

GSK PURCHASE ORDER TERMS AND CONDITIONS (UNITED STATES)

- Definitions.** The term "GSK" shall refer to SmithKline Beecham Corporation, a corporation of the Commonwealth of Pennsylvania, d/b/a/ GlaxoSmithKline. The term "Supplier" shall refer to the vendor designated on the face hereof and shall also include its employees, subcontractors, independent contractors and all other persons performing any type of work under this Purchase Order, including these Terms and Conditions ("PO"). The term "good(s)" shall refer to the materials, supplies, items and equipment covered by this PO and any pre-existing master agreement between GSK and the Supplier. The term "services" shall refer to the work and/or services covered by this PO and any pre-existing master agreement between GSK and the Supplier.
- Acceptance.** This PO must be accepted in writing by Supplier. If Supplier fails to accept in writing, any conduct by Supplier which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute an acceptance by Supplier of this PO. Any terms proposed in Supplier's acceptance of GSK's offer that add to, vary from, or conflict with these Terms and Conditions are hereby objected to and shall not apply. If this PO has been issued by GSK in response to an offer, and if any of these Terms and Conditions are additional to or different from any terms of such offer, then the issuance of this PO by GSK shall constitute an acceptance of such offer subject to the express condition that Supplier assent to these additional and different Terms and Conditions, and Supplier shall be deemed to have so assented unless Supplier notifies GSK to the contrary in writing within ten (10) days of receipt of this PO. Any "click-wrap", "shrink-wrap" or other preprinted terms and conditions provided by Supplier shall be void and of no effect.
- Entire Agreement.** This PO, together with the terms contained herein and on the face as well as any specifications, exhibits or amendments that may be referred to or attached hereto, sets forth the complete and final agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written communications relating thereto. If this PO is used as a release for goods or services under a pre-existing master agreement, then the Terms and Conditions of this PO shall supplement the provisions of such master agreement to the extent they are not inconsistent. In the event of any inconsistency between the terms of any pre-existing master agreement, the terms on the face of this PO or these pre-printed Terms and Conditions, the following shall be the order of precedence: (i) the terms of the master agreement, (ii) the terms on the face of the PO, and (iii) these pre-printed Terms and Conditions. Any reference to a proposal, quotation or other communication by Supplier shall, unless indicated to the contrary, be limited to the description of the goods or services and by the terms set forth or incorporated by reference herein. The failure of GSK to insist on performance of any provision hereof shall not be construed to be a waiver of such provision or any part thereof.
- Prices.** The price(s) set forth on the face of this PO are firm, and are not subject to increase.
- Taxes.** The prices for the goods or services provided hereunder include all Federal, state and local taxes imposed upon or on account of such sale, unless otherwise indicated on the face of this PO.
- Invoices.** All invoices shall be submitted in duplicate and be accompanied by a copy of the bill of lading if on collect freight shipments or if otherwise required by law, and by a prepaid freight bill if all or any part of the freight is included on the face of the invoice. In addition to any other information specified elsewhere herein, invoices and packing slips shall contain the following information: PO number, item number, description of goods and services, sizes, quantities, weight, unit prices and extended totals.
- Payment.** GSK shall make payment for goods and services within thirty (30) days after receipt of invoice and delivery and acceptance of the goods or complete performance of the services, unless different terms have been stated on the face of this PO. Payment of an invoice shall not constitute acceptance of goods or services and shall be subject to adjustment for errors, shortages, defects in the goods or services, damage to GSK for which Supplier is partially or wholly responsible, or other failure of Supplier to meet the requirements of the PO.
- Delivery.** Time is of the essence and the goods must be received or services performed on the dates and at the destination(s) set forth on the face hereof. If Supplier fails to meet any such delivery date, GSK may, without limiting its other rights and remedies, direct expedited routing, charge excess costs incurred thereby to Supplier, or cancel all or part of this PO. All rejected or over-run goods and material with GSK's printing or identification must be destroyed by Supplier at Supplier's expense and not sold as surplus.

