

# **GS1 New Zealand**

## **Terms and Conditions**

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

## 1. Definitions and Interpretation

- 1.1** "Affiliate Licensee" means a licensee of GS1 who has entered into an Affiliate License Agreement with GS1 but who is not a Member.
- 1.2** "Contract" shall mean these Terms and Conditions and any Specific Agreement or other terms or policies that are specifically referenced in these terms and conditions.
- 1.3** "Covid-related Services" are defined as a service for GS1 Identifier(s) allocated to assist the Ministry of Health Covid-19 contact tracing response when tracing is required or mandated by the New Zealand Government. The GLN is encoded in a QR code poster and must (at a minimum) always be used to identify a physical location.
- 1.4** "Data provider" means a person who supplies data to GS1 (including supply to GS1 Global via GS1) and is therefore bound by the Information Agreement.
- 1.5** "Fee" and "Fees" means the cost of the services as agreed between GS1 and you in accordance with clause 4 of this Contract.
- 1.6** "Force Majeure" means any occurrence or omission as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations under this Agreement (other than payment of money) and that is beyond the reasonable control of that party, including but not limited to acts of God, epidemics, pandemics, sabotage, terrorism, public disorders, industrial actions, transportation failures or delays, shortage of materials, breakdowns in computer facilities, telecommunication delays or malfunctions, delay or non-supply of electricity for any reason whatsoever, and government directives whether valid or invalid;
- 1.7** "GS1" means GS1 New Zealand Incorporated (NZBN 9429000000000) and its successors and assigns.
- 1.8** "GS1 Global" refers to GS1 AISBL is an international non-profit association registered in Brussels Belgium, (Enterprise number: 419.640.608).
- 1.9** "GS1 Global Systems" means the systems of GS1 Global Office, and GS1 Member Organisations including but not limited to; websites, registries, libraries, data transfer between systems and users of these systems which may include third party users of data.
- 1.10** "GS1 Identifier(s)" means the unique identification numbers issued by GS1 to Members (or Affiliate Licensees) and registered in the GS1 Global Registry, including but not limited to as a Global Trade Identification Number (GTIN), Global Company Prefix (GCP), Global Location Number (GLN), and EPC keys.
- 1.11** "Information Agreement" means the terms that apply to any supply of data by you to GS1 including supply of data by you to GS1 Global, for use in GS1 Global Systems, available at [www.gs1nz.org](http://www.gs1nz.org), as amended from time to time.
- 1.12** "Intellectual Property" means all copyright, trademarks, and patents (whether registered or unregistered), database rights, data and information, and any other rights generally accepted as falling within the definition of "intellectual property" whether created before, on or after the date that this Contract was accepted or agreed by you.
- 1.13** "Intellectual Property Rights" means all rights in Intellectual Property belonging to GS1 (or GS1 Global, or licensors).
- 1.14** "Medical Device" means a product that may be characterised as a medical device under the laws of the country where such product is marketed.
- 1.15** "Member" means a customer of GS1 who subscribes and pays for GS1 membership privileges.

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

- 1.16** "National Product Catalogue" means the online product service operated by GS1.
- 1.17** "Privacy Statement" means the GS1 Privacy Policy available at [www.gs1nz.org](http://www.gs1nz.org), as amended from time to time.
- 1.18** "Public Customer" means a member of the public that is not a Member but obtains any Services from GS1 (including via GS1 from GS1 Global).
- 1.19** "Services" shall mean all services supplied by GS1 (and where the context so permits shall include any supply of such services from GS1 and/or GS1 Global) and may include Covid-Related Services.
- 1.20** "Specific Agreement" means the GS1 Information Agreement and/or National Product Catalogue Terms and Conditions of Use, and/or other specific Service terms, that apply to the Services in question, including any supply of data and information to GS1.
- 1.21** "you" and "your" are references to the Member, Affiliate Licensee or Public Customer who obtains or wishes to obtain Services and who is therefore deemed to have agreed to this Contract on that basis.
- 1.22** 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.

Your use of GS1's Services is governed by these terms and conditions as well as other Specific Agreements applicable to the specific Services you use.

## 2. Acceptance

- 2.1** Any request received by GS1 for the supply of Services, and a Specific Agreement (if any), shall constitute acceptance of this Contract and consent to collect, store, share and retain information provided by you under the terms of this Contract unless You have expressly elected to opt out of a service or supply of data. In particular but without limitation, the acceptance in this clause enables GS1 to share information via the GS1 Global Systems as a GS1 Global Systems Member as it is required to do under its affiliate arrangements with GS1 Global.
- 2.2** Where more than one person has entered into this Contract, those persons shall be jointly and severally liable under the terms of this Contract, including but not limited to for all payments of the Fee.
- 2.3** By requesting or using any of the Services, you are deemed to have accepted this Contract. Upon acceptance by you, this Contract is 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 you have selected to use, you may have entered into another agreement or accepted other terms with GS1 that are 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 to the extent of the inconsistency.
- 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.

