

TERMS AND CONDITIONS OF SUPPLY

The following are GlaxoSmithKline Australia Pty Limited's ABN 47 100 162 481 (**Supplier**) terms and conditions of supply of Products to the Customer (**Agreement**). This Agreement applies to all deliveries/distribution of Products by the Supplier, or on behalf of the Supplier, to the Customer. :

1. DEFINITIONS

In these terms and conditions:

- (1) **Agreement** means these terms and conditions of supply;
- (2) **Consequential Loss** includes loss of revenue or profits, loss of opportunity, lost savings, expenses, delay or lost time, loss or damage to goodwill, operating costs, special or punitive damages, losses or expenses in connection with assessment, replacement, investigation and any other special indirect or consequential loss or damage.
- (3) **Customer** means the entity or its Representative acquiring the goods or services under this Agreement;
- (4) **GSK Product** means an investigational or licensed medicinal product, consumer healthcare product, vaccine, biological product or device whether under development by, or manufactured, marketed, supplied or distributed by or on behalf of, any division or operating company of the Supplier or the GSK group of companies, whether in Australia, New Zealand or in any other country. A list of GSK Products is available on the GSK website;
- (5) **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;
- (6) **GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth), and all related and auxiliary legislation;
- (7) **Human Safety Information** means any information relating to human health and/or wellbeing following exposure to GSK products, including Adverse Event information. Adverse Event (AE) means any untoward medical occurrence in a patient, clinical investigation subject or consumer, and is temporally associated with the use of a GSK Product, whether or not considered related to the product. Human Safety Information and related Adverse Events ("HSI/AE") can include: any unintended sign (including an abnormal laboratory finding), symptom, or disease (new or exacerbated); failure to produce expected benefits (i.e. lack of efficacy); reports of off-label use; reports of medication errors or misuse, including drug overdose, whether accidental or intentional; reports of drug abuse or effects of drug withdrawal; reports of occupational exposure; reports of patients taking GSK Products while pregnant or breastfeeding; reports of paternal exposure to a GSK Product before and during pregnancy; transmission of an infectious agent via a medicinal product; safety information received as part of a product quality complaint; reports of drug interaction; unexpected therapeutic benefits – an unexpected improvement in a concurrent condition other than the one being treated;
- (8) **PBS** means Pharmaceutical Benefits Scheme.
- (9) **PPSA** means the Personal Property Securities Act 2009 (Cth). If a term used in this Agreement has a particular meaning in the PPSA, it has the same meaning in this Agreement;
- (10) **Price** means GSK's price for the Products for Customers as set out in the price list supplied to the Customer by the Supplier;
- (11) **Representative** of a party means that party's director, officer, employee or agent;
- (12) **Sale or Return** means an arrangement by which the Customer receives a quantity of goods into stores, with the right of returning surplus goods for credit.

- (13) **Small Business Customer** means a Customer who satisfies either or both of the following conditions:
- (a) the Customer employs fewer than 100 persons;
 - (b) the Customer's Turnover for the Customer's last income year (within the meaning of the *Income Tax Assessment Act 1997* (Cth)) that ended at or before the time when these Terms were entered into, is less than \$10,000,000.
- (14) **Sponsor** has the meaning given in the Therapeutic Goods Act 1989 (Cth)
- (15) **Supplier** means GlaxoSmithKline Australia Pty Ltd ABN 47 100 162 481 and any related body corporate of GlaxoSmithKline Australia Pty Ltd within the meaning of section 50 of the Corporations Act 2001 (Cth);
- (16) **Tax Invoice** has the meaning given to it in the GST Law; and
- (17) **TGA** means the Therapeutic Goods Act 1989 (Cth), and all related and auxiliary legislation.
- (18) **Turnover** means the sum of the values of all supplies the Customer made during its last income year, excluding:
- (a) supplies that are input taxed;
 - (b) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the GST Law);
 - (c) supplies that are not made in connection with an enterprise that the Customer carries on;
 - (d) supplies that are not connected with the indirect tax zone.

2. BINDING TERMS AND CONDITIONS

- (1) Subject to subclause 2(4), this Agreement constitutes the whole agreement between the parties.
- (2) No terms or conditions of Customer, including any terms or conditions printed on or referred to in Customer's offer to purchase or order will form part of this Agreement.
- (3) The Supplier may update or vary these terms in accordance with clause 19.9.
- (4) If there is any conflict between this Agreement and any amendment or variation expressly agreed to in writing by the parties, the terms of the amendments or variations will prevail.
- (5) For the avoidance of doubt, this clause does not exclude any terms imposed by law which cannot be excluded.

