human health and/or wellbeing arising following exposure of humans to a Supplier's product. Examples include, but are not limited to, Adverse Event information, reports of patients taking a Supplier's product whilst pregnant, reports of drug abuse or overdose, reports of drug interaction, information received as part of product complaints, as well as information regarding unexpected therapeutic benefits (i.e. an unexpected improvement in a concurrent condition other than the one being treated);
- (6) Representative of a party means that party's director, officer, employee or agent;
- (7) Sponsor has the meaning given in the Therapeutic Goods Act 1989 (Cth)
- (8) Supplier means GlaxoSmithKline Consumer Healthcare Australia Pty Ltd ABN 68 603 310 292 and any related body corporate of GlaxoSmithKline Consumer Healthcare Australia Pty Ltd within the meaning of section 50 of the Corporations Act 2001 (Cth); and
- (9) Tax Invoice has the meaning given to it in the GST Law.

### 2. BINDING TERMS AND CONDITIONS

The only terms and conditions which are binding upon Supplier in relation to the supply of goods and services to Customer are those set out in these terms and conditions, or as otherwise agreed to in writing by Supplier in which case those terms and conditions will prevail over these terms and conditions, and those terms, if any, which are imposed by law and which cannot be excluded.

### 3. ORDERS

- 3.1 Minimum Order Quantities  
Orders will not be accepted for quantities of less than 1 case (24 Units). Export orders are supplied in accordance with FCA Incoterms.
- 3.2 Supplier's Right to Accept or Reject any Orders  
Notwithstanding clauses 3.1 and 3.2, Supplier reserves the right to accept or reject any orders which may be received by it in its absolute discretion.

### 4. PRICE

#### 4.1 Price of Goods or Services Supplied

If Supplier accepts an order from the Customer, it will supply the goods or services ordered at prices current on the date of delivery at customer's premise, or otherwise at the price agreed in writing between Supplier and Customer.

#### 4.2 Price Change

The prices shown in the price list of Supplier (if any) are subject to alteration without notice.

4.3 GST  
Unless otherwise stated in writing, all prices quoted are exclusive of GST, which must be added to the price and be paid by Customer as part of the price.

4.4 Freight  
Any freight charges incurred under or referred to in these terms and conditions will be subject to GST and must be paid by Customer unless otherwise agreed in writing by Supplier.

## 5. CREDIT CLAIMS

### 5.1 Stock generally

- (1) Supplier will investigate and honour any claims for goods not supplied in saleable condition, provided notification in writing is given by the Customer to the supplier within 48 hours of the delivery of the goods. Goods accepted by customer as "subject to check" are not qualified as acceptable notice to supplier.
- (2) Goods other than those covered in clause 5.1(1), or goods ordered by Customer surplus to requirements, are not returnable to Supplier and no credit will be given for any such purported return.
- (3) If Customer fails to give notice to Supplier in accordance with this clause 5.1(1), then to the extent permitted by law, the goods or services are deemed to have been accepted "as is" by Customer, and Customer must pay for the goods or services in accordance with these terms and conditions. In this case, Customer will be taken to have waived any claim Customer may have had against Supplier.
- (4) Supplier will not accept returned goods unless the authorised "Returns Number" is clearly marked on the goods being returned. Supplier's Customer Service Department will advise the "Returns Number" upon notification by Customer pursuant to clause 5.1(1).
- (5) Supplier will not accept freight forward charges when the goods have been consigned by any transport company other than a carrier which has been authorised by Supplier.
- (6) Accepted claims may be deducted from payments due to Supplier within 60 days of the date of the invoice to which the credit relates. Supplier will not accept claims outside this period.

### 5.2 Promotional

A Tax Invoice for reimbursement of promotional claims, which have been approved in advance in writing by Supplier with full supporting documentation, must be received by Supplier within 30 days of the commencement of the promotion which is being claimed. Tax Invoices received outside this period will not be accepted nor reimbursed.

A Tax Invoice for authorised promotions may be deducted from payments to Supplier within 60 days of the commencement of the promotion period providing Supplier has received the Tax Invoice with supporting documentation referred to in clause 5.3(1) from Customer within the 30 day period and has accepted the same. Tax Invoices outside this period will not be accepted.

## 6. PAYMENT

### 6.1 Payment Terms

Payment for goods or services supplied by Supplier to Customer must be tendered in accordance with the requirements set out in the invoice rendered by Supplier to Customer, or if no requirements are set out in the invoice, payment must be received by Supplier in cleared funds within 30 days of the date of the invoice. A failure to comply with these payment terms is deemed a material breach of this agreement by Customer.

