



General Contract Terms and Conditions

1. Scope
- 1.1. These General Contract Terms and Conditions (hereinafter referred to as "GTC") shall apply to contractual legal relationships between GlaxoSmithKline Pharma GmbH (hereinafter referred to as "GSK") and the Supplier (hereinafter referred to as "SUP").
- 1.2. Changes to the GTC shall become legally valid at the beginning of the next month following the month in which the SUP was notified and shall henceforth apply to any current and future business transactions between the SUP and GSK unless a written objection filed by the SUP was received by GSK prior to that date.
- 1.3. The validity of third party general terms and conditions of business/general contract terms and conditions for GSK and/or terms and conditions that are standard for the industry shall be explicitly excluded.
2. SUP obligations
- 2.1. The SUP undertakes to observe the relevant company rules of GSK.
- 2.2. The SUP shall hire only carefully selected and properly trained employees. At the request of GSK, the SUP shall, within a reasonable period, replace employees who do not possess the required expertise or who jeopardise performance of the contract.
- 2.3. As soon as the SUP becomes aware of circumstances that may jeopardise the agreed performance of the contract, it must inform GSK immediately in writing, no later than 48 hours after the discovery of these circumstances, and propose solutions for ensuring compliance with the contract.
- 2.4. If, in the course of performance of the contract, performance is required that is not envisaged in the contract, the SUP must reach agreement regarding this performance with GSK before carrying it out. Once the necessity or suitability of this performance has been mutually agreed, the corresponding remuneration must be agreed. If GSK is provided with performance not envisaged in the contract or without prior written consent and agreement on remuneration, GSK shall not be obliged to pay for this performance.
- 2.5. The costs for quotations, including any costs arising in connection with the drawing up of the contract, as well as cost estimates, shall be borne by the bidder.
- 2.6. The conclusion of subwork contracts governing professional activities within the contract requires the prior consent of GSK. If the SUP hires employees or concludes work contracts for the purposes of performance of the contract, it becomes the employer/principal and concludes these employment or work contracts in its name and for its account. The SUP shall be liable for the negligence of all persons it uses in the performance of its contractual obligations to the same extent as it would be for its own negligence.
3. Most-favoured status
The SUP shall grant GSK most-favoured status, i.e. should it offer a third party better conditions for comparable work, particularly with regards to remuneration and quality, GSK shall be entitled to have the contract amended accordingly without delay.
4. Delivery/contractual penalties
- 4.1. For each calendar day exceeding an agreed performance deadline, the SUP must pay 5% of the agreed remuneration as a contractual penalty. The judicial right of mitigation shall be excluded.
- 4.2. The contractual penalty shall become payable as soon as the SUP defaults and shall be calculated until performance has been rendered in full; evidence of loss or damage is not required.
- 4.3. Claims for damages in excess of the contractual penalty shall remain unaffected.
- 4.4. Payment of the contractual penalty shall not release the SUP from its obligation to provide the agreed performance.
5. Confidentiality
- 5.1. The SUP undertakes to keep confidential all data, information, business secrets, expertise, etc. revealed to it, unless GSK releases it from this obligation in writing in a specific case.