9. **Freight; Title and Risk of Loss.** Unless otherwise specifically provided for herein, Supplier shall be responsible for freight and delivery to the destination specified on the face of this PO. All freight and delivery charges will be paid by Supplier. Notwithstanding anything else herein, Supplier shall bear all risks of loss and damage to the goods until final acceptance by GSK at GSK's "ship to" destination specified on the face of this PO. Further, Supplier shall bear the same risks with respect to any goods rejected by GSK or as to which GSK has revoked its acceptance, from the time of such rejection or revocation.
10. **Inspection.**
- (a) Notwithstanding any prior inspections or payments hereunder, all goods and services shall be subject to final inspection, which may include measurement, testing or examination, and acceptance at GSK's facility within a reasonable time (but not less than 90 days) after receipt at destination. Any inspection by GSK does not relieve Supplier of any obligations or liabilities under this PO.
- (b) If any goods or services delivered do not meet all of the requirements of this PO, GSK shall have the right to reject such goods or services and return such goods at Supplier's expense. GSK may elect to reject the entire goods or services tendered even if only a portion thereof is nonconforming. If GSK elects to accept nonconforming goods or services, GSK, in addition to its other remedies, shall be entitled to an appropriate reduction in price. Payment for any goods or services shall not be deemed an acceptance thereof.
11. **Warranty.**
- (a) Supplier warrants that all goods and services furnished hereunder shall: (i) be free from latent and patent defects in workmanship, material, manufacture, and design (where design is Supplier's responsibility); (ii) comply with the requirements of this PO, including all drawings and specifications incorporated herein and samples and warranties furnished by Supplier; (iii) be merchantable and safe for consumer use, and fit and sufficient for the use intended by GSK; (iv) be free and clear of any lien, security interest or other adverse claim against title; (v) comply with the laws of the states and of the United States governing weights, measures and sizes; (vi) not be adulterated or misbranded within the meaning of any State food and drug laws or the Federal Food, Drug and Cosmetic Act, or not be an article which may not under the provisions of section 404 or 505 of the Federal Act or any other applicable Federal, State or local laws, be sold, legally transported or introduced into interstate commerce; and (vii) not infringe, including without limitation their sale or use alone or in combination, any United States or foreign patents, trademarks, trade secrets, copyrights or proprietary rights of any third party.
- (b) The foregoing warranties are in addition to all other warranties, expressed or implied, and shall survive any delivery, inspection, acceptance, and payment by GSK.
- (c) Supplier's warranties shall be effective for the period of time either (i) set forth on the face of this PO, or (ii) one (1) year from the date of GSK's final acceptance, whichever is greater.
- (d) These warranties shall run to GSK's customers and users of its products.
- (e) If any goods or services furnished hereunder do not meet the warranties specified in this PO, GSK may, at its option: (i) require Supplier to correct, at no cost to GSK, any defective or nonconforming goods or services by repair or replacement within seven (7) days of notice to Supplier; or (ii) return such defective or nonconforming goods at Supplier's expense to Supplier and recover from Supplier the price thereof; (iii) correct the defective or nonconforming goods or services itself and charge Supplier with the cost of such correction; or (iv) accept the defective or nonconforming goods or services at a reduced price.
12. **Changes.** GSK reserves the right at any time to change this PO in writing, and if such change causes an increase or decrease in price or delivery of goods or services, an equitable written adjustment shall be made.
13. **Confidentiality.** In its performance of this PO, GSK may disclose to Supplier or Supplier may have access to certain Proprietary Information of GSK. "Proprietary Information" means trade secrets (as defined by applicable laws), any data, reports, computer programs or models and related documentation, business or research plans, specifications, drawings, designs or information transmitted by GSK to Supplier in connection with this PO, and any other information that is of value to its owner and is treated as confidential, including without limitation, the fact that Supplier has furnished or contracted to furnish to GSK the goods or services covered by this PO. All Proprietary Information of GSK shall remain the property of GSK. Supplier shall keep all Proprietary Information of GSK confidential and use such information only as necessary to fulfill Supplier's obligations pursuant to this

PO. All originals, copies, summaries and derivations of Proprietary Information in whatever form shall be returned to GSK upon GSK's request.

