

GS1 New Zealand - Terms and Conditions of Trade

The following are the Terms and Conditions of Trade of GS1 New Zealand Incorporated. You must read them to understand your obligations as a Customer of GS1. It is your responsibility to ensure that you have read and understood your obligations under these terms and conditions, as a breach by you will be actionable by GS1.

1. Definitions and Interpretation

- 1.1 "Contract" shall mean these Terms and Conditions of Trade.
- 1.2 "Customer" means customers of GS1 (including but not limited to Single Number Users), whether members of GS1 or not;
- 1.3 "GS1" shall mean GS1 New Zealand Incorporated and its successors and assigns.
- 1.4 "Services" shall mean all services supplied by GS1 to the Customer including but not limited to GS1 numbers and online tools, and includes any advice or recommendations provided by GS1 to the Customer, (and where the context so permits shall include any supply of such Services).
- 1.5 "Single Number User" means a Customer of GS1 who applies for and is supplied a single GS1 barcode for a one-off fee.
- 1.6 "Specific Agreement" means the GS1 License Agreement or GS1 Information Agreement.
- 1.7 "Fee" shall mean the cost of the Services as agreed between GS1 and the Customer subject to clause 4 of this Contract.
- 1.8 The section headings and sidebar content contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this agreement.

The GS1 Terms and Conditions apply to all customers of GS1 regardless of the services subscribed to.

By subscribing to GS1 services you accept these Terms and Conditions.

2. Acceptance

- 2.1 Any instructions received by GS1 from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained in this Contract.
- 2.2 Where more than one Customer has entered into this Contract, the Customers shall be jointly and severally liable for all payments of the Fee.
- 2.3 Upon acceptance by the Customer, the terms and conditions in this Contract are irrevocable and can only be rescinded in accordance with the Contract or with the written consent of the Chief Executive of GS1.
- 2.4 As a result of the Services the Customer has selected to use, the Customer may have entered into another agreement with GS1 that is more specifically relevant to those Services, being a Specific Agreement. To the extent that this Contract is inconsistent with any such Specific Agreement, the latter prevails.
- 2.5 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.

3. Services

- 3.1 The Services are those services as defined, and as described on the invoices, quotation, or any other work commencement forms provided to the Customer by GS1.

You agree to pay for GS1 Services at the price quoted or advised by GS1.

4. Fees And Payment

- 4.1 At GS1's sole discretion the Price shall be either;
- (a) The Price as indicated on invoices provided by GS1 to the Customer in respect of Services supplied; or
 - (b) Subject to clause 4.2, GS1's quoted Price, which shall be binding upon GS1 provided that the Customer shall accept in writing GS1's quotation within thirty (30) days.
- 4.2 GS1 may, by giving notice to the Customer (verbally or otherwise) at any time before supply, increase the Price of the Services to reflect any variations to the Services that are beyond the reasonable control of GS1 and that 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 supply of the Services until the Customer has paid for them, in which event payment shall be made before the supply 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 Customer 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 provided by GS1.
- 4.7 As Price is reflective of a Customer's turnover, the Customer must immediately notify GS1 of any change in business circumstances, affecting or having the potential to affect, its annual turnover. GS1 has the right to make independent enquiries in relation to a Customer's annual turnover and alter Fees accordingly as and when required.

5. Supply Of Services

- 5.1 The Services shall be supplied to the Customer using the contact details provided by the Customer.
- 5.2 The failure of GS1 to supply the Services shall not entitle either party to treat this contract as repudiated.
- 5.3 GS1 shall not be liable for any loss or damage whatsoever due to failure by GS1 to supply the Services (or any of them) promptly or at all.

GS1 will deliver the Services but any failure to do so will not give rise to liability on the part of GS1.

6. Errors & Omissions

- 6.1 The Customer shall, inspect the Services at the time they are supplied and shall within twenty (20) days of supply, notify GS1 of any alleged defect, or failure to comply with the description or quote. The Customer shall afford GS1 a reasonable time following such notification to rectify the issue, if the Customer believes the Service is defective in any way. If there is no such notification by the Customer, the Services shall be conclusively presumed to be in accordance with this Contract.

GS1 will attempt to rectify errors upon notice from you of such errors.

7. Default & Consequences Of Default

- 7.1 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify GS1 from and against all GS1's costs and disbursements (including but not limited to legal fees) and in addition all of GS1's nominees costs of collection.

