

GLAXOSMITHKLINE TERMS AND CONDITIONS OF PURCHASE (GOODS & SERVICES)

1. DEFINITIONS

“**Affiliate**” means an organisation which is directly or indirectly controlled by, in Control of, or under common control with a Party to this Agreement.

“**Agreement**” means the agreement between GSK and Supplier consisting of the Purchase Order, these Terms and Conditions, the Specifications, and any other documents (or parts thereof) specified in the Purchase Order or otherwise expressly incorporating these Terms and Conditions.

“**Control**” means the ownership of more than 50% of the voting stock of any organisation or the legal power to direct or cause the direction of the general management of either Supplier or GSK as appropriate.

“**Goods**” means all (or any) of the goods covered by the Agreement including without limitation raw materials, processed materials or fabricated products, which is supplied by the Supplier to the GSK.

“**GSK**” means GlaxoSmithKline (China) R&D Co., Ltd, or its Affiliates.

“**Intellectual Property Rights**” means patents, registered designs, trade marks and service marks (whether registered or not), domain names, copyright, database right, moral right and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, computer programs, confidential information, business names, goodwill and in applications for protection of the above rights.

“**Party**” shall mean the GSK, or the Supplier as the case may be and jointly the GSK and the Supplier when used in the plural.

“**Purchase Order**” means GSK’s purchase order issued by an authorized purchasing staff of GSK and confirmed by Supplier setting out GSK’s requirements for Goods or Services.

“**Services**” means the services covered by the Agreement and provided by Supplier to GSK.

“**Specification**” means the quality standards, specifications or scope of work or otherwise separately documented by GSK in writing which sets out the performance required of the Goods and Services.

“**Supplier**” means the person, firm (or any individual partner thereof), or company who supplies Goods or provides Services to GSK in accordance with the Agreement and to whom the Purchase Order is addressed.

“**Terms and Conditions**” means the terms and conditions set out in this document.

2. STATUS OF TERMS AND CONDITIONS

2.1 These Terms and Conditions and other matters appearing on the Purchase Order shall apply to all contracts for the purchase of Goods or Services by GSK from Supplier. Acceptance of the Purchase Order constitutes acceptance of these Terms and Conditions and any schedules attached.

2.2 GSK will not be liable in respect of any Purchase Order(s) or instructions other than those issued or confirmed on its official, duly issued Purchase Order documents.

2.3 With regard to the power of the contracting documents entered into by the Parties in purchase of any Goods or Services, the Purchase Order shall have prevailing power over these Terms and Conditions and any other contract documents (including proposals, scope of work provided by Supplier); these Terms and Conditions shall have prevailing power over the other contract documents except the Purchase Order; where the issues have not been addressed by the Purchase Order, these Terms and Conditions shall apply.

3. DELIVERY OF GOODS AND PROVISION OF SERVICES

3.1 Unless otherwise instructed in writing by GSK's nominated representative, all Goods must be delivered and all Services must be performed at the time and place specified in the Agreement. Supplier shall supply GSK with details of the anticipated lead times between placing an order and delivery of any Goods and Supplier shall keep GSK informed of progress. Quantities delivered in excess of those stated in the Purchase Order may not be accepted.

3.2 Time shall be of the essence in relation to the performance of any and all of Supplier's obligations pursuant to the Agreement.

4. PASSING OF PROPERTY AND RISK IN GOODS

4.1 The title and risk in Goods shall remain with Supplier until they are delivered at the place specified in the Agreement and a nominated employee of GSK signs a delivery note at which point they shall pass to GSK.

5. PRICE, INVOICING AND TERMS OF PAYMENT

5.1 The price and terms of payment are agreed by GSK and Supplier in Schedule 1 hereto. The price shall be a firm fixed price during the term of this Agreement and inclusive of all packaging, delivery, insurance and other related charges (unless otherwise agreed). Any increase in the price for any reason shall be subject to the express prior written consent of GSK.

5.2 The correct Purchase Order number must be quoted on all invoices, and GSK will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers.

5.3 To ensure payment in accordance with the above procedure all invoices must be received at the invoice address shown on the Purchase Order.

6. QUALITY AND FITNESS FOR PURPOSE OF GOODS

6.1 The Goods and Services must comply in all respects with the Specifications or any modifications that may be agreed in writing. The Goods and Services supplied must also comply in all respects with the Agreement and the implied conditions, warranties and terms contained in any applicable Chinese laws, regulations, related statutes and any statutory re-enactment(s) or modification(s) thereof.