14. **Intellectual Property.**
 - (a) **Ownership.** Supplier agrees that all writings, drawings, designs, copyrightable material, inventions (whether or not patentable), improvements, discoveries, developments, and all works of authorship created by Supplier in performance of services hereunder, including all worldwide rights therein under patent, copyright, trade secret, confidential information, or other intellectual property right (collectively "Work Product"), are the sole property of GSK. Supplier assigns to GSK all right, title and interest in and to all such Work Product, and shall perform such further acts needed to transfer, perfect, and defend GSK's ownership of the Work Product. Supplier shall require its subcontractors to execute written assignments of Work Product to effect such assignment.
 - (b) **License.** To the extent that Supplier or third parties retain ownership rights in materials delivered with the goods, or upon which the Work Product is based, Supplier hereby grants to GSK an irrevocable, worldwide, non-exclusive, royalty-free right and license to make, have made, modify, use, distribute, publicly perform or display, sell, offer to sell, and import such materials. Supplier hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the licenses and intellectual property rights set forth in this Intellectual Property section.
15. **Liens.** If the goods or services are of such a nature that Supplier would be entitled to file a lien against GSK's real or personal property, Supplier shall submit a Release and Waiver of Lien and all applicable subcontractor's and materialman's Release and Waivers of Lien in a form acceptable to GSK prior to final payment by GSK.
16. **Work on GSK's Premises; Occupational Health Services.** If the services are to be performed on GSK's premises, Supplier shall comply with all applicable safety laws and GSK's then current safety and other applicable regulations. Supplier shall provide GSK with a complete list of all chemicals, hazardous materials, and ingredients in the composition of goods or used in the performance of the services hereunder and a copy of the Material Safety Data Sheet for such chemicals and hazardous materials. The submission of such list by Supplier shall not relieve Supplier of exclusive responsibility for the safe transportation, use, storage, and disposal of such materials prior to acceptance by GSK. All chemicals and hazardous materials brought by Supplier to GSK's premises shall bear a label stating the identity of the chemical or material and the hazards associated therewith.
17. **Indemnity; Insurance.**
 - (a) Supplier shall defend, indemnify and hold GSK, its affiliated companies, and their respective shareholders, officers, directors, employees, agents, successors, and assigns harmless from and against any and all claims, suits, actions, liabilities, losses, costs, reasonable attorneys' fees, expenses, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of Supplier; (ii) goods or services supplied hereunder; (iii) a breach of any of Supplier's warranties or any other term and condition of this PO; (iv) Supplier's negligent, unauthorized or wrongful acts or omissions with regard to the transportation, use, handling, disposal, processing or installation of hazardous materials; (v) a claim that any goods or services furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another; or (vi) a claim of any lien, security interest or other encumbrance made by a third party; or (vii) a violation of federal or state law, regulation, statute or ordinance; or (viii) failure to comply with the Confidentiality obligations set forth herein.
 - (b) Without limiting GSK's rights and remedies hereunder, if GSK believes that the goods or services supplied hereunder are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, trade secret, or other proprietary right, GSK may require Supplier to (i) replace such goods or services with equivalent functionality or (ii) modify such goods or services with equivalent functionality to make them non-infringing.
 - (c) Supplier shall carry and maintain insurance coverage satisfactory to GSK to cover its obligations in this PO, including without limitation, the following insurance with the respective minimum limits per occurrence: Commercial General Liability - \$1,000,000, Workers' Compensation - statutory, Business Automobile Liability - \$1,000,000 and Product Liability Coverages - \$1,000,000. Upon request, Supplier shall submit to GSK certificates of insurance showing proof of such coverages. All such policies shall name GSK as an additional insured.
18. **Termination.**

- (a) GSK may, at any time, terminate this PO, in whole or in part, without cause, upon written notice to Supplier. Upon any such termination Supplier shall, to the extent specified by GSK, stop all work on this PO, and cause its suppliers and subcontractors to stop work. Charges for any such termination of this PO shall be limited to actual non-recoverable costs incurred by Supplier that Supplier can demonstrate were properly incurred prior to the date of termination. In no event will GSK reimburse Supplier for goods, inventory or services in excess of those required to meet GSK's delivery schedule for binding forecasts. In no event shall such reimbursement include anticipated profits or revenue or other economic loss for undelivered goods or unperformed services.
- (b) GSK may terminate this PO, in whole or in part, if Supplier: (i) fails to make delivery of the goods or perform the services within the time specified herein; or (ii) fails to replace or correct defective goods or services in accordance with the provisions of this PO; or (iii) fails to perform any other provision of this PO or so fails to make progress as to endanger performance in accordance with its terms; or (iv) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors.
- (c) Any such termination shall not relieve Supplier from any liability hereunder.
19. **Remedies.** GSK's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision.
20. **GSK Property.** All drawings, artwork, data, material, supplies, equipment, tooling, dies, molds, fixtures, and patterns furnished or paid for by GSK, or which have had their cost amortized shall be GSK's exclusive property, and shall be used by Supplier only in performance of this PO. Such property, while in Supplier's custody and control, shall be held at Supplier's sole risk and, upon GSK's request, shall be returned to GSK in good condition, normal wear and tear excepted.
21. **Assignability and Subcontracting.** This PO shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, neither this PO nor any interest therein shall be assigned, delegated or otherwise transferred by the Supplier except upon the prior written consent of GSK, and any assignment or transfer without such consent shall be void and of no effect. Supplier shall not appoint any subcontractor or non-employee to carry out its obligations under this PO without the prior written consent of GSK. In any event, even with GSK consent, Supplier shall remain liable for the performance of all such obligations and shall ensure that any permitted subcontractor or non-employee reads and understands the terms of this PO. GSK may assign its rights or obligations under this PO to any GSK affiliate or successor without Supplier's consent.
22. **Survivorship.** All provisions, representations and warranties contained herein which by their nature are required or intended to be observed or performed after termination of this PO will survive its termination.
23. **Release of Information.** Supplier shall not release any statement, advertisement, information, or publicity referring to GSK, or any GSK affiliate, or use of the word "Glaxo", "SmithKline", "Beecham" or "GlaxoSmithKline" without GSK's prior written approval.
24. **Limitation of GSK's Liability.** IN NO EVENT SHALL GSK BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF GSK AS TO THE GOODS DELIVERED OR SERVICES PERFORMED HEREUNDER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.
25. **Compliance with Laws.** Supplier warrants that all goods and services will be produced or performed in compliance with all applicable federal, state and local laws, rules and regulations, including without limitation:
- (a) the Environmental Protection Agency Toxic Substances Control Act's reporting regulation and any and all pre-manufacturing reporting required with regard to the goods, or any of the goods' constituent ingredients, covered by this PO;
- (b) the Department of Transportation Hazardous Materials Regulations in shipping the goods covered by this PO.
- (c) the Occupational Safety and Health Act of 1970.
- (d) the Resource Conservation and Recovery Act, and the Immigration Reform and Control Act of 1986 ("IRCA") and the IRCA's implementing regulations as they pertain to any and all employees employed by Supplier in connection with performance hereunder.

