

TERMS AND CONDITIONS OF SALE

1. Acceptance of Orders

- 1.1 We, GlaxoSmithkline NZ limited, will only supply you, the customer, with goods on these terms unless we have agreed in writing to different terms.
- 1.2 We will only supply classified medicines where you hold the appropriate licence to purchase such goods.
- 1.3 We will only supply you with goods on credit when we have obtained a credit check satisfactory to our requirements.
- 1.4 Orders of pharmaceutical products with a value of less than \$1,000.00 will not be accepted.
- 1.5 A minimum order of pharmaceutical products of a value of not less than \$1,000.00 can only be placed no more than once a week.
- 1.6 Notwithstanding clauses 1.4 and 1.5 above, we reserve the right to accept or reject any orders which may be received in our absolute discretion.

2. Price

- 2.1 The price of the goods:
 - 2.1.1 Will be our current prices at the date of delivery unless we have quoted a firm price.
 - 2.1.2 May be increased if we incur higher freight, insurance or import charges or higher foreign exchange costs after the order is placed, or if we incur extra costs because you did not provide us with information of licences by the time we required.
 - 2.1.3 Will be exclusive of Goods and Services Tax.
- 2.2 If we supply goods to you which are invoiced on an advanced credit arrangement, then it is agreed that the price at which those goods are invoiced are prices which are:
 - 2.2.1 Equal to the lowest cash price which the goods could have been purchased under our normal credit terms.
 - 2.2.2 The lowest price that we both would have agreed upon for the goods at the time of invoice on the basis of payment in full at the time at which the title in the goods would transfer to you.
- 2.3 Wholesalers Servicing Retail Pharmacies
Our wholesale policy is to supply at our normal wholesale price only to wholesalers who:
 - (a) are not also retailers; and
 - (b) offer a range of wholesale goods and services to supply a retail pharmacy.

3. Payment

- 3.1 You must pay us the price of the goods by the 20th of the month following the date of our invoice, unless otherwise agreed.
- 3.2 If we supply you goods on advanced credit, you must pay us the price by the 20th of the month agreed upon by us.
- 3.3 If you do not pay us in accordance with clauses 3.1 or 3.2, we will be entitled to:
 - 3.3.1 Defer supplying you with any more goods, on credit or otherwise.
 - 3.3.2 Charge you penalty interest on the amount owing to us at a rate equivalent to that which trading banks charge commercial customers on unarranged overdrafts from the time the payment was due (on a daily basis).
 - 3.3.3 Treat the contract as having been cancelled by you.
 - 3.3.4 Recover from you (as a debt owing to us) all costs incurred by us in recovering any monies owing by you to us, including all legal expenses (on a client/solicitor basis), debt collection costs, administration charges, and/or collection fees as the case may be.
 - 3.3.5 Charge you the standard list price for the goods, where those goods supplied to you are supplied at a discount price.
- 3.4 If we reasonably believe that you will not pay any monies owing to us for any reason, then we may demand from you:
 - 3.4.1 Payment in full of any monies owing to us;
 - 3.4.2 That you provide us with adequate collateral to secure the payment of all monies owing to us before we commence, or continue to deliver goods to you.
- 3.5 We may in our discretion apply any payments we receive from you towards any indebtedness you may have with us. We are not bound by any conditions or qualifications that you may make in relation to any payments made to use.
- 3.6 You may not withhold payment, or make deductions on account of any goods, which you claim to be defective.

4. Title and Risk

4.1 Risk and Ownership

- 4.1.1 Risk of any loss, damage or deterioration of or to the goods passes to you on delivery in accordance with clause 5.
- 4.1.2 Ownership of the goods remains with us and does not pass to you until you:
 - (a) pay the Amount Owing in full and GSK has released the Security Interest; or
 - (b) resell the goods pursuant to the authority granted by these Terms.
- 4.1.3 While ownership of the goods remains with us:
 - (a) you must store them separately and clearly identify them as belonging to us;
 - (b) we authorise you, in the ordinary course of your business, to use the goods or sell them for full consideration.This authority is revoked immediately if:
 - (i) payment is not made when it is due; or
 - (ii) we notify you in writing that this authority is revoked.You must advise us immediately of any action by third parties (including any of its creditors) affecting our interest in the goods.
- 4.1.4 We may apply any payments received from or on behalf of you in reduction of the Amount Owing in such order and manner as we think fit.
- 4.1.5 If you resell or use any goods before ownership of the goods has passed to you, the proceeds of such sale or use shall be received and held by you (in whatever form) in trust for both you and us. Our interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Amount Owing. The balance of the proceeds (if any) shall be your beneficial interest under that trust.
- 4.1.6 We may bring an action for the price of the goods sold even where ownership of the goods may not have passed to you.