6.2 The Goods must be, supplied with adequate instructions as to use and use-by date, fit for the purpose for which they are intended, of satisfactory quality, and free from defects in design, material and workmanship.

7. REJECTION, REPAIR AND REPLACEMENT

7.1 In the case of Goods not conforming with the Agreement, GSK may, at its discretion:

7.1.1 require Supplier as soon as reasonably practicable to either repair or replace the Goods at the site of delivery or Supplier's works, whichever GSK shall so determine, or refund to GSK the purchase costs of all Goods which do not correspond with the Agreement. Repairs, replacements, and any refunds shall themselves be subject to the obligations in this Agreement;

- 7.1.2 in the case of defective delivery, require Supplier to promptly reimburse GSK in respect of any cost including but not limited to freight, clearance, duty and storage charges incurred by GSK; and
- 7.1.3 purchase Goods elsewhere which nearly as practicable accord with the Agreement and any extra expense thus incurred shall be paid by Supplier to GSK. Before exercising such right to purchase elsewhere GSK shall give Supplier a reasonable opportunity to replace rejected Goods with goods which conform with the Agreement or refund to GSK the purchase costs of all Goods which do not correspond with the Agreement.
- 7.2 In the event of a rejection in accordance with Section 7.1 above GSK shall notify Supplier in writing, and the payment obligation in relation to any such delivery shall be suspended forthwith.
- 7.3 The parties shall use their best endeavours to resolve any dispute arising pursuant to Sections 6 and 7.1. If no agreement can be reached within 30 days, the parties shall agree on an independent inspection institution (not an arbitrator, hereinafter called "Institution") whose decision shall be final and binding as to the dispute and as to which party should pay his fees, the default result being that the fees shall be borne by the party against whom the Institution's decision is given.
- 7.4 If the Institution finds that any delivery of the Goods has not complied with the Agreement, GSK shall have the rights stated in Section 7.1.
- 7.5 If the Institution finds that the Goods comply with the Agreement, GSK shall pay for such Goods in accordance with the payment provisions contained in the Agreement.

8. PACKAGING

Supplier will package and label the Goods in a manner suitable for transit and storage at no cost to GSK. GSK will not pay for or return Packaging materials unless previously agreed between the parties and confirmed in writing. Packaging must comply with all relevant legislative requirements, including those pertaining to environmental, and occupational health and safety standards. Supplier will investigate potential environmental improvements to Packaging and will, where practicable, use minimal Packaging, recyclable Packaging and recycled materials as appropriate.

9. STANDARD OF SERVICES

- 9.1 Supplier warrants and represents to GSK that any Services performed by Supplier or duly appointed sub-contractor:
- 9.1.1 shall be performed in a good and workmanlike fashion and with all due speed, care, skill and diligence.
- 9.1.2 shall be carried out in accordance with the Agreement, with current industry standard codes of practice, and the highest standards prevailing in Supplier's industry. Supplier shall ensure that all of its personnel and sub-contractors are suitably qualified to perform the Services and that all necessary licences, work permits or other authorisations have been obtained.
- 9.2 GSK shall have the right exercisable during the performance of the Services to suspend any payment obligation in respect of the Services if the performance does not conform in quality with any stipulations in the Agreement or if the performance is delayed.
- 9.3 If the Services do not conform with the Agreement, GSK shall have the right to purchase Services from elsewhere which nearly as practicable conform to the Agreement; and any extra expense incurred shall be paid by Supplier to GSK. Before exercising such right to purchase the Services from an alternative supplier GSK shall give Supplier an opportunity to replace the Services in respect of which payment was cancelled with Services which conform with the Agreement.

10. INSPECTION

- 10.1 GSK, and any third party it appoints on its behalf, shall have the right upon prior notice to inspect and carry out any tests, or batch sampling, it wishes on all Goods at Supplier's

premises and the premises of any sub-contractors and on any premises where the Services are provided. Where pre-shipped inspection is specified, Supplier must, at its expense facilitate the same and provide any or all relevant certificates of analysis.

10.2 Any inspections, tests, approvals or acceptance given on behalf of GSK in relation to the Goods or Services shall not relieve Supplier from its obligations or liabilities under the Agreement.

