

## GSKDirect Terms and Conditions of Sale

The following terms and conditions of sale, as the same may be amended by GSK from time to time in its sole discretion (the "GSK Standard Terms and Conditions" or "Agreement"), shall apply to all sales of products to eligible purchasers (each hereinafter referred to as a "Purchaser") by GlaxoSmithKline LLC, a Delaware limited liability company ("GSK"), through [www.gskdirect.com](http://www.gskdirect.com) (the "GSK Direct Website"). Before placing a reservation or order through the GSKDirect Website, Purchasers first must register at [www.gskdirect.com](http://www.gskdirect.com) and be approved by GSK. Eligibility to purchase shall be determined by GSK in its sole discretion. Each reservation or order by a Purchaser shall be deemed an acknowledgement and acceptance by Purchaser of the GSKDirect Terms and Conditions of Sale then in effect at the time of such reservation or order and Purchaser's agreement to comply with such terms. The terms and conditions set forth herein are hereby incorporated by reference into all invoices issued by GSK in connection with sales arising out of orders by Purchaser through [www.gskdirect.com](http://www.gskdirect.com).

### I. General Provisions

A. Pricing to Purchaser. Orders shall be invoiced at the prices in effect at the time the order is received by GSK's order processing system. Subject to Section III.B hereof, all prices are subject to change without notice. All invoices shall include, and Purchaser shall be responsible for paying, all applicable Federal, state and local taxes.

B. Shipment. GSK will ship the products ordered hereunder to the address specified at the time of order in accordance with and subject these terms of sale. GSK reserves the right to fill only as much of Purchaser's product order as GSK, in its sole discretion (after conferring in good faith with Purchaser), determines represents Purchaser's current requirements for such product under the applicable contract. In addition, in the case of GSK influenza vaccines, GSK reserves the right to allocate supply among its customers, delay shipments or to make partial deliveries based on availability and approval of the product. GSK's election to delay shipment of some doses shall not impact Purchaser's eligibility for pricing.

C. Passing of Title; Risk of Loss. Title to, and risk of loss for, products shipped to Purchaser will pass when delivered to the carrier by GSK. The transportation agent acts as Purchaser's agent for the shipment of products to Purchaser, and GSK is not responsible for loss of damage to, or delay with respect to such products after delivery to the carrier. If product arrives in broken or damaged condition, Purchaser shall insist upon carrier's agent noting the damage or breakage on the delivery receipt.

D. Transportation Charge Prepayment. GSK shall prepay all carrier charges and insurance against Purchaser's risk of loss or damage to GSK products during carriage.

E. Returns. Unless otherwise set forth herein or in a separate agreement between the parties, the products delivered hereunder are not returnable except as provided in the GSK's Return Goods Policy set forth at [www.gskdirect.com](http://www.gskdirect.com) as of the date of the applicable order.

F. Warranty. GSK warrants that its products at the time of shipment to Purchaser by GSK: (a) will in all material respects have been manufactured in conformance with current good manufacturing

practices as set forth in Title 21 of the Code of Federal Regulations at the time of manufacture; and (b) will not be: (i) adulterated or misbranded by GSK within the meaning of the Food, Drug and Cosmetic Act, as amended (the "FD&C Act") or (ii) an article that may not be introduced into interstate commerce under the provisions of Sections 301 or 505 of the FD&C Act. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

G. Limitation of Damages. In no event shall GSK be liable for loss of profit or use, special, indirect, incidental or consequential damages, whether based in contract, tort or any other legal theory, for any claim asserted by Purchaser under this Agreement. In the event that products are missing, defective or not in accordance with Purchaser's order, Purchaser's exclusive remedy shall be, at GSK's option, replacement of the damaged or defective product or crediting of Purchaser's account. Unless Purchaser notifies GSK in writing within fourteen (14) days from the date of receipt (or eighteen (18) days from date of invoice whichever is earlier) that quantities are missing, damaged, or not in accordance with the Purchaser's order, it shall be conclusively presumed that such products were in the proper quantity, were not damaged, and were in accordance with Purchaser's order.

## **II. Obligations of Purchaser.**

A. Payment for Products. Purchaser shall pay for all vaccine purchases with payment to be received by GSK within ninety days from the date of invoice, unless expressly provided otherwise on the GSKDirect Website. Purchaser shall be responsible for paying all applicable Federal, state and local taxes in effect at the time product is shipped by GSK. Each Purchaser who is exempt from state and local tax must have its exemption certificate on file with GSK to avoid tax being billed. All invoices must be paid in full under the terms specified above and no deductions are permitted from GSK invoices unless authorized by a prior credit memo. Unauthorized deductions or past due account balances are in violation of this Agreement and may result in a delay or a suspension of shipments. Purchaser shall reimburse GSK for any cash discounts taken but not earned upon request from GSK.