By subscribing to GS1 services you accept the Contract (these Terms and Conditions and any Specific Agreement applicable to the specific Services you use).

## 3. Services

- 3.1** The Services are those services as defined, and as described in a Specific Agreement or on the GS1 website, invoices, quotation, or any other work commencement order or form provided to you by GS1.
- 3.2** You acknowledge and agree that the Services shall be supplied to you using the data and information provided by Data Providers, and neither GS1 nor GS1 Global bear any responsibility or liability whatsoever for the accuracy of the same.

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

## 4. Fees and Payment

- 4.1** At GS1's sole discretion the Fee shall be either;
- (a) The Fee as indicated on invoices provided by GS1 to you in respect of Services supplied; or
  - (b) Subject to clause 4.2, GS1's quoted Fee, which shall be binding upon GS1 provided that you accept in writing GS1's quotation **within thirty (30) days** of its date.
- 4.2** GS1 may, by giving notice to you (verbally or otherwise) at any time before supply, increase the Fee for the Services to reflect any variations to the Services that are beyond the reasonable control of GS1 or that increase the cost of the Services by more than 10% of the quoted Fee.
- 4.3** Time for payment for the Services shall be of the essence and will be stated on the GS1 website, invoice, quotation, or any other order forms. If no time is stated, then payment shall be due on the 20th day of each month following the date of the invoice.
- 4.4** GS1 may withhold supply of the Services until you have paid the Fee, in which event payment shall be made before the supply date.
- 4.5** Payment of Fees will be made by credit card, direct debit, direct credit, GS1 Payment Gateway or by any other method as agreed to between you 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** The Fee for some services is reflective of a Member's turnover. Where this is the case, the Member agrees to 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 Member's annual turnover and alter Fees accordingly as and when required.

## 5. Supply of Services

- 5.1** The failure of GS1 to supply the Services shall not entitle either party to treat this Contract as repudiated.
- 5.2** While GS1 will use its best endeavours to supply the Services, it shall not be liable for any loss or damage if it is not able to do so for any reason.

## 6. Errors & Omissions

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

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

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

## 7. Default & Consequences of Default

- 7.1** If you default in payment of any Fee when due, you shall indemnify GS1 from and against all GS1's costs and disbursements (including but not limited to legal fees) and all of GS1's nominees' costs of collection (if any).
- 7.2** Without prejudice to any other remedies GS1 may have, if at any time you are in breach of any obligation (including those relating to payment of the Fee), GS1 may suspend or terminate the supply of Services to you and any of its other obligations under the Contract. GS1 will not be liable to you for

any loss or damage you or anyone else suffers because GS1 exercised its rights under this clause.

**7.3** In the event that:

- (a) Any Fee payable to GS1 becomes overdue, or in GS1's reasonably held opinion you will be unable to meet GS1's Fee requirements as they fall due; or
- (b) You become insolvent, convene a meeting with your creditors or propose or enter an arrangement with creditors, or make an assignment for the benefit of your creditors; or
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any of your assets, then without prejudice to GS1's other remedies at law, GS1 shall be entitled to:
  - (i) cancel or suspend all or any part of any of the Services which remain unperformed in addition to and without prejudice to any other remedies;
  - (ii) immediate payment of all Fees owing to GS1, whether due for payment or not; and/or
  - (iii) Terminate this Contract under clause 10.

GS1 may suspend or terminate delivery of its services to you if You breach these terms, including but not limited to your failure to pay fees.

## 8. Supply of Information

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

- (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 you;
  - (ii) in a manner that competes with the Services;
  - (iii) unless the data or information has been incorporated into a good or service you provide to third parties that is substantially different from the Services; and
- (a) will identify any data or information relating to a Medical Device and notify GS1 of same, acknowledging and agreeing that GS1 has regulatory obligations in relation to such information and that such information may be required to be corrected, removed, or disclosed to relevant authorities;
- (b) acknowledge that GS1 has no responsibility:
  - (i) for the accuracy or completeness of any data or information placed or published on or accessed through the Services by you or any other party, and you acknowledge and agree that GS1 can take remedial steps to correct your data or information where it fails to comply with national and/or international regulations;
  - (ii) to force you or anyone else to comply with the obligations under this Contract or any similar terms that anyone else may have agreed with GS1;
  - (iii) for any action or transaction undertaken based on information provided to, obtained from, or accessed through the Services;
  - (iv) for any failure by you to comply with any law, (including but not limited to the Fair Trading Act 1986, Consumer Guarantees Act 1993 (if applicable), Privacy Act 2020, Commerce Act 1986, and Copyright Act 1994) or of any person exercising power or authority thereunder;