3. ORDERS AND DELIVERY

3.1. Pharmaceutical

- (1) The Supplier may in its absolute discretion determine from time to time a "Specified Order Value", being the minimum order value for each order of GSK Products to be supplied to Customer. Pharmaceutical orders with a value of less than A\$500.00 will incur a service charge at Supplier's discretion.
- (2) Two free into store/agreed deliver point(s) orders per month will be supplied providing each order has an invoice value of not less than A\$500.00. Further orders may incur freight charges at Supplier's discretion.
- (3) Where Customer requires Supplier to freight the goods to Customer urgently, or in a manner which is not usually used by Supplier, Supplier reserves the right to charge Customer for any additional freight expenses incurred.

3.2. Supplier's Right to Accept or Reject any Orders

- (1) Notwithstanding clause 3.1, Supplier reserves the right to accept or reject any orders placed by the Customer, in whole or in part, which may be received by it in its absolute discretion.
- (2) To the extent that an order is not automatically accepted by GSK, the Customer may cancel any orders placed by the Customer prior to acceptance or rejection by the Supplier. Once accepted by the Supplier, an order may not be cancelled by the Customer except with the express consent of the Supplier.

3.3. Delivery

- (1) Supplier will determine the days and times for the delivery of the goods, and Customer agrees to accept delivery of the GSK Products at any time during business hours on a business day. Supplier may deliver the goods to Customer by instalments in any quantities and each delivery will be by separate contract independent from the other deliveries.
- (2) Subject to clause 5.1, 18.1 and to the extent permitted by law:
 - (a) Supplier is not liable to the Customer for any loss or damage whatsoever (including any Consequential Loss) caused directly or indirectly, including by a third-party contractor of Supplier, for any delay or failure in delivery otherwise than through the fault of Supplier; and
 - (b) Any delay in delivery shall not relieve the Customer of its obligation to accept that delivery and remaining delivery.

4. PRICE

4.1. Price of Goods or Services Supplied

If Supplier accepts an order from Customer, it will supply the goods or services ordered at Prices current on the date the order was placed. No credit will be granted to the Customer for stock on hand in the event of a Price reduction.

4.2. Price Change

- (1) Prices are subject to alteration by Supplier in accordance with this clause.
- (2) Supplier will use best endeavours to notify Customer of any change in PBS Prices as soon as practicable in advance of Price coming into effect.
- (3) Where an increase in Price is not required under the PBS, Supplier will provide Customer with 30 days' notice of the increase in Price. If no notice is provided to Customer by Supplier or the Customer does not agree to the increase, Customer is permitted to terminate this Agreement by providing 30 days' written notice to Supplier. Immediately upon termination, all outstanding amounts owing under this Agreement become due and payable.

4.3. GST and other charges

Unless otherwise stated in writing, all prices quoted are exclusive of GST and any other taxes or governmental charges, which must be added to the price and be paid by Customer.

4.4. Freight

Any freight charges incurred under or referred to in this Agreement 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) Customer must inspect the goods provided and the services rendered by Supplier immediately upon delivery or provision of such goods or services (as applicable), and must within 48 hours of the delivery of goods or provision give written notice to Supplier, with full particulars, of any claim that the goods or services are defective in any way. Supplier will replace short delivered or damaged stock provided notification is given to the Supplier within 48 hours of the delivery of goods.
- (2) Upon receipt of short dated stock, the Customer may contact the Supplier's Customer support team for a replacement, refund or credit.
- (3) Goods other than those covered in clause 5.1(1) and 5.1(2), or goods ordered by Customer surplus to requirements, are not returnable to Supplier and no credit will be given for any such purported return. For the avoidance of doubt, no GSK Products for which the shelf life has expired will be accepted for return unless expressly authorised by the Supplier in writing.
- (4) If Customer fails to give notice to Supplier in accordance with this clause 5.1, 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 this Agreement. In this case, Customer will be taken to have waived any claim Customer may have had against Supplier.
- (5) Supplier will not accept returned goods unless expressly authorised in writing by Supplier's Customer Support team.
- (6) 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.
- (7) Stock returns must be approved by Supplier to trigger acceptance and payment of credit note by Supplier. Method of payment for accepted stock return claims is the same method of payment of the original invoice, and is to be processed within 30 days of the date of the invoice to which the credit relates.