B. Financial and Credit Position. Purchaser shall maintain an adequate financial condition satisfactory to GSK and substantiate such condition with financial statements or as otherwise requested by GSK. If, in GSK's judgment, at any time before shipment, the financial condition of the Purchaser becomes impaired or unsatisfactory to GSK, GSK may delay or deny shipment and/or require cash payment or appropriate security before shipment.

### **C. Ordering.**

1. These terms of sale shall apply to all orders by Purchaser for GSK vaccine products through [www.gskdirect.com](http://www.gskdirect.com) and/or other authorized electronic direct ordering methods. Once placed, orders are cancelable only in full, and no order may be cancelled within 72 hours of the requested shipment date.
2. Pre-book reservations for GSK influenza products are not deemed to be orders until Purchaser is sent notification of pending shipment.
3. GSK reserves the right to limit orders for new products, strengths and sizes during the first sixty (60) days after their introduction.
4. In the event that Purchaser is party to more than one separate written agreement with GSK pursuant to which GSK vaccines can be purchased, Purchaser is required to specify for each order the agreement pursuant to which the purchase is being made. Such specification shall constitute Purchaser's certification that the GSK vaccines purchased in such transaction may be purchased under such contract

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and shall be used only for the purposes permitted under such agreement.

D. Inventory. GSK can request, at any time, information regarding inventory levels of any GSK vaccines product. An authorized GSK representative can compile this information from either computer records or actual physical inventory count during normal hours of business.

E. Lawful Handling.

1. Purchaser agrees that any GSK vaccines purchased through [www.gskdirect.com](http://www.gskdirect.com) are for the "own use" of Purchaser as defined by the United States Supreme Court in *Abbott Laboratories v. Portland Retail Druggists Association, Inc.*, 425 U.S. 1 (1976), and Purchaser further agrees that it shall neither administer such vaccines in a manner that is inconsistent with the foregoing nor sell such vaccines for any reason. Purchaser shall take such precautions as are necessary to prevent them from falling into the hands of those who may not lawfully possess or handle them and shall permit GSK, or an agent of GSK, to audit Purchaser from time to time to confirm compliance with the terms of this provision. Purchaser acknowledges and agrees that any violation of this provision shall be deemed a material breach of the Agreement. GSK reserves all rights and legal remedies in the event that products sold under the "own use" restrictions are administered by Purchaser in a manner that is inconsistent with the "own use" requirements contained in this provision.
2. Purchaser shall maintain all federal, state and local registrations necessary for the lawful handling of all GSK products and promptly notify GSK of any denial, revocation or suspension of any such registration or any changes in the GSK products which Purchaser authorized to administer.
3. Purchaser shall report any administrative, civil or criminal action by local, state or federal authorities against Purchaser, its officers or employees, regarding alleged violations of the Controlled Substance Act of 1970, as amended or other comparable legislation, and shall provide GSK with complete information concerning the disposition of such action.

F. Proper Handling and Storage. Purchaser shall handle and store GSK products in a clean and orderly location and in a manner that will assure that the proper rotation and quality of such products are maintained. Refer to the Tag Alert© Instructions posted on [www.gskdirect.com](http://www.gskdirect.com) for specific handling and storage criteria for GSK vaccines. For products requiring unique or special handling and storage, Purchaser shall comply with GSK criteria specifically communicated about the product. Purchaser represents and warrants that it has and will maintain at all times the proper license or licenses required to receive, handle and store vaccines. Purchaser shall allow GSK to conduct a physical inspection of Purchaser's storage facilities at any time GSK requests during normal hours of business.

G. Compliance with Laws. Purchaser shall comply with all Federal, state and local laws, requirements and regulations as they relate to its performance under the Agreement. Without limitation of the foregoing, Purchaser will comply with applicable provisions of 42 U.S. C. 1320a-7b prohibiting illegal remunerations (including any kickback, bribe, or cost incentive) by properly disclosing and appropriately reflecting the discounts and rebates described in this Agreement in the costs claimed or the charges made under the Medicaid, Medicare or any federal health program. To that end, Purchaser shall properly document the pricing made available hereunder in Purchaser's records setting forth the acquisition cost of the products and, if Medicare, Medicaid or any other Federal or State-funded healthcare program requests information as to the cost of the products acquired hereunder, Purchaser shall properly and accurately disclose such pricing.