### 6.2 Extended Terms

Supplier may at its discretion demand immediate settlement of credit accounts, should the balance of the account exceed Customer's normal trading terms.

### 6.3 Collection Costs

Customer will be liable for all costs (including legal costs), charges, commissions, fees and disbursements incurred by Supplier in recover of any unpaid account, including charges for any dishonoured cheques received.

6.4 Interest for Late Payment

Supplier may in its absolute discretion charge Customer interest on any account unpaid on the due date in accordance with the rate set by section 2 of the Penalty Interest Rate Act 1983 (Vic) from time to time from the due date until the account is paid in full by Customer.

6.5 Withdrawal of Account Facilities

Supplier is at liberty to withdraw account facilities offered to Customer at any time without prejudice to any other right Supplier may have and without being liable for the consequences. If Supplier so acts then Customer must immediately pay the account balance in full in cleared funds.

**7. RETENTION OF TITLE AND RISK**

7.1 When Property Passes

Title in the goods supplied by Supplier to Customer does not pass to Customer until Customer has paid all sums owing to Supplier on any account whatsoever. Where Customer does not make payment in respect of specific goods, payment must be treated as having been made first in respect of goods which have passed out of the possession of Customer, and then in respect of whatever goods, still in the possession of Customer, Supplier elects.

7.2 Risk in Goods

Risk in goods supplied by Supplier to Customer passes to Customer upon the sooner of delivery of goods at Customer's premises, or to Customer's control.

7.3 Customer's Authority until Paid for Until Customer has paid all sums owing to Supplier on any account whatsoever:

- (1) Customer must store the goods in such a manner as to show clearly that they are the property of Supplier; and
- (2) Customer may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for Supplier.

7.4 Supplier's Authority to Inspect and Reclaim

Customer grants an irrevocable licence to Supplier and its Representatives to at any time enter any premises upon which Supplier's goods are stored to enable Supplier to inspect the goods and reclaim the goods where Customer is in breach of these terms and conditions.

**8. STORAGE AND WAREHOUSING**

8.1 General

All goods must be stored and all warehousing arrangements must be in accordance with:

- (1) the specific requirements of the products as described on the label; and
- (2) industry practices including the Australian Code of Good Wholesaling Practice for Medicines as published by the TGA.

8.2 Cold chain products

For temperature sensitive goods, each consignment must be processed and stored in accordance with the specification for those goods by Customer within one hour of receipt of such goods. Failure to comply with this clause renders Customer solely liable for any defect in the goods.

**9. REPORTING**

9.1 Reporting

- (1) The Customer must notify the Supplier by telephone on 1800 028 533 (immediately confirmed in writing) immediately after it becomes aware of any information (whether credible or otherwise) which may give rise to a recall of the goods.
- (2) Without limiting clause (1), the Customer must notify the Supplier as soon as is practicable after it becomes aware of any adverse publicity or threatened or pending legal proceedings with respect to the goods or of any other information that might adversely impact upon the goodwill associated with the Supplier or the goods.

- (3) The Customer will report Human Safety Information for Consumer Health Products or suspected counterfeit Consumer Health Products to GlaxoSmithKline Consumer Healthcare Australia Pty Ltd on 1800 028 533 within 24 hours of initial awareness.
- (4) The Customer will report Technical or Quality complaints relating to Consumer Health Products to the Supplier on 1800 028 533 within 24 hours of initial awareness. Complaints samples if available must be securely retained and provided to the Supplier upon request.

## **10. PRODUCT RECALL**

### **10.1 Supplier to manage Product recall**

- (1) Any decision relating to a recall of the goods (including any decision relating to the initiation or implementation of or strategy relating to a recall of the goods) will be made at the discretion of the Supplier or, where the Supplier is not the Sponsor, the Sponsor unless otherwise directed by a relevant regulatory authority.
- (2) The Customer must not initiate, implement or take any action in relation to a recall of the goods without the prior consent of the Supplier or, where the Supplier is not the Sponsor, the Sponsor.

### **10.2 The Customer's obligations**

- (1) The Customer must maintain procedures relating to a withdrawal of the goods, recall and tampering and records necessary to support a recall of the goods, and allow the Supplier to inspect such procedures and records at any time on reasonable notice.
- (2) The Customer must provide any services, resources or facilities to the Supplier as may be reasonably required in respect of a recall of the goods.
- (3) The Supplier agrees to refund or provide credit to the Customer for any units of the goods that are recalled under this clause unless the conduct of the Customer or its employees, contractors or other persons it has engaged has given rise to the recall of the goods.