10.3 Supplier shall, and shall ensure that its sub-contractors shall, grant a right of access to GSK and any third party it appoints in order to inspect and test the Goods for compliance with relevant environmental, occupational health and safety legislation and other requirements such as GSK standards.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 The Supplier agrees to indemnify GSK and its employees, Affiliates, sub-contractors and agents in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all direct damages, losses, costs and expenses (including without limitation legal and other professional advisers fees), made against or incurred or suffered by any of them and whether wholly or in part resulting directly or indirectly from any claim by a third party that the Goods or the provision of the Services by the Supplier or the use by or behalf of GSK of the Goods or of any assets used by the Supplier in connection with the performance of the Services infringes the Intellectual Property Rights of that third party.

11.2 Supplier shall, at its expense, defend any actions arising from infringements or alleged infringements of its Intellectual Property Rights in connection with the Goods or Services and Supplier undertakes to indemnify GSK against any costs which GSK incurs in connection with such actions, provided that GSK gives Supplier all appropriate information and assistance and the sole authority to defend or settle any legal proceedings at Supplier's expense.

11.3 GSK retains Intellectual Property Rights in, and ownership of all materials, plans, drawings, Specifications, patterns and/or designs provided by GSK to Supplier, and they shall all be returned at any time in good condition to GSK at GSK's request.

11.4 Where Goods are made to GSK's Specification, model, or plans, the Intellectual Property Rights in the Goods in so far as they relate to the Specification, model, or plans, and any improvements or developments thereof shall be the absolute property of the GSK, and the Supplier will assign all such Intellectual Property Rights to the GSK when such assignation is necessary.

11.5 Intellectual Property Rights arising during or out of the provision of Services shall be and remain the property of GSK.

11.6 In the event that the Intellectual Property Rights relating to the Goods and Services are held by the courts to infringe a third party's rights, and their use is enjoined by that third party, Supplier shall have the option and at its expense to procure for GSK the right to continue using the Goods or Services, or replace the Goods with non-infringing Goods or Services, or modify the Goods or Services so that they become non-infringing without detracting from their overall performance and functionality.

12. CONFIDENTIALITY AND PUBLICITY

Supplier shall, and shall procure that its employees and sub-contractors shall, keep confidential all information of a commercial or technical nature disclosed to Supplier by GSK for the purpose of the Agreement, and shall not use or disclose such information to any third party without GSK's prior written consent. Supplier shall not without GSK's prior written consent disclose, copy, publicise or publish, the existence of the Agreement or any information related to the Agreement including the name of GSK, the Goods, Services, and the place of delivery or performance.

13 FORCE MAJEURE

13.1 Neither party shall be liable for, nor be deemed to be in default, on account of any delay in completion or the performance of any other act under the Agreement due to circumstances which could not have been contemplated by the parties and which are beyond the party's

reasonable control ("Force Majeure"), provided that the party claiming hereunder shall notify the other with all possible speed specifying the cause and probable duration of the delay or non-performance and shall minimise the effects of such delay or non-performance.

13.2 If the performance by either party of any of its obligations under the Agreement is prevented or delayed by Force Majeure for a period in excess of 60 days cumulatively or consecutively, then the other party shall in its discretion have the right to immediately terminate the Agreement upon written notice.

14 .COMPLIANCE WITH STATUTES AND REGULATIONS

Supplier warrants that the Goods and Services comply with the Agreement, relevant statutes, regulations and other legal requirements.

15 DATA PRIVACY DIRECTIVE

The parties warrant that they will hold and process any personal data of staff, employees and/or sub-contractors working for the other to which they have been granted access, or which have otherwise been made available for the purpose of the Agreement strictly in accordance with the applicable laws and regulations in relation to protection of personal data and information. Each party agrees to indemnify the other in consequence of any breach of this Section or any claim by an employee or sub-contractor of the other party that his/her rights have been infringed.

16 HAZARDS

16.1 Supplier shall, and shall ensure that its staff and those of any sub-contractor shall, when working on any site in connection with the Agreement, comply with all relevant environmental, occupational health and safety legislation and any other appropriate standards, policies and procedures notified by GSK.

16.2 Hazardous Goods must be marked by Supplier with International Danger Symbol(s) and the name of the material in Chinese. Transport and other documents must include declaration of the hazard and name of the material in Chinese. Goods must be accompanied by emergency information in Chinese in the form of written instructions, labels or markings. Supplier shall observe the requirements of Chinese laws, regulations and agreements relating to the packing, labelling and carriage of hazardous Goods.