4.2 Personal Property Securities Act 1999

- 4.2.1 Without limiting anything else in this agreement, you acknowledge that:
 - (a) these terms create, in favour of us, a security interest in all present and after acquired goods (being, for the avoidance of doubt, all your 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 us to (or for the account of) you) to secure the payment by you to us of the Amount Owing; and
 - (b) these terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of you; and
 - (c) the Security Interest shall continue until we give you a final release.
- 4.2.2 You undertake to:
 - (a) promptly do all things, sign any further documents and/or provide any information which we may reasonably require to enable us to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
 - (b) give us (addressed to Credit Services or equivalent) not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).
- 4.2.3 You waive your right to receive a verification statement in respect of any financing statement relating to the Security Interest.
- 4.2.4 To the extent permitted by law, we and you contract out of:
 - (a) section 114(1)(a) of the PPSA; and
 - (b) your rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.
- 4.2.5 You agree that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

5. Delivery

- 5.1 We will, at our cost, freight the goods to your premises (provided your premises are in New Zealand) by whatever methods and route we consider to be the most expedient.
- 5.2 Where you are a community pharmacy, and your order is less than the stipulated freight-free level (excluding GST), we will freight the goods to you at your own cost (as to packaging and shipping) by whatever method and route we consider to be the most expedient.
- 5.3 Where your premises are outside New Zealand, we will ship the goods to you "freight on Board", or "Freight on Board Airport" (at our discretion). The terms "Freight on Board Airport" shall have the same meanings given to those terms under the Incoterms 1990 promulgated by the International Chamber of Commerce.
- 5.4 Where you require us to freight the goods to you urgently, or in a manner which is not usually used by us, we reserve the right to charge you for any additional freighting expenses incurred.
- 5.5 We will only deliver the goods to you direct, and not to a third party.
- 5.6 If you have specified a delivery date, we will try and deliver the goods to you by that date. However:
 - 5.6.1 We will be entitled to deliver the goods to you after the agreed delivery date or cancel the contract without being liable to you in any way if the delay in delivery is in respect of causes outside our control.
 - 5.6.2 We may deliver the goods to you by instalments in any quantities and each delivery will be by separate contract independent from the other deliveries.
- 5.7 We will determine the days and times for the delivery of the goods. Any time stated for delivery is an estimate only and we are not liable for any delay.
- 5.8 You must provide a secure delivery point. Goods are deemed delivered properly when unloaded at the delivery point (even when you are not present) – all risk in and responsibility for insuring goods supplied by us will pass to you on delivery.

6. Exclusions and Limitations to our Liability

- 6.1 Where we are permitted by law, we exclude or contract out of all conditions, guarantees and warranties, statutory or otherwise.
- 6.2 We will not be bound by any representations that we make unless they are in writing.
- 6.3 We give all technical advice or assistance entirely at your risk.
- 6.4 We warrant only that the goods comply with our specifications where we are the manufacturer, or that they comply with the manufacturer's specifications where we are not the manufacturer.
- 6.5 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.
- 6.6 We will not be liable to you for any direct, indirect or consequential loss in respect of the goods or for any delay or failure to supply the goods except where it is due to our gross negligence or wilful default. However, our liability to you in the instance is limited to the amount that we may receive from the manufacturer if we are not the manufacturer, or to the sale price of the goods where we are the manufacturer.

