

SUPPLY AGREEMENT

By signing this agreement, you agree to and acknowledge the following:

Signature	Name (print)	Position	Date

1. DEFINITIONS

In these terms and conditions:

- (1) **Customer** means the entity or its Representative acquiring the goods or services upon these terms and conditions;
- (2) **GST “Goods and Services Tax”** 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;
- (3) **GST Law** means the Goods and Services Tax Act 1985, and all related legislation;
- (4) **GSK Product** is defined as 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 GSK, whether in the Territory or in any other country.
- (5) **Human Safety Information (HSI)** is defined as information relating to human health and/or wellbeing following exposure to GSK products, including Adverse Event (**AE**) information. AE shall mean 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 related to the product. **HSI/AE** can include:
 - (a) Any unintended sign (including an abnormal laboratory finding), symptom, or disease (new or exacerbated)
 - (b) Failure to produce expected benefits (i.e. lack of efficacy)
 - (c) Off-label use
 - (d) Medication errors or misuse, including drug overdose, whether accidental or intentional
 - (e) Drug abuse or effects of drug withdrawal
 - (f) Occupational exposure
 - (g) Patients taking GSK products whilst pregnant or breastfeeding
 - (h) Paternal exposure to a GSK product before and during pregnancy
 - (i) Transmission of an infectious agent via a medicinal product
 - (j) Safety information received as part of a product quality complaint
 - (k) Drug interaction
 - (l) Unexpected therapeutic benefits (i.e. an unexpected improvement in a concurrent condition other than the one being treated)
- (6) **Medsafe** means New Zealand Medicines and Medical Devices Safety Authority.
- (7) **PPSA** means the Personal Property Securities Act 1999. If a term used in this agreement has a particular meaning in the PPSA, it has the same meaning in this Agreement.
- (8) **Representative** of a party means that party’s director, officer, employee or agent;
- (9) **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.
- (10) **Sponsor** means the person listed with the Medicines and Medical Devices Safety Authority as having received consent or provisional consent of the Minister to the distribution of the medicine in New Zealand.
- (11) **Supplier** means GlaxoSmithKline NZ Limited; NZ Company No: 1235481
- (12) **Tax Invoice** has the meaning given to it in the GST Law; and

2. BINDING TERMS AND CONDITIONS

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

3. ORDERS AND DELIVERY

3.1 Pharmaceutical

- (1) The Supplier will only supply restricted medicines where you hold the appropriate licence with the Medicines and Medical Devices Safety Authority to purchase such goods.
- (2) The Supplier will only supply you with goods or services on credit when the Supplier has obtained a credit check satisfactory to the Supplier’s requirements
- (3) The Supplier may in its absolute discretion determine from time to time a “Specified Order Quantity”, being the minimum order value or quantity for each order of products to be supplied to Customer. Pharmaceutical orders with a value of less than NZD\$1,000.00 will incur a service charge at the Supplier’s discretion
- (4) If an order has an invoice value of not less than NZD\$1,000.00, Supplier will arrange for One Weekly Order to be supplied free to individually agreed delivery points (“Freight-Free Level”). Further orders may incur freight charges at

Supplier's discretion.

- (5) 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

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. Once accepted by the Supplier, an Order may not be cancelled by the Customer except with the express consent of the Supplier.

For the avoidance of doubt no terms or conditions of the Customer, including any terms or conditions printed on or referred to in Customer's offer to purchase or order will be binding on the Supplier or have any legal effect unless expressly agreed to in writing by 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 products at any time during business hours on a Business Day.
- (2) 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.

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 of dispatch of the goods or services to Customer as set in Supplier's sole discretion, or otherwise at the price notified in writing by the Supplier to Customer.

4.2 Price Change

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

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 these terms and conditions will be subject to GST and must be paid by Customer unless otherwise agreed in writing by Supplier.