16.3 Supplier will provide applicable hazard information such as material safety data sheets and will inform GSK of all regulations and guidance (statutory or otherwise) which Supplier knows or believes to be associated with the Goods and any combination of the Goods with another product.

16.4 Supplier will indemnify GSK against all liability and loss related to any third party claim which arises from Supplier's or Supplier's sub-contractors' actions resulting in alleged release of any waste, hazardous substance or other pollutant.

17 .. ETHICAL STANDARDS AND HUMAN RIGHTS

17.1 Unless otherwise required or prohibited by law, the Supplier warrants, to the best of its knowledge, that in relation to the supply of goods or services under the terms of this Agreement:

- (a) it does not employ engage or otherwise use any child labour below the age of completion of compulsory schooling and in any case not below the age of sixteen or below the legal minimum employment age (where this is the higher) in circumstances such that the tasks performed by any such child labour could reasonably be foreseen to cause either physical or emotional impairment to the development of such child;
- (b) it does not use forced labour in any form (prison, indentured, bonded or otherwise) and its employees are not required to lodge papers or deposits on starting work;
- (c) it provides a safe and healthy workplace, presenting no immediate hazards to its employees. Any housing provided by the Supplier to its employees is safe for habitation. The Supplier provides access to clean water, food, and emergency healthcare to its

- employees in the event of accidents or incidents at the Supplier's workplace;
- (d) it does not discriminate against any employees on any ground (including race, religion, disability or gender).
 - (e) it does not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace;
 - (f) it pays each employee at least the minimum wage, or a fair representation of the prevailing industry wage, (whichever is the higher) and provides each employee with all legally mandated benefits;
 - (g) it complies with the laws on working hours and employment rights in the countries in which it operates;
 - (h) it is respectful of its employees right to join and form independent trade unions and freedom of association.
- 17.2 The Supplier agrees that it is responsible for controlling its own supply chain and that it shall encourage compliance with ethical standards and human rights by any subsequent supplier of goods and services that are used by Supplier when performing its obligations under this Agreement.
- 17.3 The Supplier shall ensure that it has ethical and human rights policies and an appropriate complaints procedure to deal with any breaches of such policies.
- 17.4 GSK reserves the right upon reasonable notice (unless inspection is for cause, in which case no notice shall be necessary) to enter upon the Supplier's premises to monitor compliance by the Supplier of the warranties set out in Clause 17.1 above and the Supplier shall, subject to compliance with law, furnish GSK with any relevant documents requested by GSK in relation thereto.

18 RESPONSIBILITY FOR INFORMATION

Supplier shall be responsible for any errors or omissions in any drawings, calculations, Packaging details or other particulars supplied by Supplier, whether such information has been approved by GSK or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by GSK.

19 LIABILITY AND INSURANCE

- 19.1 Supplier shall indemnify GSK against any direct liabilities, damages, claims, costs, losses and expenses incurred or paid by GSK howsoever arising from any defect in the Goods or Services or any breach by Supplier of its obligations hereunder or of any statutory duty or from any act or omission of Supplier's employees, agents or sub-contractors.
- 19.2 Supplier shall insure with a reputable insurance company its liabilities under the Agreement if so required at any time produce the policy of insurance and the receipt for the current premium to GSK for its inspection. Supplier agrees that any monies received by Supplier from the insurance company in full or part settlement of a claim arising out of the Agreement and paid by or due to GSK shall be paid immediately to GSK without offset or counter claim.
- 19.3 Any limitation, monetary or otherwise in such policy shall not be construed as a limitation on Supplier's liability and Supplier shall, notwithstanding such limitation, remain liable in full for the matters and to the extent not covered by the policy.

20 SUPPLIER'S EMPLOYEES

For the duration of the period that any Services are being provided, the employment of any employee of Supplier shall remain with Supplier and shall not pass or otherwise transfer to GSK and nothing in the Agreement shall be construed or have effect as constituting any relationship of employer and employee between GSK and the employees and/or sub-contractors of Supplier. Supplier agrees that it is performing the Services as an independent contractor and will retain all responsibility for payment of any business tax, income tax and any other taxation that may arise from the provision of the Services.

21 ASSIGNMENT

- 21.1 Supplier's rights and obligations under the Agreement may not be assigned in whole or in part without the prior written consent of GSK (acting in its sole discretion) and any such consent shall not be deemed to relieve Supplier of any of its obligations and liability to GSK pursuant to the Agreement.
- 21.2 GSK shall be entitled at any time by notice in writing to Supplier to assign the whole or any part of its rights and obligations under the Agreement to any Affiliate or to any successor in title to the whole or part of that part of GSK's business which relates to the Goods or Services.