5.2. Promotional and/or other Services

A Tax Invoice for reimbursement of promotional and/or other services claims, which have been approved in advance in writing by Supplier with full supporting documentation, must be received by the end of the month following the month in which the promotion and/or other services being claimed was provided. Tax Invoices received outside this period will not be accepted nor reimbursed.

Promotional and/or other service Tax Invoices must not be deducted from payments made to Supplier. Customer is to raise a tax invoice against a Supplier purchase order, with the invoice to be processed by the Supplier accounts payable department. Supplier standard payment terms will be applied.

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 from the date of receipt of the invoice. A failure to comply with these payment terms is deemed a material breach of this Agreement by Customer.

6.2. Remittances

Customer agrees to provide payment by Electronic Fund Transfer, unless otherwise agreed with the Supplier. For establishing payment via Electronic Fund Transfer or for any other remittance related matter, Customer may contact the Supplier Credit Services team at +61 (0) 3 9721 6666 or via email at credit.services@gsk.com.

6.3. Credit application

Customer authorises Supplier, its authorised agents or representatives, to make enquiries as to the credit and financial history and responsibilities of the Customer, and/or its Representative (as applicable), as required by Supplier from time to time. If Supplier so requires, the Customer must provide (and must procure that its Representatives or guarantors, as applicable, provide) any consent or authorisation required by law for Supplier, its Representatives to undertake any such enquiries, including obtaining reports from credit reporting bodies as to the consumer and/or commercial creditworthiness of the Customer and/or its Representatives or guarantors (as applicable).

Any credit terms granted to the Customer is on the condition that Customer has made complete and accurate disclosure to Supplier in its credit application of all material information relevant to Supplier's decision to extend credit. The Customer must promptly inform Supplier of any material adverse change in Supplier's financial or business circumstances.

6.4. Extended Terms

Supplier may in its absolute discretion demand immediate settlement of credit accounts, suspend the Customer's credit facility, reduce the Customer's payment terms or require cash payment on or before delivery, terminate any outstanding orders or do any combination of the foregoing with notice, where it becomes aware of matters that could adversely affect it recovering any or all costs incurred. The Customer shall not be entitled to any compensation for termination of the credit facility.

The Customer must keep Supplier promptly informed of any material adverse change in the Customer's financial or business circumstances.

6.5. 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.

6.6. 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.

6.7. Withdrawal of Account Facilities

Supplier is at liberty to withdraw account facilities offered to Customer upon 7 days written notice to Customer, or immediately in writing where the Customer does not hold licences permitting sale and supply of medicines in Australia 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 under the relevant order for those goods.

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 for an order:

- (1) Customer must sell the goods relating to that order, in the ordinary course of its business, as agent and in a fiduciary capacity for Supplier; and
- (2) the proceeds of sale or use of the goods relating to that order shall be received and held by Customer (in whatever form) on trust for Supplier.

7.4. Supplier's Authority to Inspect and Reclaim

Customer grants an irrevocable licence to Supplier and its Representatives to, with reasonable prior notice to Customer, enter any premises upon which Supplier's goods are stored during business hours to inspect the goods to which Supplier retains title and reclaim those goods where Customer is in breach of this Agreement.

The Supplier agrees to comply with all laws and regulations when on the premises upon which the Supplier's goods are stored and to comply with any direction given by the Customer and/or its Representatives in relation to safety of people and/or property while on the premises.

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;
- (2) licensing requirements applicable to the storage of the goods; and
- (3) industry practices including the Australian Code of Good Wholesaling Practice for Medicines as published by the TGA.

8.2. Storage for end customer

The goods are supplied to Customer for sale to the end-user of the goods in the packaging in which the goods are supplied to Customer. Customer must not interfere with, or alter, the original packages insofar as they set out Supplier's marks, numbers, references and other information.

8.3. Delivery point

Customer must provide a secure delivery point. Goods are deemed delivered properly when unloaded at the delivery point.