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

- (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);

and you hereby release 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. In particular but without limitation, you must not, in respect of any data or information obtained using the Services:

- (i) modify it without the consent of GS1 (which may in turn require the obtaining of consent from the Data Provider);
- (ii) use it for training any artificial or machine learning tool;
- (iii) publish or use it in a manner that implies any endorsement by GS1 of a Data Provider, without their respective consent; and
- (iv) decompile, reverse-engineer, alter, or in any way tamper (or attempt to do so) with all or part of the of the Software used to provide the Services or any software or solution comprised therein or connected thereto, nor cause, permit or assist any other person directly or indirectly to do any of the above;

- (d) will comply with all applicable laws, and all reasonable GS1 directions or instructions in relation to your use of the Services including but not limited to any such directions or instructions published on the GS1 website. In particular but without limitation, you must comply, and ensure your use of any data or information obtained using the Services complies, with Fair Trading Act 1986, Consumer Guarantees Act 1993 (if applicable), Privacy Act 2020, Commerce Act 1986 and Copyright Act 1994 and other general fair trading, passing off, and consumer protection laws in New Zealand and other jurisdictions;

- (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) Your use or misuse of Services or any data or information provided as part of the Services;
- (ii) A breach of this Contract by you;
- (iii) Any claim against GS1 by a third party relating to, or arising out of, your use or misuse of the Services or quality of the data or information provided you or anyone else to GS1 or GS1 Global;
- (iv) Any access to, or use of, the Services by any of your employees, contractors, agents, or associates;
- (v) Any claim by a third party that any information or data provided by either you to GS1 or GS1 to you infringes the intellectual property rights of that third party; and
- (vi) Any failure by you to comply with any reasonable GS1 directions or instructions.

- 8.2** You acknowledge that any failure to comply with this clause 8 may result in the Services failing to operate or being accessible in the manner intended, and in such event GS1 has the right and sole discretion to terminate this Contract and your use of the Services in accordance with clause 11.2(a).

## 9. Intellectual Property and Title

- 9.1** Unless otherwise provided in this Contract, you agree that all Intellectual Property in and to the Services is owned by GS1, GS1 Global or their licensors.
- 9.2** Intellectual Property belonging to either GS1 or you prior to entering into this Contract shall remain the property of that party.
- 9.3** You warrant that any intellectual property supplied to and subsequently used by GS1 in the course of supplying the Services does not infringe the intellectual property rights of any third party.
- 9.4** No Intellectual Property belonging to GS1 (for the avoidance of doubt, including but not limited to GS1 Trademarks (whether registered or unregistered)) shall be used by you for any marketing or promotional material without the prior written consent of GS1. Where consent is provided the relevant Intellectual Property must be reproduced correctly as instructed by GS1.

Each party owns its own Intellectual Property.

Use GS1 Intellectual Property only in accordance with GS1 instruction.

## 10. Termination

- 10.1** 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 you. On giving such notice GS1 shall promptly repay to you 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.
- 10.2** GS1 may terminate this Contract immediately by giving notice to you if:
- (a) You breach your obligations under the Contract, including but not limited to failing to make payment of Fees owed; or
  - (b) In any of the circumstances or situations described in clause 7.2 or 7.3.
- 10.3** Subject to clause 10.2, either party may terminate this Contract by providing one months' written notice to the other party.
- 10.4** On termination of this Agreement by either party, you must:
- (a) Cease to use all Intellectual Property belonging to GS1, including but not limited to ceasing all direct or indirect use of GS1 Identifier(s), services, and related Intellectual Property;
  - (b) Upon request by GS1 return (without retaining copies thereof) all materials, notes, data, instructions and other papers samples, materials, and property GS1 has supplied to you or items which contain GS1 Intellectual Property;
  - (c) Cease the use of Services and GS1 Identifier(s).
- 10.5** You shall be liable to GS1 in the event that any loss, costs, or damage suffered or incurred by GS1 as a result of the unauthorised continued use by you of any Intellectual Property or GS1 Identifier(s) following termination.
- 10.6** Upon termination of this Contract by either party, GS1 has the right to:
- (a) reassign your GS1 Identifier(s) to another organisation; and
  - (b) contact relevant major New Zealand retailers to confirm your cessation of use of GS1 Identifier(s) and other Intellectual Property Rights.

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.

You must stop using GS1 Intellectual Property on termination.