### **10.3 Reimbursement of recall costs**

- (1) The reasonable costs incurred by the Customer, including the Customer's management costs, in connection with the recall of any goods will be borne by the Supplier, except where the conduct of the Customer or its employees, contractors or other persons it has engaged has given rise to the recall of the goods (in which case the reasonable costs incurred by the Supplier in connection with the recall of the goods will be borne by the Customer).
- (2) To the extent that a party pays costs in connection with the recall of any goods for which the other is responsible under clause 9.3(1), the other party must, after receiving a written request together with sufficient evidence to substantiate the request for reimbursement from the first party, with seven days.

## **11. CONTRACTS WITH YOUR CUSTOMERS**

Customer agrees that it will include the above clauses 8, 9, and 10 in any contract for the sale of the goods that it enters into with any purchaser who is not the end consumer of the goods.

## **12. INSURANCE**

Customer must insure the goods at its cost from the time of delivery of the goods to Customer or into Customer's custody (whichever is the sooner) until they are paid for in full, against such risks as it thinks appropriate and must note the interest of Supplier on the policy of insurance and produce a certificate to this effect to Supplier on request.

## **13. ANTI BRIBERY AND CORRUPTION**

- (1) The Customer acknowledges receipt of the Anti Bribery and Corruption (ABAC) „Prevention of Corruption – Third Party Guidelines. (as set out at the bottom of this document) and agrees to perform its obligations under this Agreement in accordance with the principles set out therein.
- (2) The Customer shall comply fully at all time with all applicable laws and regulations, including but not limited to applicable anti-corruption laws, of Australia in which it conducts business with the GSK.

- (3) GSK shall be entitled to terminate this Agreement immediately on written notice to the Customer, if it fails to perform its obligations in accordance with this Agreement. The Customer shall have no claim against GSK for compensation for any loss of whatever nature by virtue of the termination of this Agreement in accordance with this clause. To the extent (and only to the extent) that the laws of Australia provide for any such compensation to be paid to the Customer upon the termination of this Agreement, the Customer hereby expressly agrees to waive (to the extent possible under the laws of Australia) or to repay to GSK any such compensation.

## **14. GENERAL**

### **14.1 Conditions and Guarantees Required to be Binding**

The only conditions and guarantees which are binding on Supplier in respect of:

- (1) the state, quality or condition of the goods supplied by it to Customer; and/or
- (2) advice, recommendation(s), information or services supplied by it or its Representative to Customer associated with the goods, their use and application; are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010 (Cth)).

### **14.2 Limitation on Liability**

To the extent permitted by law, the liability, if any, of Supplier arising from a breach of or otherwise under this agreement, is at Supplier's option, limited to and completely discharged:

- (1) in the case of the goods, by either;
  - (a) the supply by Supplier of equivalent goods;
  - (b) the replacement by Supplier of the goods supplied to Customer; or
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
- (2) in the case of advice, recommendation(s), information or services, by either;
  - (a) supplying the advice, recommendation(s) information or services again; or
  - (b) the payment of the cost of having the advice, recommendation(s) information or services supplied again.

### **14.3 Exclusion of Other Conditions and Warranties**

Except as provided in clause 13.1, all conditions and warranties imposed or implied by law in respect of the state, quality or condition of the goods and services which may apart from this clause be binding on Supplier are excluded.

### **14.4 Exclusion of Consequential Loss**

Except to the extent provided in these terms and conditions, Supplier has no liability (including liability in negligence) to any person for any loss or damage, consequential or otherwise, suffered or incurred by that person in relation to the goods and/or advice, recommendation(s), information or services.

### **14.5 Indemnity**

Customer indemnifies Supplier against all losses and liabilities, whether direct or indirect, incurred by Supplier including all legal costs and other expenses in relation to or arising in connection with the supply of goods or services by Supplier to Customer which are caused by or arise as a result of any act or omission by Customer or Customer's Representative.

### **14.6 Change of Ownership**

Customer indemnifies Supplier against any losses incurred due to change of ownership, partnership or change of address of Customer, unless written advice of such change is received by Supplier prior to the delivery of goods being made. In the event of any change in ownership of Customer, any outstanding monies on account of Customer will become immediately due and payable to Supplier.

### **14.7 Director's Guarantee and Indemnity**

If Customer is a Proprietary Limited Company, Supplier reserves the right to require a guarantee and indemnity (in a form and for an amount satisfactory to Supplier) from the directors of that Customer, such guarantee and indemnity to be current for the term of this agreement.