7.2 Without prejudice to any other remedies GS1 may have, if at any time the Customer is in breach of any obligation (including those relating to payment), GS1 may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. GS1 will not be liable to the Customer for any loss or damage the Customer suffers because GS1 exercised its rights under this clause.

7.3 In the event that:

- (a) Any money payable to GS1 becomes overdue, or in GS1's opinion the Customer will be unable to meet its payments as they fall due, Or;
- (b) The Customer 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 Customer or any asset of the Customer, then without prejudice to GS1's other remedies at law, GS1 shall be entitled to:
 - (i) cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) immediate payment of all amounts owing to GS1, whether or not due for payment.

GS1 may terminate delivery of its services to you in the event of a breach of these terms by you, including but not limited to your failure to pay GS1 fees.

8. Supply of Information

8.1 Where data or information is provided to the Customer by GS1 as part of the Services, the Customer:

- (a) will not on-sell or supply any data or information provided as part of the Services to any third party
 - (i) in the form it was provided to the Customer;
 - (ii) in a manner that competes with the Services;
 - (iii) unless the data or information has been incorporated into a good or service the Customer provides to third parties that is substantially different from the Services;
- (b) acknowledges that GS1 has no responsibility:
 - (i) for the accuracy or completeness of any information placed or published on or accessed through the Services by the Customer or any other party;
 - (ii) for any requirement for the Customer to comply with its obligations under this Contract;
 - (iii) for any action or transaction undertaken based on information provided to, obtained from, or accessed through the Services;
 - (iv) for any failure by the Customer to comply with any law, (including but not limited to the Fair Trading Act 1986, Consumer Guarantees Act 1993 (if applicable), Commerce Act 1986 and Copyright Act 1993) or of any person exercising power or authority thereunder;
 - (v) in respect of any act, matter or thing arising out of any transaction action or inaction involving or associated with your use of the Services (including any claim or dispute relating to that transaction, action or inaction),
 - (vi) and the Customer hereby releases GS1 from any and all liability arising therefrom;
- (c) will only use the information provided by GS1 as part of the Services for the purposes for which the Services were obtained;

Information or data provided to you by GS1 must be used in accordance with these terms

- (d) will comply with all applicable laws, and all reasonable GS1 directions or instructions in relation to the Customer's use of the Services including any such directions or instructions published on the GS1 website;
- (e) agrees to indemnify GS1 and keep it indemnified against any liability, loss, cost or damage which GS1 suffers or incurs arising out of or in connection with:
 - (i) Customer's use of Services or any data or information provided as part of the Services;
 - (ii) A breach of this Contract by the Customer;
 - (iii) Any claim against GS1 by a third party relating to, or arising out of, the Customer's use of the Services;
 - (iv) Any access to, or use of, the Services by any employee contractor, agent or associate of the Customer;
 - (v) Any claim by a third party that any information or data provided by GS1 to the Customer infringes the intellectual property rights of that third party; and
 - (vi) Any failure by the Customer to comply with any reasonable GS1 directions or instructions.

8.2 The Customer acknowledges that any failure to comply with this clause 8 may result in the Services failing to operate in the manner intended, and in such event GS1 has the right and sole discretion to terminate this Contract and the Customer's use of the Services in accordance with clause 11.2(a).

9. Title

9.1 It is the intention of GS1 and agreed by the Customer that property in the Services (not including Intellectual Property owned by GS1 and, for the avoidance of doubt, not including any proprietary rights in GS1 Numbers) shall pass to the Customer once the Customer has paid all amounts owing for the particular Services.

10. Intellectual Property

10.1 Unless otherwise provided in this Contract, the Customer agrees that all intellectual property rights in and to the Services are owned by GS1 or its licensors.

10.2 Intellectual Property belonging to either GS1 or the Customer prior to entering into this Contract shall remain the property of that party.

10.3 The Customer warrants that any Intellectual property supplied to and used by GS1 in the course of supplying the Services does not infringe the rights of any third party.

10.4 No trademarks or other Intellectual Property belonging to GS1 shall be used by the Customer for any marketing or promotion material without the prior written consent of GS1. Where consent is provided the relevant Intellectual Property must be reproduced correctly.



Each party owns its own Intellectual Property.



Use GS1 Intellectual Property only in accordance with GS1 direction.