- 10.7** You are liable for all Fees owing up to the date of termination.
- 10.8** Where Services are terminated by GS1 under clause 10.3:
- (a) within three (3) months of commencing supply of the Services, all Fees paid by you shall be refunded to you;
  - (b) between four (4) and six (6) months of commencement, a monthly apportionment of Fees will be refunded to you;
  - (c) after six (6) months, the total annual Fee will remain payable.

Some Fees will remain payable following termination.

## 11. Privacy

- 11.1** GS1's commitment to privacy is set out in the Privacy Statement and the Privacy Act 2020 (as amended from time to time).
- 11.2** You authorise GS1 to collect, retain and use any information about you and your personnel, for the purpose of supplying the Services, assessing your creditworthiness or turnover, promoting GS1 Services to any other party or for GS1's own internal purposes in accordance with this Contract and the Privacy Statement.
- 11.3** In supplying GS1 Services, you will provide personal and product detail to GS1 which is shared to GS1 Global Systems and which it is your responsibility to ensure is current and accurate. GS1 will not be liable for any damage or loss arising from your or anyone else's provision of inaccurate or out of date data or information to GS1.
- 11.4** For the purposes of UK and EU data protection laws, GS1 is a joint "Data Controller" with GS1 Global and will comply with all relevant laws relating to disclosing personal data. For more information see GS1 Global's privacy policy at <https://www.gs1.org/privacy-policy>.

Your personal information will not be disclosed (for reasons other than as outlined) without your permission.

## 12. Disclaimer

- 12.1** You hereby disclaim any right to rescind or cancel the Contract or to sue for damages or to claim restitution arising out of any representation made to you by GS1 and you acknowledge and agree that you obtain the Services relying solely upon its own skill and judgement.
- 12.2** You acknowledge that GS1 and GS1 Global are supplying, and you are accessing and using, the Services and any data and information supplied as part of the Services for business purposes, and that the protection of data and information entrusted to GS1 and GS1 Global by Data Providers justifies the restrictions on access and use set out in this Contract. Accordingly, you agree that:
- (a) the provisions of the Consumer Guarantees Act 1993 do not apply;
  - (b) sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986 do not apply;
  - (c) contracting out of the above statutory provisions is fair and reasonable;
  - (d) you have had a sufficient opportunity to review this Contract and take independent advice on it, and you understand its terms; and
  - (e) this Contract is not unfair or unreasonable and it protects the legitimate interests of GS1, GS1 Global and Data Providers who supply data and information that is included in GS1's systems and in the GS1 Global Systems.

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



### 13. Confidentiality

- 13.1** You must keep confidential and secure and not exploit or otherwise misuse any information belonging to GS1 (including but not limited to its Intellectual Property and Intellectual Property Rights), which is identified as, or would be expected to be, proprietary, confidential, or commercially sensitive. You will only disclose the information to the extent that disclosure is
- (a) necessary to perform your obligations under the Contract and on a "need to know" basis only; or
  - (b) authorised in writing by GS1; or
  - (c) required by law.

You must keep GS1 information confidential.

### 14. General

- 14.1** 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.
- 14.2** All Services supplied by GS1 are subject to the laws of New Zealand (including New Zealand Government directives) and GS1 takes no responsibility and shall not be liable for changes in the law that affect the supply of Services.
- 14.3** GS1 shall be under no liability whatsoever to you Member for any consequential or indirect cost, damage, loss, and/or expense (including loss of revenue, profit, opportunity, or savings) suffered or incurred by you arising out of a breach by GS1 of this Contract.
- 14.4** In the event of any breach of this Contract by GS1 your remedies shall be limited to damages. Under no circumstances shall the liability of GS1 exceed the Fee paid for the Services.
- 14.5** Neither party shall be liable for any default due to a Force Majeure event.
- 14.6** You must not set off against the Fee amounts due from GS1.
- 14.7** GS1 may license or sub-contract all or any part of its rights and obligations under this Contract without your consent. In particular some Services will be supplied directly by GS1 Global, and you acknowledge that GS1 is not responsible or liable in respect of those Services or any failure by GS1 Global to deliver them in any manner. You must not assign your rights or obligations under this Contract without the prior written approval of GS1, which consent will not be unreasonably withheld.
- 14.8** In conjunction with the provisions of this Contract, Members are expected at all times to also abide by the governing rules of GS1.
- 14.9** GS1 reserves the right to review this Contract at any time and from time to time. If, following any such review, there are amendments to the Contract, that change will take effect from the date on which GS1 provides notice of such changes on the homepage of the [GS1 website](http://www.gs1nz.org) at [www.gs1nz.org](http://www.gs1nz.org).
- 14.10 Survival:** Clauses 1, 7, 8, 9, 10.4, 10.5, 11, 12, 13 and 14 shall survive termination of this Contract.

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