

1. Definitions

- 1.1 "GS1" shall mean GS1 New Zealand Incorporated and its successors and assigns.
- 1.2 "Member" shall mean the Member or any person acting on behalf of and with the authority of the Member.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Member if a Limited Liability Member on a principal debtor basis.
- 1.4 "Services" shall mean all services supplied by GS1 to the Member including GS1 numbers and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.5 "Fee" shall mean the cost of the Services as agreed between GS1 and the Member subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by GS1 from the Member for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Member has entered into this agreement, the Members shall be jointly and severally liable for all payments of the Fee.
- 2.3 Upon acceptance of these terms and conditions by the Member the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Chief Executive of GS1.
- 2.4 None of GS1's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Chief Executive of GS1 in writing nor is GS1 bound by any such unauthorised statements.
- 2.5 These terms and conditions are to be read in conjunction with the Annexe showing use of GS1 Numbers. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

3. Services

- 3.1 GS1 as described on the invoices, quotation, or any other work commencement forms as provides the Services to the Member.

4. Fees And Payment

- 4.1 At GS1's sole discretion the Price shall be either;
 - (a) The Price shall be as indicated on invoices provided by GS1 to the Member in respect of Services supplied; or
 - (b) The Price of the Services shall, subject to clause 4.2, be GS1's quoted Price, which shall be binding upon GS1 provided that the Member shall accept in writing GS1's quotation within thirty (30) days.
- 4.2 GS1 may by giving notice to the Member (verbally or otherwise) at any time before delivery increase the Price of the Services to reflect any variation from the plan of scheduled works or specifications beyond the reasonable control of GS1 which increase the cost of the Services by more than 10% of the quoted Price.
- 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on 20th day of each month following the date of the invoice.
- 4.4 GS1 may withhold delivery of the Services until the Member has paid for them, in which event payment shall be made before the delivery date.
- 4.5 Payment will be made by cheque, or by credit card, or by direct debits, or by direct credit, or by any other method as agreed to between the Member and GS1.
- 4.6 The Fee shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by GS1.

5. Delivery Of Services

- 5.1 Delivery of the Services shall be made to the Member's nominated address. The Member shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery.
- 5.2 The failure of GS1 to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 GS1 shall not be liable for any loss or damage whatever due to failure by GS1 to deliver the Services (or any of them) promptly or at all.

6. Errors & Omissions

- 6.1 The Member shall inspect the Services on completion and shall within twenty (20) days of completion notify GS1 of any alleged defect, or failure to comply with the description or quote. The Member shall afford GS1 a reasonable time following completion to inspect the Services, if the Member believes the Service is defective in any way. If the Member shall fail to comply with these provisions the Services shall be conclusively presumed to be in accordance with the terms and conditions.

7. Default & Consequences Of Default

- 7.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 7.2 If the Member defaults in payment of any invoice when due, the Member shall indemnify GS1 from and against all GS1's costs and disbursements including on a solicitor and own Member basis and in addition all of GS1's nominees costs of collection.
- 7.3 Without prejudice to any other remedies GS1 may have, if at any time the Member is in breach of any obligation (including those relating to payment), GS1 may suspend or terminate the supply of Services to the Member and any of its other obligations under the terms and conditions. GS1 will not be liable to the Member for any loss or damage the Member suffers because GS1 exercised its rights under this clause.
- 7.4 If any account remains unpaid at the end of the second month after supply of the Services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 7.1 hereof.
- 7.5 In the event that:
- (a) any money payable to GS1 becomes overdue, or in GS1's opinion the Member will be unable to meet its payments as they fall due, Or;
 - (b) the Member becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, Or;
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Member or any asset of the Member,
- then without prejudice to GS1's other remedies at law
- (i) GS1 shall be entitled to cancel all or any part of any order of the Member which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to GS1 shall, whether or not due for payment, immediately become due and payable.

8. Title

- 8.1 It is the intention of GS1 and agreed by the Member that property in the Services shall not pass until the Member has paid all amounts owing for the particular Services.

9. Security & Charge

- 9.1 Despite anything to the contrary contained herein or any other rights which GS1 may have howsoever:
- (a) Where the Member and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Member and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to GS1 or GS1's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Member and/or the Guarantor acknowledge and agree that GS1 (or GS1's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should GS1 elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Member and/or Guarantor shall indemnify GS1 from and against all GS1's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause [9.1(a) to (b)] inclusive hereof the Member and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint GS1 or GS1's nominee, as the Member's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as GS1 shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Member and/or the Guarantor in any land, realty or asset in favour of GS1 and in the Member's and/or Guarantor's name as may be necessary to secure the said Member's and/or Guarantor's obligations and indebtedness to GS1 and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in GS1's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

10. Intellectual Property

- 10.1 Where GS1 has designed or drawn Services for the Member, then the copyright in those designs and drawings shall remain vested in GS1, and shall only be used by the Member at GS1's discretion.
- 10.2 Conversely, in such a situation, where the Member has supplied drawings, GS1 in its sale conditions may look for an indemnity (the specifications and design of the Services (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of GS1). Where any designs or specifications have been supplied by the Member or to the order of GS1 then the Member warrants that the use of those designs or specifications for the processing, assembly or supply of the Services shall not infringe the rights of any third party.
- 10.3 The Member warrants that all designs or instructions to GS1 will not cause GS1 to infringe any patent, registered design or trademark in the execution of the Members order.
- 10.4 GS1 must give prior written approval before the use of any Trademarks or associated material for any marketing or promotion material.
- 10.5 Where GS1 has given approval for Trade Marks to be used for marketing and promotional materials then these Trademarks must be produced correctly.