22 .SUB-CONTRACTORS

Supplier shall not, without the prior written consent of GSK, appoint any sub-contractor or any person or persons to carry out its obligations under the Agreement. In the event that Supplier appoints a sub-contractor or other person to perform its obligations it shall remain liable to GSK for the performance of all its obligations and shall ensure that any such sub-contractor or other person reads and understands the implications of the Agreement.

23 .TERMINATION

- 23.1 Subject to Clause 23.1, either Party may, by giving thirty (30) days' written notice to the other party, terminate this Contract if the other party breaches any provision hereof or defaults in the performance of its obligations hereunder and does not remedy the default within thirty (30) days after a written notice is given from the non-defaulting party to remedy the default.
- 23.2 If either party shall become insolvency, bankrupt, dissolved, wound up, or shall compound or make any arrangement with its creditors it shall promptly so notify the other party in writing giving particulars of the circumstances whereupon the other party may terminate the Agreement immediately by notice.
- 23.3 If at any time during the term of the Agreement there shall be any change in the legal or beneficial ownership or Control of either party:
- 23.3.1 The changed party shall immediately so notify the other party in writing; and
- 23.3.2 the other party may, upon receiving notice or otherwise becoming aware of a change in the legal or beneficial ownership or Control of the changed party, terminate the Agreement immediately by notice in writing to that party if it considers in its sole discretion that such change of ownership or Control are prejudicial to its interests.
- 23.4 The Agreement may be cancelled at any time by GSK for any reason whatsoever, by giving Supplier notice in writing. A fair and reasonable price will be paid for all Services in progress that have been delivered to GSK. GSK's liability is limited to Services in progress, and no further loss or liability will accrue on their account.

24 .CONSEQUENCES OF TERMINATION

- 24.1 On termination of the Agreement Supplier shall, not later than seven days after GSK's request but at GSK's cost:
- 24.1.1 deliver to GSK (or as GSK shall direct) all quantities of the Goods in its possession which comply with the Agreement;
- 24.1.2 return to GSK all documents provided to Supplier by GSK; and
- 24.1.3 ensure that all documents containing Intellectual Property Rights and/or any information of a technical nature relating to the Goods, the manufacture of the Goods and the provision of Services, or of a confidential nature and supplied by GSK to Supplier, will be returned to GSK or destroyed by Supplier at GSK's option.
- 24.2 With effect from termination of the Agreement Supplier shall not make any use for any purpose whatsoever of any Intellectual Property Rights which is the property of GSK.
- 24.3 Termination or expiry shall not relieve either party from any liability or action accrued prior to such termination or expiry.

24.4 Termination of the Agreement or withdrawal of any Goods or Services from the Agreement shall be without prejudice to the continuation in force of Sections 1, 2, 11, 21, 22, 23, and 28. Supplier agrees to provide GSK with all reasonable support with respect to any investigation required by GSK or any regulator with respect to the Goods or Services carried out prior or after such termination or withdrawal. GSK will reimburse Supplier's reasonable costs in providing such assistance unless such termination or withdrawal has occurred for a reason contained in Section 17.

25 .WAIVER

No waiver or forbearance by GSK in enforcing any of its rights under the Agreement shall prejudice or affect the ability of GSK to enforce such rights or any of its other rights at any time in the future. No waiver shall be effective unless in writing and signed by GSK.

26 .SEVERABILITY

Any provision of these Terms and Conditions which is declared void or unenforceable by any competent authority or court shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect the other provisions of these Terms and Conditions, which shall continue unaffected.

27 AMENDMENT

This Agreement may only be amended in writing by authorised representatives of both parties.

28 .GOVERNING LAW AND JURISDICTION

This Contract shall be governed by and construed in accordance with the laws of the People's Republic of China. All disputes arising out of or in connection with this Contract shall be settled through friendly consultation between both parties. In case no settlement can be reached, either Party may submit the dispute to the China International Economic and Trade Arbitration Commission ("CIETAC") in Beijing for arbitration in accordance with the CIETAC rules of arbitration then in effect. The arbitration award shall be final and binding on the Parties.

29 LANGUAGE

This Contract is made in written in English and Chinese and both version shall have the same effect. In case there is any any discrepancy between the two versions, the Chinese version will prevail