8.4. Cold chain products

For temperature sensitive goods:

- (1) each consignment must be processed and stored in accordance with the specification for those goods by Customer upon receipt of such goods. Failure to comply with this clause renders Customer solely liable for any defect in the goods.
- (2) All cold chain deliveries contain temperature monitors. Monitors must be inspected by customer on receipt and any alarms reported to GSK au.gsk-coldchain@gsk.com within 24 hours of receipt. Information is available with each delivery on how to read monitors provided.

8.5. Customer liability

Customer is solely liable in respect of any loss or cost (including losses or costs suffered by third parties) due to goods not being stored or handled in accordance with this clause 8.

9. REPORTING

9.1. Product issue reporting

- (1) The Customer must notify the Supplier by telephone via GSK Australia Medical Information 1800 033 109 (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) above, 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.

9.2. Human Safety Information/Adverse Event reporting

- (1) If the Customer, or any of the Customer contractors, are informed or become aware of any report of any HSI/AE (whether the information relates to the GSK Product by reference to its generic name or by reference to its trade mark), the Customer shall provide all known information in respect of each such report to the Supplier within one business day of receipt. The Customer shall report this information to GSK Australia Medical Information on 1800 033 109 or +61 3 9721 4323.

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 10.3(1), the other party must, after receiving a written request together with sufficient evidence to substantiate the request for reimbursement for reimbursement from the first party, reimburse the first party with seven days.

11. CONTRACTS WITH YOUR CUSTOMERS

Customer agrees that it will include the above clauses 8, 9, 10 and 19.3 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. INTELLECTUAL PROPERTY

- (1) All Supplier's trademarks or other intellectual property rights in respect of the goods remain its property, and Customer must not in any way interfere with, alter or infringe upon Supplier's intellectual property rights relative to its "trademarks", "trade dress" or "get-up" associated with the goods.
- (2) All advertising material supplied to Customer for its business use, and not for dissemination to the end-user of the goods, remains Supplier's property, and Customer will return it to Supplier immediately upon Supplier's request to do so.
- (3) No licence relating to the goods, express or implied, is granted under the intellectual property rights existing under the laws of the United States or any jurisdiction outside Australia.

13. CONFIDENTIALITY

13.1. Confidentiality Undertaking

Subject to clauses 13.2 and 13.3, each party will treat as confidential, and keep confidential, all information of a confidential nature relating to the other party or its business, in whatever form, provided to it by, or on behalf of the other party under, in connection with or in the course of:

- (1) this Agreement; or

- (2) any negotiations relating to this Agreement, (the 'Confidential Information'). The Confidential Information includes the terms and existence of this Agreement.

13.2. Permitted Disclosure

Neither party may disclose Confidential Information provided to it by the other party other than:

- (1) subject to clause 13.4, to its officers, employees (on a need to know basis), legal advisers and financial advisers and, in the case of GSK, the officers, employees (on a need to know basis), legal advisers and financial advisers of any Related Bodies Corporate of GSK, or any associate of GSK (as that term is defined in the Corporations Act);
- (2) subject to clause 13.4, with the prior consent of the other party; or
- (3) to the extent:
 - a. required by:
 - i. law;
 - ii. the rules of any stock exchange; or
 - iii. any applicable accounting standards; or
 - b. ordered by any court,

Having, to the extent practicable, consulted with the other party with a view to agreeing the form, content, timing and manner of disclosure.

13.3. Use of Confidential Information

A party may use Confidential Information only for the purposes of:

- (1) exercising or enforcing any right or remedy by that party in connection with this Agreement;
- (2) the performance of any obligation by that party under this Agreement; or
- (3) the bringing or defending of any action or claim for breach of this Agreement, and not for any other purpose.

13.4. Disclosure to Other Persons

If a party is permitted to and discloses Confidential Information of the other party it will use reasonable endeavours to ensure that no person to whom it disclosed Confidential Information discloses it to any other person and that no person uses the Confidential Information for any other purpose other than for the purposes in clause 13.3. The reasonable endeavours referred to in the foregoing include making the persons to whom the Confidential Information is disclosed aware that the Confidential Information is confidential and that the Confidential Information is disclosed subject to the provisions of this clause 13 and such other terms as GSK may reasonably require.

14. 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. The Customer must provide the Supplier with evidence of insurance upon request from the Supplier.