- 5.2. The SUP undertakes to take all reasonable measures to ensure confidentiality and to prevent the unauthorised use of information; i.e. it must in particular take at least the same measures that it would take to protect its own confidential information, and it must impose the same confidentiality obligation on its employees, subcontractors, consultants, etc., who have access to the information, before its disclosure and fully support GSK in the enforcement of claims against third parties.
- 5.3. The SUP undertakes to comply with the provisions of the Federal law governing the protection of personal data (Data Protection Act 2000 – DSG, BGBl. I 1999/165 in its current version), in particular the provision in Section 15 DSG.
- 5.4. The obligation with respect to confidentiality and data privacy shall continue to exist after performance has been rendered by the SUP to GSK in full.
- 5.5. In the event of a breach of these obligations and of the obligation to impose the confidentiality obligation, the SUP shall be obliged to pay GSK a penalty, regardless of fault, in the amount of EUR 10,000. The applicability of the judicial right of mitigation shall be excluded. GSK reserves the right to assert a further claim for damages. Payment of the penalty shall not release the SUP from its obligation to perform its contractual obligations.
6. Remuneration
- 6.1. If the SUP submits a cost estimate, its correctness shall be deemed warranted (Section 1170 a ABGB).
- 6.2. The remuneration indicated in the agreement or offer is a fixed all-inclusive price, including all statutory levies, excluding VAT. General price reductions, including any implemented by the SUP after the date upon which the contract was signed, must be passed on to GSK.
- 6.3. No separate costs, in particular travel expenses, subsistence expenses, other expenses, etc. shall be borne by GSK. The absorption of such costs must be expressly agreed in the contract and the amount clearly defined.
7. Invoicing/payment terms
- 7.1. Invoices should preferably be sent electronically to GSK via the Tungsten Network. Please contact our Procurement department for more information.
Invoices can also be sent separately to the following address:
Recall Information Management, SA
Reference GSK 10
Apartado Postal 24094
28080 MADRID, SPAIN
- The billing address is:
GlaxoSmithKline Pharma GmbH
Euro Plaza, Gebäude I, 4. Stock
Wagenseilgasse 3, 1120 Vienna, Austria
- 7.2. Undisputed invoices shall be paid within 60 days net of their receipt. The payment period shall commence on the date of receipt by GSK.
- 7.3. Invoices containing factual or accounting errors shall not be deemed to be due for payment until they have been corrected by mutual agreement, and may be returned by GSK at any time. In the latter case, payment shall only be deemed to be due upon receipt of the corrected invoice.
8. Right of use
- 8.1. The SUP shall deliver the work as stipulated in the contract and all work results to GSK.
- 8.2. GSK shall have the exclusive, irrevocable and unrestricted right to use and exploit the work to be provided by the SUP and the associated work results, including the relevant expertise – by whatever means – free of charge.
- 8.3. The expertise made available by GSK to the SUP for the fulfilment of performance covered by the contract, in particular for the completion of work results covered by the contract, belongs to GSK and may not be used by the SUP without express consent.
9. Freedom from third-party rights
- 9.1. If a claim is asserted against GSK due to the infringement of the intellectual property rights of third parties, or there is a risk of a claim being asserted, GSK must inform the SUP without delay and give the SUP the opportunity for defence against the claim or the full granting of rights.
- 9.2. The SUP shall compensate GSK for any losses arising from the breach of the intellectual property rights of third parties by goods or services provided by the SUP. Part of the damage to be compensated shall be payments for the out-of-court settlement of disputes, which GSK may agree with the consent of the SUP; this consent may not be refused by the SUP without factual, objective justification.