H. Transfer of Ownership; Change of Address. Purchaser shall notify GSK of any transfer in majority ownership or control, or any change in address, at least thirty (30) days prior to such action and provide

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advice as to its timing, contractual implications, and any other factor that changes the trading relationship.

I. Claims. Purchaser shall immediately report to GSK any in-transit loss or shortage of GSK products including controlled substances. Purchaser shall report all claims within fourteen (14) days of the receiving date. Proper documentation must accompany all claims. Deductions on shortages or shipping errors are not allowed. If appropriate, GSK will issue credit to the Purchaser for the claim.

J. Audit or Review and Payment of Prior Transactions. Purchaser must submit all requests for review or payment of prior transactions within twelve (12) months of the transaction date. Appropriate documentation must accompany all claims.

K. Confidentiality. Purchaser agrees that the pricing made available hereunder and the terms and conditions of this Agreement are confidential information of GSK. Such information shall be kept in strict confidence by the Purchaser and shall not be used by Purchaser or disclosed to any third party without the express written consent of GSK. Failure to comply with this provision shall be deemed a material breach of the Agreement and shall entitle GSK to immediately terminate Purchaser as an eligible purchaser, without limiting any of the other rights and remedies available to GSK at law or in equity, including without the right to seek an injunction to prohibit disclosure of GSK's confidential information.

### **III. Additional Provisions**

A. Acceptance by GSK. All orders are subject to acceptance and approval by GSK at its central Operations Office in Philadelphia, Pennsylvania.

B. Construction. The GSK Standard Terms and Conditions shall prevail over any inconsistent or conflicting terms in any other agreement between Purchaser and GSK; provided that, if Purchaser is party to a separate written contract with GSK when an order is placed and a provision in the separate written contract specified by Purchaser for such order conflicts with a provision in the GSK Standard Terms and Conditions, then the provision in the separate written contract shall prevail over the conflicting provision in the GSK Standard Terms and Conditions with respect to such order. The terms and conditions of any purchase order or other document issued by Purchaser (whether in writing, electronic or otherwise) that conflict with or are in addition to the terms and conditions stated herein or on the applicable GSK invoice are expressly rejected by GSK and superseded hereby.

C. Force Majeure. Neither GSK nor Purchaser shall be liable to the other for failing to do as agreed where such failure is the result of a strike or other labor disturbance, fire, flood, earthquake, storm, governmental action, or other reason beyond its control.

D. No Agency Relationship. The relationship created by this Agreement is a buyer-seller relationship and not an agency relationship.

E. No License of IP Rights. Nothing in this Agreement or the conditions of sale of product to Purchaser shall be construed as granting or implying the grant of any license under any patent or trademark rights or any other intellectual property rights held by GSK or any of its affiliates anywhere in the world, and GSK shall be entitled to exercise such patent or trademark rights and/or other intellectual property rights to the fullest extent legally permissible at the time of such exercise. In the case where a trademark was on the goods when originally supplied by them, this trademark shall not be altered, partly removed or partly obliterated.

F. Product Shortages. In the event there is a shortage of any GSK product, GSK in its sole discretion shall have the right to allocate such product among its customers in such a manner as it deems appropriate. In addition, in the event that the government assumes control of product allocation (as a result of a shortage or otherwise) or requires that specific requirements be met, then product amounts and delivery schedules may be changed to meet the government's requirements.

G. Scope of Agreement. The pricing and terms of this Agreement shall apply only to Purchasers located in the Continental U.S., Alaska and Hawaii; provided that, if a Purchaser is located in a state in which the state (or state agency) has in force or enacts, implements or modifies a law, rule or regulation (such as a state unitary pricing, anti-discount or pricing, rebate or other law intended to impact the pricing of prescription drugs or penalize GSK for such pricing) or interpretation thereof and which law (1) prohibits or restricts in any material way the provision of pricing, discounts or rebates described in this Agreement, (2) requires GSK to provide the same or similar pricing to other purchasers or users of GSK's Vaccines to which GSK would not normally provide such pricing or terms or (3) otherwise results in a potentially adverse impact on GSK, then such Purchaser shall not be eligible to purchase GSK vaccines hereunder until such law or regulation is repealed.