15. ANTI BRIBERY AND CORRUPTION

- (1) The Customer agrees it shall comply fully at all times with all applicable laws and regulations, including but not limited to anti-corruption laws, and that it has not, and covenants that it will not, in connection with the performance of this Agreement, directly or indirectly, make,

promise, authorise, ratify or offer to make, or take any act in furtherance of any payment or transfer of anything of value for the purpose of influencing, inducing or rewarding any act, omission or decision to secure an improper advantage; or improperly assisting it or GSK in obtaining or retaining business, or in any way with the purpose or effect of public or commercial bribery, and warrants that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so. For the avoidance of doubt this includes facilitating payments, which are unofficial, improper, small payments or gifts offered or made to Government Officials to secure or expedite a routine or necessary action to which we are legally entitled. For the purpose of this Agreement, "Government Official" (where 'government' means all levels and subdivisions of governments, i.e. local, regional, national, administrative, legislative, executive, or judicial, and royal or ruling families) means:

- a. any officer or employee of a government or any department, agency or instrumentality of a government (which includes public enterprises, and entities owned or controlled by the state);
 - b. any officer or employee of a public international organisation such as the World Bank or United Nations;
 - c. any officer or employee of a political party, or any candidate for public office;
 - d. any person defined as a government or public official under applicable local laws (including anti-bribery and corruption laws) and not already covered by any of the above; and/or;
 - e. any person acting in an official capacity for or on behalf of any of the above.
- "Government Official" shall include any person with close family members who are Government Officials (as defined above) with the capacity, actual or perceived, to influence or take official decisions affecting GSK business.

- (2) GSK shall be entitled to terminate this Agreement immediately on written notice to the Customer, if the Customer fails to perform its obligations in accordance with this Clause 15. 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 15.

16. LABOUR RIGHTS

The Customer represents and warrants, to the best of its knowledge, that in connection with this Agreement, it respects the human rights of its staff and does not employ child labor, forced labor, unsafe working conditions, or cruel or abusive disciplinary practices in the workplace and that it does not discriminate against any workers on any ground (including race, religion, disability, gender, sexual orientation or gender identity); and that it pays each employee at least the minimum wage, provides each employee with all legally mandated benefits, and complies with the laws on working hours and employment rights in the countries in which it operates. The Customer shall be respectful of its employees right to freedom of association and the Customer shall encourage compliance with these standards by any supplier of goods or services that it uses in performing its obligations under this Agreement.

17. SECURITY INTERESTS

17.1. General

- (1) The Customer acknowledges and agrees that this Agreement constitute a security agreement for the purposes of the PPSA and create a security interest in all goods supplied by Supplier to Customer on retention of title terms and the proceeds of sale of goods supplied on retention of title terms by Supplier to Customer.
- (2) The Customer must assist when requested by Supplier to do such acts and provide such information as Supplier considers reasonably necessary or desirable to enable Supplier

to perfect any security interest created or provided by these provisions in the goods or any proceeds, with first ranking priority or such other priority that Supplier requires.

17.2. Confidentiality

- (1) The Supplier and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) of the PPSA if the Supplier approves prior to any such disclosure of or request for information. Nothing in this clause will prevent any disclosure by the Supplier that it believes is necessary to comply with its other obligations under the PPSA, including under any law.
- (2) To the extent that it is not inconsistent with constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that the Supplier may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that the Supplier is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

17.3. Enforcement of security interest

If the Customer defaults in the timely performance of any obligation owed to the Supplier, the Supplier may enforce the Security Interest by exercising all or any of its rights under this Agreement, the general law and the PPSA. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Supplier of the Security Interest, the Customer and the Supplier agree that the following provisions of the PPSA do not apply: (i) to the extent that s 115(1) of the PPSA allows them to be excluded: ss 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and (ii) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: ss 129(2) and (3), and 132.

17.4. No limitation

Nothing in this clause is limited by any other provision of this Agreement or any other agreement between the Supplier and the Customer. Nothing in this clause limits the Supplier's rights or the Customer's obligations apart from under this clause.

17.5. Notification

Customer must notify Supplier immediately of any action by a third party (or any of its creditors) affecting Supplier's interest in the goods.