11. Cancellation

- 11.1 GS1 may cancel these terms and conditions or cancel delivery of Services and Services at any time before the Services are delivered by giving written notice. On giving such notice GS1 shall promptly repay to the Member any sums paid in respect of the Fee for those Services. GS1 shall not be liable for any loss or damage whatever arising from such cancellation.

12. Privacy Act

- 12.1 The Member and the Guarantor/s (if separate to the Member) authorises GS1 to collect, retain and use any information about the Member, for the purpose of assessing the Members creditworthiness or marketing any Services and Services provided by GS1 to any other party.
- 12.2 The Member authorises GS1 to disclose any information obtained to any person for the purposes set out in clause 12.1
- 12.3 Where the Member is a natural person the authorities under (clause 12.1 & 12.2) are authorities or consents for the purposes of the Privacy Act 1993.

13. Members Disclaimer

- 13.1 The Member hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of GS1 and the Member acknowledges that he buys the Services relying solely upon his own skill and judgement.

14. Confidentiality

- 14.1 The Member is expected to keep confidential and secure and not exploit or otherwise misuse any information of GS1, which is identified as or would be, expected to be, proprietary, confidential or commercially sensitive. The Member will only disclose the information to the extent of
- (a) necessary to perform your obligation under the Licence and on a "need to know" basis only; or
 - (b) GS1 authorises it in writing; or
 - (c) as required by law.

15. Grant of Licence

- 15.1 If GS1 accepts the application for membership and issues the Member with GS1 numbers, GS1 also grants the Member a non-exclusive non-transferrable licence to use those GS1 numbers in connection with the supply and sale of the Members products. The Licence will commence on the date that GS1 issues the Member with GS1 numbers and will continue until terminated as provided in clause 11.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 All Services supplied by GS1 are subject to the laws of New Zealand and GS1 takes no responsibility for changes in the law, which affect the Services supplied.
- 16.3 GS1 shall be under no liability whatever to the Member for any indirect loss and/or expense (including loss of profit) suffered by the Member arising out of a breach by GS1 of these terms and conditions.
- 16.4 In the event of any breach of this contract by GS1 the remedies of the Member shall be limited to damages. Under no circumstances shall the liability of GS1 exceed the Fee of the Services.
- 16.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable
- 16.6 The Member shall not set off against the Fee amounts due from GS1.
- 16.7 GS1 may license or sub-contract all or any part of its rights and obligations without the Member's consent.



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16.8 GS1 reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which GS1 notifies the Member of such change.

1. USE OF GS1 NUMBERS AND OTHER INTELLECTUAL PROPERTY

- 1.1 Use of GS1 Numbers:** You are only entitled to use the GS1 Numbers issued to You by GS1. You must not use any numbers issued by GS1 to any other person. You must not use any numbers which purport to be issued by GS1 or which copy the GS1 numbering system. You will only use the GS1 Numbers issued to You in connection with the manufacture, sale and identification of Your Products.
- 1.2 Not Alter the Numbers:** You will not alter the GS1 Numbers licensed to You in any way.
- 1.3 No Dealing with Numbers:** You recognise GS1's title to the GS1 Numbers and related Intellectual Property and shall not at any time do or suffer to be done any act or thing which may in any way impair GS1's rights in the GS1 Numbers or related Intellectual Property.
- 1.4 Not Permit Display:** You will not permit anyone else to use or display the GS1 Numbers issued to You.
- 1.5 No Challenge or Misuse of GS1 Numbers:** You shall not at any time, either during the term of this Licence or after termination, directly or indirectly:
- 1.5.1 Challenge Ownership of Numbers:** challenge, call into question or raise any questions concerning the validity or ownership of the GS1 Numbers or related Intellectual Property; or
 - 1.5.2 Seek Registration of Similar Numbers:** use or seek registration of any Intellectual Property including any design which incorporates or includes, or is substantially identical to, or deceptively or confusingly similar to, the GS1 Numbers or related Intellectual Property without GS1's prior written consent.
- 1.6 Proprietary Notices:** You will ensure that all proprietary notices that GS1 may require from time to time, appear on the Products.

2. TERMINATION

- 2.1 GS1 Termination:** GS1 shall have the right to terminate the Licence immediately by giving notice if:
- 2.1.1 Fail to Pay Licence Fee:** You fail to pay the annual Licence fee by its due date;
 - 2.1.2 Breach:** You commit a breach of Your obligations under these terms and conditions;
 - 2.1.3 Insolvency:** You are declared bankrupt, go into liquidation, have a receiver or statutory manager appointed, or (being a company) are wound up otherwise than for the purpose of a reconstruction; or
 - 2.1.4 Head Licence Terminates:** GS1 ceases to hold the necessary licence rights to issue GS1 Numbers in New Zealand.
- 2.2 Termination by either Party:** Either GS1 or You may otherwise terminate this Licence in any other circumstances by giving 1 months written notice to the other party.
- 2.3 No Release from Obligations:** Termination of this Licence does not relieve either GS1 or You from liability arising from any prior breach of the terms of this Licence.



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3. CONSEQUENCES OF TERMINATION

On termination of this Licence, Your rights under this Licence shall terminate and You will immediately comply with the following:

- 3.1 Cease to Use Intellectual Property:** cease all direct or indirect use of the GS1 Numbers and related Intellectual Property;
- 3.2 Return Materials:** return (without retaining copies thereof) all material, notes, data, instructions and other papers, samples, materials and property GS1 has supplied or other items which contain GS1's confidential information or Intellectual Property relating to the GS1 Numbers; and
- 3.3 Cease applying GS1 Numbers to Products:** cease applying the GS1 Numbers to any of Your Product manufactured or sold by You after the termination date.