H. Amendments. GSK may amend these terms and conditions at any time and for any reason without notice to Purchaser.

I. Waiver. The waiver of a breach of the terms hereof or any default hereunder shall not be deemed a waiver of any subsequent default whether of the same or similar nature and shall not in any way affect the terms hereof. No waiver shall be valid or binding unless in writing and signed by the parties.

J. Assignment. Purchaser shall not sell, assign, or transfer to any third party, and past, present or future obligation, covenant, or claim of any nature whatsoever relating to any matter covered by the Agreement. Any such sale, transfer or assignment made contrary to this section shall be null and void. Purchaser shall indemnify and hold harmless GSK and its shareholders, directors, officers and employees from and against any and all costs, damages or liability expenses, including defense costs and attorney fees incurred in connection with Purchaser's breach of this section.

K. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Pennsylvania without regard to its conflicts of law principles.

L. Severability. In the event any term or provision of these GSKDirect Terms and Conditions is declared illegal, unenforceable or in conflict with any law or regulation, the validity of any other term or provision of these GSKDirect Terms and Conditions shall not be affected thereby.

M. Miscellaneous. Except to the extent provided herein, these GSKDirect Terms and Conditions constitute the entire agreement between GSK and Purchaser with respect to the subject matter hereof and supersedes any and all prior agreements or understandings between the parties in relation thereto. Both parties acknowledge that any statements or documents not specifically referenced and made a part of the GSKDirect Terms and Conditions shall be of no force or effect.

N. Entire Agreement. Except as set forth in Section III.B, this Agreement supersedes all prior contracts, agreements and understandings between GSK and Purchaser.

O. Storage and Handling Instructions. Reference TagAlert® instructions link at the bottom of [www.gskdirect.com](http://www.gskdirect.com).

#### **IV. Additional Provisions Applicable to Purchases of Influenza Virus Vaccines**

A. Purchases of GSK Influenza Virus Vaccine. The following additional terms and conditions shall apply to any purchase of GSK influenza virus vaccine through the GSKDirect Website and/or other authorized electronic direct ordering methods. Such terms shall supersede any inconsistent terms otherwise contained herein.

1. The parties acknowledge and agree that in the event there is a shortage of any GSK influenza virus vaccine, then GSK in its sole discretion shall have the right to allocate such product among its customers in such a manner as it deems appropriate. In addition, in the event that the government assumes control of product allocation (as a result of a shortage or otherwise) or requires that specific requirements be met, then product amounts and delivery schedules may be changed to meet the government's requirements. The parties understand and agree that this Agreement does not extend any agreement or guarantee, express or implied, as to the supply or distribution of any specified minimum quantity of influenza virus vaccine doses.
2. GSK will begin accepting pre-book reservations for influenza virus vaccine from Purchaser at its discretion. GSK will continue to accept pre-book reservations for doses of influenza virus vaccine at its sole discretion for as long as anticipated supply for the current season lasts. GSK reserves the right to determine a "stop date" for accepting pre-book reservations, at any time.
3. The minimum prebook quantity for purchases of influenza vaccine under this Agreement is 10 doses for Fluarix (Influenza virus vaccine) and 10 doses for Flulaval (Influenza virus vaccine).
4. The minimum shipping quantity for purchases of influenza vaccine under this Agreement is 10 doses of Fluarix (Influenza virus vaccine) and 10 doses of Flulaval (Influenza virus vaccine).
5. GSK will send a confirming email(s) to Purchaser acknowledging that its pre-book reservation has been received by GSK. When product is available for delivery, GSK will email the Purchaser to notify the Purchaser of delivery(s). Purchaser does not need to confirm its scheduled delivery date. Detailed information regarding pre-book, orders, or shipments can be obtained at [www.gskdirect.com](http://www.gskdirect.com) or by contacting the GSK Vaccine Service Center at 866-475-8222.
6. Purchaser has at least five business days (or 7 calendar days) after notification of shipment to cancel or reduce their influenza vaccine reservation.
7. To qualify for the Flu Advantage Program, you must pre-book through [www.gskdirect.com](http://www.gskdirect.com) by the applicable lock-in date. Only reservations made through this website are eligible for the Flu Advantage Program and its benefits. Program is subject to modification or termination at GSK's sole discretion. Pre-booked reservations and purchases under the Flu Advantage Program are subject to the same terms of sale you accepted when you registered at [www.gskdirect.com](http://www.gskdirect.com).