26. **Applicable Law.** THIS PO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CHOICE OF LAW OF SUCH STATE.
27. **Government Contractor.** GSK is a Contractor to the U.S. Government and is required to flow down to its subcontractors certain regulatory provisions, including, but not limited to, the following which is hereby incorporated by reference and made part of this PO as if fully set forth herein (i) the provisions of the Equal Opportunity clause set forth in 41 CFR 60-.4(a) pursuant to the requirements of Executive Order 11246; (ii) applicable contractual requirements of the Rehabilitation Act of 1973 as set forth in 41 CFR 60-741.1; (iii) applicable contractual requirements of the Vietnam Era Veteran Readjustment Assistance Act of 1974 as set forth in 41 CFR 60-250.4; (iv) applicable contractual provision of Public Law 95-507 concerning the Utilization of Small Business Concerns; and (v) any law, order, or regulatory provision issued in addition, supplement or replacement of the foregoing concerning federal contractors. Supplier also agrees to comply with all applicable federal, state, or local statutes, ordinances, and regulations relating to non-discrimination in employment.
28. **Independent Contractor.** Supplier shall perform this Agreement as an independent contractor, and Supplier is not an employee, agent, partner or representative of GSK. Supplier shall conduct its business under its own name as an independent contractor, and is hereby expressly prohibited from holding itself out as an employee, agent, partner or representative of GSK. It is agreed that any person employed by Supplier to perform hereunder shall not be deemed to be an employee of GSK, and Supplier and Supplier's employees, suppliers, subcontractors, agents or representatives shall not be, or represent themselves to be, officers, employees, agents or representatives of GSK and shall not bind, or attempt to bind, GSK to any agreement, liability or obligation of any nature. Supplier agrees to pay, and hereby accepts full and exclusive liability for the payment of, any and all contributions and taxes for Unemployment Compensation or Disability Insurance or Old Age Pension or Annuities, and all similar provisions now or hereafter imposed by any Federal or state governmental authority, which are imposed with respect to or measured by wages, salaries, or other compensation paid by Supplier to persons employed by Supplier; and Supplier further agrees to indemnify and save GSK harmless against any and all such liability or claims thereof.
29. **Debarment Clause.** Supplier certifies that Supplier and its principals, are not debarred, suspended or proposed for debarment by the Federal Government. Debarment suspension or proposed debarment by the Federal Government will constitute grounds for automatic termination of this PO by GSK.
30. **Force Majeure.** GSK shall have the right to suspend any shipment from Supplier hereunder without penalty or liability to GSK in the event of war, riot, flood, acts of God, fire, court order, strike, work stoppage, act of governmental authority, or other causes beyond GSK's control. GSK shall not be liable to Supplier for its failure to accept delivery of goods or services purchased hereunder if such failure arises from such above-mentioned causes.
31. **Severability.** In the event that any provision of this PO is declared invalid by a proper tribunal or law, the remainder of the provisions shall not be affected thereby, and each term and provision not declared invalid or unenforceable shall be valid and shall be enforced to the fullest extent permitted by law.