18. LIABILITY

18.1. Limitation on Liability

- (1) To the extent permitted by law, the liability of Supplier arising from a breach of or otherwise under this Agreement, is at Supplier's option, limited to and completely discharged:
 - (a) in the case of the goods, by either;
 - (i) the supply by Supplier of equivalent goods;
 - (ii) the replacement by Supplier of the goods supplied to Customer; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and

- (b) in the case of advice, recommendation(s), information or services, by either;
 - (i) supplying the advice, recommendation(s) information or services again; or
 - (ii) the payment of the cost of having the advice, recommendation(s) information or services supplied again.
- (2) To the extent permitted by law, and subject to clause 18.1(3) neither party is liable to the other for any indirect or Consequential Loss arising out of or in connection with this Agreement, including any breach of this Agreement however arising, in tort (including negligence), under any statute, custom, law or on any other basis.
- (3) Nothing in this clause 18 will limit the liability of the Customer for any direct, indirect or Consequential Loss arising out of or in connection with a breach by the Customer of any of its obligations under any law.

18.2. Exclusion of Other Conditions and Warranties

Except as provided in clause 18.1 and to the full extent permitted by law, 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 the parties are excluded.

18.3. Exclusion of third party liability

To the extent permitted by law, Supplier has no liability (including liability in negligence) to any third party for any loss or damage, consequential or otherwise, suffered or incurred by that third party in relation to the goods and/or advice, recommendation(s), information or services.

18.4. Indemnity

Except to the extent caused or contributed to by the negligent act or omission, wilful misconduct or breach of this Agreement by Supplier, 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.

19. GENERAL

19.1. 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.

19.2. 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.

19.3. 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, which may be withheld or provided in the Supplier's sole discretion.

19.4. 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).

19.5. Privacy

Supplier may collect personal information from its dealings with the Customer. If so, Supplier will comply with its Privacy Policy. A copy of the policy is available at: <http://au.gsk.com/en-au/privacy-policy/>.

19.6. Insolvency of Customer

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

19.7. Customer 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.

19.8. Assignment

Customer must not assign its rights or delegate its performance under this Agreement without Supplier's consent in writing.

19.9. Variation

Supplier may vary this Agreement of supply by providing 30 days written notice to Customer. Customer's continued purchase of goods and/or services after such notification will evidence Customer consent to the new terms and conditions of supply. If no written notice is provided to Customer by Supplier, Customer is permitted to terminate the contract at any time by providing 30 days' written notice to Supplier. Immediately upon termination, all outstanding amounts owing under this agree become due and payable.

19.10. Waiver

A party's delay or failure to exercise any right, power or remedy by a party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on any party granting that waiver unless made in writing.

19.11. Compliance with all laws

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

19.12. Governing Law and Jurisdiction

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

20. Terms applicable to businesses other than a Small Business Customer

20.1 Application of this section

This section applies to Customers who are not Small Business Customers and replaces the preceding terms as specified in this clause 20.

20.2 Modification of these Terms

- (1) Clause 3.3(2) is replaced with:

Subject to clause 5.1, 18.1 and to the extent permitted by law, Supplier is not liable to the Customer for any loss or damage whatsoever (including any consequential loss) caused directly or indirectly by any delay or failure in delivery. Any delay in delivery shall not relieve the Customer of its obligation to accept that delivery and remaining delivery.

- (2) Clause 4.2(a) is replaced with:

Subject to clause 5.1, 18.1 and to the extent permitted by law, Supplier is not liable to the Customer for any loss or damage whatsoever (including any consequential loss) caused directly or indirectly by any delay or failure in delivery. Any delay in delivery shall not relieve the Customer of its obligation to accept that delivery and remaining delivery.

- (3) Clause 17.3 is replaced with:

If the Customer defaults in the timely performance of any obligation owed to the Supplier, the Supplier may enforce the Security Interest by exercising all or any of its rights under this Agreement, the general law and the PPSA. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Supplier of the Security Interest, the Customer and the Supplier agree that the following provisions of the PPSA do not apply: (i) to the extent that s 115(1) of the PPSA allows them to be excluded: ss 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and (ii) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: ss 127, 129(2) and (3), 132, 134(2), 135, 136(5) and 137.

- (4) Insert a new Clause 18.1A:

The only conditions and guarantees which are binding on the 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)).

- (5) Clause 18.1(2) and 18.1(3) do not apply

- (6) Clause 18.2 is replaced with:

Except as provided in clause 18.1 and to the full extent permitted by law, 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 the Supplier are excluded.

- (7) Clause 18.3 is replaced with:

To the extent permitted by law, the 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.

(8) Clause 18.4 is replaced with:

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