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10. Warranty
 - 10.1. The SUP undertakes, following completion of the work, to remedy all defects upon request by GSK within a reasonable period of time with no further claim for remuneration. The warranty period shall be two years, unless a longer warranty period is stipulated by law, and shall begin on the date of acceptance of the work by GSK.
 - 10.2. If the SUP fails to comply with its obligation to remedy defects, even after a reasonable extension has been granted, or fails to fulfil its obligation in a timely manner or in full, or if the remedy is also defective, the following shall apply:
 - 10.2.1. If the work is unusable for GSK and cannot be improved by a third party, the SUP shall lose its entitlement to remuneration; amounts already received must be paid back by the SUP, plus interest in the amount of 5% above the base interest rate (Euribor), billed from the date of receipt of the amounts.
 - 10.2.2. If the work can be improved by a third party, GSK shall be entitled to claim reimbursement of all improvement costs from the SUP.
 - 10.2.3. If the value of the work has been diminished for GSK and improvement by a third party is possible, GSK shall be entitled to claim an appropriate reduction of the remuneration.
 - 10.3. In the event of a delay caused by the SUP, GSK shall be entitled to arrange for substitute performance at the expense of the SUP after notification and the granting of a reasonable extension. The granting of an extension shall not apply to fixed dates pursuant to Section 919 ABGB.
 - 10.4. The burden of proof, including incidental costs and expenses, for the absence of defects or for the insignificant nature of a defect shall rest with the SUP.
 11. Compensation for damages
 - 11.1. The SUP shall be liable without limitation for all damages that it has caused intentionally or by gross negligence, as well as for consequential damage, lost profits, etc. In the case of ordinary negligence, the SUP shall be liable for the damage incurred, up to a maximum of the amount of the gross order value.
 - 11.2. The SUP shall be liable for the negligence of all persons it uses in the performance of its contractual obligations, pursuant to Section 1313 a ABGB.
 - 11.3. Where there are multiple suppliers, these shall be jointly and severally liable to GSK for the performance of all obligations arising from the contract.
 - 11.4. The agreement of a contractual penalty pursuant to Section 1336 ABGB shall not affect the right to assert a further claim for damages.
 - 11.5. If a claim is asserted against GSK due to behaviour on the part of a third party or employee of the SUP, which is not grossly negligent or intentional, in the context of the concrete work, the SUP shall indemnify and hold GSK harmless in this respect.
 12. Extraordinary termination
 - 12.1. GSK shall have the right to extraordinary termination of the order or contract at any time. If there is no reason for termination pursuant to Point 12.2, GSK must reimburse the SUP for the verified cash expenses and the portion of the remuneration payable for the performance of the provider up to that point.
 - 12.2. In particular, GSK shall have the right to terminate the contract without notice if:
 - 12.2.1. insolvency or bankruptcy proceedings are initiated against the assets of the SUP or the initiation of bankruptcy proceedings is refused due to a lack of assets. The right to extraordinary termination can be exercised, in the event of composition, during the entire course of the composition proceedings, up to the time of their suspension, in other cases for an indefinite period until completion of performance;
 - 12.2.2. the SUP defaults with respect to the agreed work; if the work is to be rendered in parts as agreed and if the SUP defaults only with respect to part performance, extraordinary termination can be declared only with respect to the individual part performances or all outstanding part performances. The granting of an extension by GSK is not required;
 - 12.2.3. circumstances exist, which clearly render the timely fulfilment of the order impossible, by more than half of the originally agreed delivery time, unless GSK is responsible for such circumstances;
 - 12.2.4. the SUP concludes a subwork contract without the consent of GSK;
 - 12.2.5. the SUP directly or indirectly offers, promises or grants a pecuniary benefit to a GSK employee involved in the conclusion and/or performance of the contract or to a third party;
 - 12.2.6. the SUP itself or a person used by it for performance of the contract breaches the confidentiality obligation;
 - 12.2.7. it transpires subsequently that the SUP provided incorrect information during the tendering process and this influenced or could have influenced the awarding of the contract;
 - 12.2.8. the SUP illegally or immorally limited or unfairly influenced free competition in the tendering process.
 - 12.3. If the SUP is to blame for extraordinary termination, it must reimburse GSK for the additional costs that may be incurred by placing the order with a third party, insofar as this is not already covered by flat-rate compensation. The SUP shall lose all entitlement to remuneration and compensation, insofar as it has not already rendered an agreed part performance that can be used by GSK.
 13. Retention and performance obligation
In the event of a dispute, the SUP shall not have the right to withhold or suspend delivery and/or performance.
 14. Exclusion of setoff
The setoff of receivables against receivables of GSK shall be excluded.
 15. Waiver of right of rescission
The SUP waives its right of rescission for lesion beyond moiety. Furthermore, rescission or adaptation of the contract on the grounds of error shall be excluded for the SUP.
 16. Naming as a reference
The SUP may not directly or indirectly refer to its activity for GSK without the prior written consent of GSK, i.e. in particular naming GSK as a reference.
 17. Applicable law and jurisdiction
Any disputes arising from or in connection with the contract shall be governed exclusively by Austrian law under exclusion of the UN Convention on Contracts for the International Sale of Goods. The court with local and subject matter jurisdiction for commercial matters in Vienna shall have jurisdiction for any disputes.
 18. Costs and fees
 - 18.1. Costs, taxes and fees associated with performance of the contract shall be borne by the SUP.
 - 18.2. In the event that the obligation to pay fees pursuant to the Act on Fees 1957 (BGBl 1957/267 in its current version) arises under the contract, resulting in the imposition of fees, these must be borne exclusively by the SUP.
 - 18.3. Each party shall bear the costs for drawing up the contract as well as legal representation.
 19. Other provisions
Should a provision of this contract be or become invalid or ineffective, it shall be replaced by a valid or effective provision which serves the economic purpose of the affected provision as closely as possible. This shall have no effect on the validity or effectiveness of the rest of the contract.
- There are no verbal or written ancillary agreements to this contract. Changes and amendments to the contract must be made in writing in order to be legally valid.
- All rights and obligations under the contract shall transfer to the legal successors, if any, of both parties.



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20. Anti-bribery and corruption

- 20.1. SUP agrees that he shall comply fully at all times with all applicable laws and regulations, including but not limited to anti-corruption laws, and that he] has not, and covenants that he 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 him] 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.
- 20.2. GSK shall be entitled to terminate this Agreement immediately on written notice to SUP, if SUP fails to perform its obligations in accordance with this Clause 20. SUP 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 20.