7. Claims

- 7.1 We will, at our option, replace or give a credit to you for any goods which contain a manufacturing defect, are damaged, or are incorrectly delivered to you if;
 - 7.1.1 You advise us of your claim within 7 days of receiving the goods, quoting the despatch number and/or invoice number where appropriate.
 - 7.1.2 Your claim identifies the manufacturing defect, and the nature of your claim.
 - 7.1.3 Your claim is accompanied by a specimen of the goods, prior to returning the goods to us.
 - 7.1.4 You obtain our consent to the return of the goods, prior to returning the goods to us.
 - 7.1.5 The goods are returned to us in the same condition in which they were received by you.
- 7.2 If you dispute any item or amount contained in any invoice, you must advise us of such a claim within fourteen days after receipt of that invoice. If you fail to give us such notice you will be deemed to have accepted the contents of the respective invoice.

8. Credit Information

- 8.1 We are authorised by you to:
 - 8.1.1 Obtain from a credit reporting agency a credit report concerning your credit information if we consider it relevant to determine whether to supply you with goods on credit, or to collect unpaid accounts from you.
 - 8.1.2 Provide any third party with information about you when requested.
 - 8.1.3 Report any overdue payments you owe to us to other credit providers or credit reporting agencies.

- 9. Return of Goods**
- 9.1 Goods are not sold on a sale or return basis.
- 9.2 We will provide you with credit for goods only where goods have been sent to you in error, or in excess of the written order.
- 9.3 All goods supplied within 6 months of the specified expiry date for those goods will be accompanied by a notice to this effect. These goods may be returned for replacement if not sold before the specified expiry date, subject to our right to accept or reject any goods returned to us.
- 9.4 We will, at our option, replace or give a credit to you for goods which have been incorrectly or mistakenly ordered if the goods are:
- 9.4.1 Returned within 7 days of the date of the invoice for the goods; and
- 9.4.2 In good condition and fit for resale.
- 9.5 We reserve the right to only accept returns if the goods are valued at \$30.00 or greater.
- 10. Storage and Packaging**
- 10.1 All goods should be stored, handled and displayed in accordance with the instructions displayed on the goods.
- 10.2 The goods are supplied to you for sale to the end-user of the goods in the packaging in which the goods are supplied to you. You should not interfere with, or alter, the original packages insofar as they set out our marks, numbers, references and other information as this may disadvantage or mislead the end-users of the goods.
- 10.3 Wholesalers of pharmaceutical products are required to maintain a 4 weeks cover of stock of the range of our products dispensed by retail pharmacies.
- 10.4 We may from time to time require wholesalers of pharmaceutical products to provide us with evidence (including by way of permitting inspection by us) that adequate stocks are held. We may decline to supply, at its normal wholesale price, further stock to you if that evidence is not forthcoming.
- 11. Intellectual Property**
- 11.1 All our trade marks or other intellectual property rights in respect of the goods remain our property, and you must not in any way interfere with, alter or infringe upon our intellectual property rights relative to our "trade marks", "trade dress" or "get-up" associated with the goods.
- 11.2 You must consult us as to the proper use of our intellectual property whenever you are going to use our intellectual property.
- 11.3 All advertising material supplied to you for your business use, and not for dissemination to the end-user of the goods, remains our property, and you will return it to us immediately upon our request to do so.
- 12. Limitations of On-Sale**
- 12.1 You may not on-sell, use or dispose of the goods otherwise than in accordance with those terms upon which we have supplied the goods to you.
- 12.2 All goods which we supply you 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.
- 12.3 In the event that you breach clauses 12.1 and 12.2, we may at our discretion defer supplying you with any more goods on credit or otherwise, and may cancel any contract for the supply of goods to you.
- 13. Assignment**
- 13.1 You may not assign your rights or delegate your performance under this agreement without our consent in writing.
- 14. No Agency**
- 14.1 You are not our agent in any respect whatsoever, and have no right to enter into any obligations on our behalf without our express consent in writing.
- 15. Arbitration**
- 15.1 We may refer any disputes between us to an arbitrator who shall be a person appointed by the President of the New Zealand Chamber of Commerce.
- 16. Waiver**
- 16.1 In the event that either party fail to perform an obligation under these Terms and Conditions of Sale, and the non-defaulting party does not elect to enforce that obligation, then the non-defaulting party's inaction shall not prevent that party from enforcing that obligation at a later date, and does not constitute a waiver of any of the terms and conditions.

Signature: _____

Print Name: _____

Date: _____ / _____ / _____