5. CREDIT CLAIMS

5.1 Stock generally

- (1) 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, damaged or short dated stock provided notification is given to the Supplier within 48 hours of the delivery of goods.
- (2) Subject to clauses 5.1(1), 5.1(2), 5.1(3), 5.1(4) and 5.1(5), upon receipt of short dated stock, the Customer may contact the Supplier's customer support team in writing within 48 hours of the delivery of goods requesting 'Sale or Return' for the short dated stock that has been received. The Supplier's customer support team will approve/reject the 'Sale or Return' request in writing, and this documentation must accompany any later request for return and credit.
- (3) Goods other than those covered in clause 5.1(1), or goods ordered by Customer surplus to requirements, are not returnable to Supplier and no credit will be given for any such purported return. For the avoidance of doubt, no 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(1), then to the extent permitted by law, the goods or services are deemed to have been accepted "as is" by Customer, and Customer must pay for the goods or services in accordance with these terms and conditions. In this case, Customer will be taken to have waived any claim Customer may have had against Supplier.
- (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 at Supplier's sole discretion, and is to be processed within 60 days of the date of the invoice to which the credit relates.
- (8) Without limiting the above, Supplier reserves the right to only accept returns if the goods are valued at \$30.00 or greater.

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

6.2 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 0800 650 777 via email at nz.credit-services@gsk.com.

6.3 Credit application

The 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 without notice, terminate any outstanding orders or do any combination of the foregoing. 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 charge the Customer interest on the overdue balance (on a daily basis) on the amount owing to the Supplier at a rate at which New Zealand trading banks charge commercial customers on unarranged commercial overdrafts from the date the payment was due until the Customer pays the account in full.

6.7 Withdrawal of Account Facilities

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

7. RETENTION OF TITLE AND RISK

7.1 When Property Passes

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

7.2 Risk in Goods

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

7.3 Customer's Authority until Paid for

- (1) Until Customer has paid all sums owing to Supplier on any account whatsoever:
 - i. Customer must store the goods in such a manner as to show clearly that they are the property of Supplier;

- ii. Customer may sell the goods, in the ordinary course of its business, as agent and in a fiduciary capacity for Supplier; and
 - iii. the proceeds of sale or use of any goods shall be received and held by Customer (in whatever form) on trust for Supplier.
- (2) This authority is revoked immediately if we notify you in writing that this authority is revoked in which case all products must be returned immediately to the Supplier and outstanding monies shall become due and payable immediately.
 - (3) The Customer shall advise the Supplier immediately of any action by a third party (or any of its creditors) affecting the Supplier's interest in the goods supplied.
 - (4) The Supplier may apply any payments received from or on behalf of the Customer in reduction of the total amount owing from the Customer to the Supplier in such order and manner as the Supplier think's fit.
 - (5) If the Customer resells or uses any goods before ownership of the goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and Supplier. The Supplier's interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the amount owing to the Supplier. The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust.

7.4 Supplier's Authority to Inspect and Reclaim

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

8. STORAGE, WAREHOUSING, AND DELIVERY

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 New Zealand Code of Good Manufacturing Practice for Manufacture and Distribution of Therapeutic Goods as published by Medsafe (which may be amended from time to time).

8.2 Product Packaging

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 (even when the Customer is not present), all risk in and responsibility for insuring goods supplied by the Supplier will pass to the Customer on delivery.

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 within one hour of 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 HCL Customer Service on 0508 727 466. 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.

8.6. Delivery Cost and times

- (1) The Supplier will, at its cost, freight the goods to the Customer's premises (provided the Customer's premises is located in New Zealand) by whatever methods and route the Supplier considers to be the most expedient.
- (2) Where the Customer is a community pharmacy, and the Customer's order is less than the stipulated Freight-Free Level (excluding GST),(as defined in clause 3.1) the Supplier will freight the goods to the Customer at the Customer's own costs(including but not limited to packaging and shipping) by whatever method and route the Supplier considers to be the most expedient.
- (3) Where the Supplier require the Customer to freight the goods to the Supplier urgently, or in a manner which is not usually used by the Supplier, the Supplier reserves the right to charge the Customer for any additional freighting expenses incurred.
- (4) If the Customer has specified a delivery date, the Supplier will try and deliver the goods or services to the Customer by that date. However:

- (a) The Supplier will determine the days and times for the delivery of the goods or services. Any time stated for delivery is an estimate only and the Supplier is not liable for any delay. The Supplier will be entitled to cancel the contract without being liable to the Customer in any way if the delay in delivery is in respect of causes outside of the Supplier's reasonable control.
- (b) The Supplier may deliver the goods or services to the Customer by instalments in any quantities and each delivery will be by separate contract independent from the other deliveries.

9. REPORTING

9.1 Pharmaceutical

- (1) The Customer must notify the Supplier by telephone on 0800 877 789 (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.
- (3) The Customer will report technical or quality complaints or suspected counterfeits relating to pharmaceutical products to GSK New Zealand on 0800 808 500 or +64 09 367 2900 within 24 hours of initial awareness. Complaints samples if available must be securely retained and provided to the Supplier upon request.

9.2 Pharmacovigilance

- (1) During the contract duration if the Customer or any of its sub-contractors becomes aware of Human Safety Information (HSI), including Adverse Events ("AE") (together referred as HSI/AE)(whether the information is associated to the GSK Product by reference to its generic name or by reference to its trademark) it shall forward such information to GSK.
- (2) All HSI/AEs shall be reported to GSK within 24 hours of initial receipt (or next working day if over a weekend) via secure email to MEL.Australia-Product-Safety@gsk.com or via fax on +61 3 9721 4676.
- (3) The Customer confirms that the HSI/AEs that it sends to GSK were sent successfully without error. If a failure notification is received, the Customer shall immediately re-send the HSI/AE and take reasonable steps to ensure it does not occur again. The Customer is responsible to follow all local regulations for reporting of HSI/AEs. The Customer is required to maintain records of successful confirmation and provide upon request by GSK. This information should be readily available in the event of audit/inspection.
- (4) In no event will personally identifiable information of any patient be provided to GSK in connection with any HSI/AE without consent from the respondent. Personal data of a healthcare professional who has reported an HSI/AE under this Agreement may be disclosed to GSK only where that healthcare professional has given their consent for such disclosure.

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.

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 from the first party, reimburse the first party with seven (7) days.

11. CONTRACTS WITH YOUR CUSTOMERS

Customer agrees that it will include the above clauses 8, 9, 10 and 18.8 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 New Zealand.

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 1 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 and must note the interest of Supplier on the policy of insurance and produce a certificate of currency or to this effect to Supplier on request.

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 AND PERSONAL PROPERTY SECURITIES ACT 1999

17.1 General

- (1) The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all present and after acquired goods (being, for the avoidance of doubt, all of the Customer's present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Supplier to (or for the account of) the Customer to secure the payment by the Customer to the Supplier of any amount owing ("Security Interest") for the avoidance of doubt this includes goods supplied by the Supplier to the Customer on retention of title terms and the proceeds of sale of goods supplied on retention of title terms by Supplier to Customer
- (2) This agreement will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) from the Customer.
- (3) The Security Interest shall continue until the Supplier gives the Customer a final release
- (4) The Customer must act immediately when requested by Supplier to do such acts and provide such information as Supplier considers 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 priority or such other priority that Supplier requires.
- (5) The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the amount owing, including future advances.

17.2 Confidentiality

- (1) Subject to 18.10 of this Agreement, the Supplier and the Customer agree not to disclose information of the kind mentioned in section 177(1) of the PPSA, except in the circumstances required by section 177(2) of the PPSA. 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.