### **14.8 No Export**

Customer must not export, sell or supply goods outside Australia or supply any of the goods it knows or could reasonably expect will be exported from Australia without the prior written consent of Supplier.

14.9 Credit Report

Supplier may disclose any information contained in Customer's credit application to a credit reporting agency and to obtain a credit report containing personal credit information about Customer (or any partner or director of Customer) in accordance with the provisions of the Privacy Act 1988 (Cth) (as amended).

14.10 Insolvency of Customer

A material breach of these terms and conditions is deemed to occur if Customer becomes bankrupt or insolvent within the meaning of the Corporations Act 2001 (Cth), or enters any form of administration or receivership.

14.11 Warranty

Customer (or any partner or director thereof) warrants that if, he or she is authorised to enter into this agreement and purchase the goods from Supplier, and that he or she has never gone into liquidation or administration, or had a controller (as defined in section 9 of the Corporations Act 2001 (Cth)) or administrator appointed under the Corporations Act 2001 (Cth), or been registered under the Bankruptcy Act 1966 (Cth), or been a director of a company which has gone into liquidation, or has a controller (as defined in section 9 of the Corporations Act 2001 (Cth)) or administrator appointed.

14.12 Variation

Supplier may vary these terms and conditions of supply at any time by written notice to Customer. Customer's continued purchase of goods and/or services after such notification will evidence your consent to the new terms and conditions of supply.

14.13 Compliance with all laws

Customer must comply with all laws, regulations and compliance codes of the jurisdictions in which it operates.

14.14 Governing Law and Jurisdiction

This agreement is governed by the laws of Victoria, Australia.

## Anti Bribery and Corruption (ABAC) PREVENTION OF CORRUPTION – THIRD PARTY GUIDELINES

The GSK Corporate Policy 007 on Preventing Corrupt Practice and Maintaining Standards of Documentation (“GSK Policy 007”) requires compliance with the highest ethical standards and all anti-corruption laws applicable in the countries in which GSK (whether through a third party or otherwise) conducts business. GSK Policy 007 requires all GSK employees and any third party acting for or on behalf of GSK to ensure that all dealings with third parties, both in the private and government sectors, are carried out in compliance with all relevant laws and regulations and with the standards of integrity required for all GSK business. GSK values integrity and transparency and has zero tolerance for corrupt activities of any kind, whether committed by GSK employees, officers, or third-parties acting for or on behalf of the GSK.

**Corrupt Payments** – GSK employees and any third party acting for or on behalf of GSK, shall not, directly or indirectly, promise, authorise, ratify or offer to make or make any “payments” of “anything of value” (as defined in the glossary section) to any individual (or at the request of any individual) including a “government official” (as defined in the glossary section) for the improper purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist the company in obtaining or retaining business.

**Government Officials** – Although GSK’s policy prohibits payments by GSK or third parties acting for or on its behalf to any individual, private or public, as a “quid pro quo” for business, due to the existence of specific anticorruption laws in the countries where we operate, this policy is particularly applicable to “payments” of “anything of value” (as defined in the glossary section), or at the request of, “government officials” (as defined in the glossary section).

**Facilitating Payments** – For the avoidance of doubt, facilitating payments (otherwise known as “greasing payments” and defined as payments to an individual to secure or expedite the performance of a routine government action by government officials) are no exception to the general rule and therefore prohibited.

### GLOSSARY

The terms defined herein should be construed broadly to give effect to the letter and spirit of the GSK Policy 007. GSK is committed to the highest ethical standards of business dealings and any acts that create the appearance of promising, offering, giving or authorising payments prohibited by this policy will not be tolerated.

**Anything of Value:** this term includes cash or cash equivalents, gifts, services, employment offers, loans, travel expenses, entertainment, political contributions, charitable donations, subsidies, per diem payments, sponsorships, honoraria or provision of any other asset, even if nominal in value.

**Payments:** this term refers to and includes any direct or indirect offers to pay, promises to pay, authorisations of or payments of anything of value.

**Government Official shall mean:**

- Any officer or employee of a government or any department, agency or instrument of a government;
- Any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government;
- Any officer or employee of a company or business owned in whole or part by a government;
- Any officer or employee of a public international organization such as the World Bank or United Nations;
- Any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or
- Any candidate for political office

In many countries in which GSK conducts business, doctors and other healthcare providers may qualify as government officials because they are either (i) employed by a government-owned or funded hospital, clinic, university or other entity and/or (ii) receive funding, professional service fees or other remuneration from a government-owned or funded hospital, clinic, university or other entity.