11. Termination

11.1 GS1 may terminate this Contract or supply of the Services under this Contract at any time prior to the Services being supplied, by giving written notice to the Customer. On giving such notice GS1 shall promptly repay to the Customer any sums paid in respect of the Fee for those Services. GS1 shall not be liable for any loss or damage whatsoever arising from such termination.

11.2 GS1 may terminate this Contract immediately by giving notice to the Customer if:



Either party can terminate this agreement with one months' notice, however GS1 may terminate this agreement at any time if you are in breach of your obligations.

- (a) The Customer breaches its obligations under the Contract, including but not limited to failing to make payment of monies owed; or
- (b) In the event the Customer is declared bankrupt, goes into liquidation, has a receiver or statutory manager appointed, or (if a company) is wound up otherwise than for the purpose of a restructure.

11.3 Subject to clause 10.2, either party may terminate this Contract by providing one month's written notice to the other party.

11.4 On termination of this Agreement by either party, the Customer will:

- (a) Cease to use all intellectual property belonging to GS1, including but not limited to ceasing all direct or indirect use of GS1 numbers and related intellectual property;
- (b) Return (without retaining copies thereof) all materials, notes, data, instructions and other papers samples, materials and property GS1 has supplied to the Customer or items which contain GS1 intellectual property;
- (c) Cease applying GS1 numbers to any products manufactured or sold by the Customer after the termination date.



You must stop using GS1 Intellectual Property on termination.

11.5 The Customer shall be liable to GS1 in the event that any damage arises to GS1 as a result of the continued use, by the Customer, of any intellectual property belonging to GS1, following termination.

11.6 Upon termination of this Contract by either party, GS1 has the right to:

- (a) reassign the Customer's GS1 barcode number(s) to another organisation; and
- (b) contact relevant major New Zealand retailers to confirm Customer's cessation of use of GS1 intellectual property.

11.7 All Customers (with the exception of Single Number Users) are liable for all Fees owing up to the date of termination. Where Services are terminated within three (3) months of commencing supply of the Services, all Fees paid by the Customer shall be refunded to the Customer. Where the supply of Services is terminated between four (4) and six (6) months of commencement a monthly apportionment of Fees will be refunded to the Customer. Where the supply of Services is terminated after six (6) months, the total annual Fee will remain payable.

12. Privacy

12.1 The Customer authorises GS1 to collect, retain and use any information about the Customer, for the purpose of supplying the Services to the Customer, assessing the Customer's creditworthiness or promoting GS1 Services to any other party.

12.2 In supplying GS1 Services to a Customer, the Customer will provide personal and product detail to GS1 which is shared to third party trade partners (including but not limited to via GS1's National Product Catalogue) and which is the responsibility of the Customer to ensure is current and accurate. GS1 will not be liable for any damage arising from a Customer's provision of inaccurate or out of date information to GS1.

12.3 Where the Customer is a natural person the authority under (clause 11.1) is an authority or consent for the purposes of the Privacy Act 1993.

12.4 For the purposes of UK and EU data protection laws, GS1 is a "Data Controller" and will comply with all relevant laws relating to disclosing personal data.



Your personal information will not be disclosed (for reasons other than delivering GS1 services) without your permission.

13. Customer Disclaimer

13.1 The Customer 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 or her by any servant or agent of GS1 and the Customer acknowledges that it purchases the Services relying solely upon its own skill and judgement.



GS1 shall not be responsible for your decision to purchase GS1 services.

14. Confidentiality

14.1 The Customer 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 Customer will only disclose the information to the extent that disclosure is

- (a) necessary to perform its obligations under the Contract and on a "need to know" basis only; or
- (b) authorised in writing by GS1; or
- (c) as required by law.



You must keep GS1 information confidential.

15. General

15.1 If any provision of this Contract is determined to be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 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.

15.3 GS1 shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by GS1 of these terms and conditions.

15.4 In the event of any breach of this Contract by GS1 the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of GS1 exceed the Fee for the Services.

15.5 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

15.6 The Customer shall not set off against the Fee amounts due from GS1.

15.7 GS1 may license or sub-contract all or any part of its rights and obligations under this Contract without the Customer's consent. The Customer may assign its rights under this Contract with the prior written approval of GS1.

15.8 **GS1 Members:** Where a Customer is also a member (or Right To Use Holder) of GS1 it is expected at all times to also abide by the governing rules of GS1

15.9 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 provides notice of such changes on the homepage of the GS1 website.



You are also subject to general terms that govern your relationship with GS1.



If you are a member of GS1 you are also subject to GS1 Rules.