17.3 Enforcement of security interest

- (1) The Customer undertakes to:
 - (a) promptly do all things, sign any further documents and/or provide any information which the Supplier may reasonably require to enable the Supplier to perfect and maintain the perfection of its Security Interest (including by registration of a financial statement); and
 - (b) give the Supplier (addressed to Credit Services or equivalent) not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- (2) The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.
- (3) 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 these conditions of sale, the general law and the PPSA. To the extent that Part 9 of the PPSA would otherwise apply to an enforcement by the Supplier of the Security Interest, and

to the extent of law, the Customer and the Supplier agree that 114(1)(a) of the PPSA do not apply, furthermore the Customer waives its rights as referred to sections 107(2)(c), (d) and (h) of the PPSA

17.4 No limitation

Nothing in this clause is limited by any other provision of the Terms and Conditions 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. GENERAL

18.1 Conditions and Guarantees Required to be Binding

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

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

18.2 Limitation on Liability

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

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

18.3 Exclusion of Other Conditions and Warranties

- (1) The Customer agrees that the Customer is acquiring the goods or services provided by the Supplier for the purposes of a business.
- (2) The Supplier will not be bound by any representations that the Supplier makes unless they are in writing.
- (3) The Supplier will give all technical advice or assistance entirely at the Customer's risk.
- (4) The Supplier warrants only that the goods comply with the Supplier's specifications where the Supplier is the manufacturer, or that they comply with the manufacturer's specifications where the Supplier is not the manufacturer.
- (5) All descriptions of the goods are only to enable their identification and do not mean that the sale of the goods is a sale by description.
- (6) Except as provided in clause 18.1 and 18.3 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 Supplier are excluded.

18.4 Exclusion of liability

Except to the extent provided in this agreement and to the extent permitted by law, Supplier has no liability (including liability in negligence or otherwise arising from our relationship with you) 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.

18.5 Indemnity

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

18.6 Change of Ownership

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

18.7 Director's Guarantee and Indemnity

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

18.8 No Export

Customer must not export, sell or supply goods outside New Zealand or supply any of the goods it knows or could reasonably expect will be exported from New Zealand without the prior written consent of Supplier, which may be withheld or provided in the

Supplier's sole discretion. In the event the Supplier provides written consent of export then the customer shall also comply with the Suppliers export terms and conditions.

18.9 Credit Report

Subject to clause 17.2 of this Agreement the 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 2020* (as amended).

18.10 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://nz.gsk.com/en-nz/privacy-policy/>.

18.11 Insolvency of Customer

A material breach of this agreement is deemed to occur if the Customer becomes bankrupt or insolvent within the meaning of the *Companies Act 1993* or is unable to pay the Customer's debts as they fall due, or enters any form of administration or receivership.

18.12 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 the *Companies Act 1993*) or administrator appointed under the *Companies Act 1993*, or has been declared bankrupt or has filed an application of insolvency under the *Insolvency Act 2006*, or been a director of a company which has gone into liquidation, or has a controller or administrator appointed.

18.13 Assignment

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

18.14. NO AGENCY

The Customer is not an agent or partner in any respect whatsoever of the Supplier, and the Customer has no right to enter into any obligations on the Supplier's behalf without obtaining the Supplier's prior express written consent.

18.15 Variation

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

18.16 Waiver

Supplier'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.

18.17 ARBITRATION

If the Supplier elects then the Customer agrees that any disputes between the parties (as nominated by the Supplier) will be arbitrated by an arbitrator in accordance with the Arbitration Act 1996, and the arbitrator will be a person appointed by the President of the New Zealand Chamber of Commerce or in accordance with the Arbitration Act 1996.

18.18 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.

18.19 Governing Law and Jurisdiction

This agreement is governed by the laws of New Zealand

19. LIMITATIONS OF ON-SALE

- (1) The Customer may not on-sell, use or dispose of the goods or services otherwise than in accordance with this Agreement.
- (2) All goods which the Supplier supplies to the Customer which are packaged and sold for "dispensing purposes only" on a medical or dental practitioner's prescription may not be on-sold without such a prescription.
- (3) In the event that the Customer breaches clauses 19(1) or 19(2) above, the Supplier may at its sole discretion defer supplying the Customer with any more goods or services on credit or otherwise, and may cancel (without liability) any contract for the supply of goods or services to the Customer.