

Terms and Conditions of Membership with GS1 South Africa

The following terms and conditions apply to the Membership of GS1 South Africa and the Licence to use the GS1 System and numbers granted by GS1 South Africa to the Member. Use of GS1 Numbers constitutes agreement by the Member to these Terms and Conditions. Failure to observe and abide by these terms and conditions may lead to termination of the Membership and the Licence.

1. DEFINITIONS:

The following definitions will apply within these terms and conditions:

1.1 "Business Day" means any day of the week except Saturday, Sunday or a national public holiday.

1.2 "GS1" means GS1 South Africa, a Division of CGCSA, an Incorporated Association not for gain.

1.3 "GS1 Numbers" means the GS1 membership number and product numbers that are issued to You by GS1 for Your use in accordance with these terms and conditions.

1.4 "Intellectual Property" means patents, registered designs, utility models, trade marks, applications for any of the foregoing, inventions, unregistered trade marks, copyright, confidential information, know-how, processes and trade secrets and other intellectual property, and equivalents of any of the foregoing anywhere in the world and includes the Trade Marks.

1.5 "Licence" means the licence granted by GS1 to You to use the GS1 Numbers.

1.6 "Licensee" means You.

1.7 "Member" means You.

1.8 "Membership" means the state of being a member of GS1 South Africa.

1.9 "Products" means the products manufactured and/or sold by You.

1.10 "Application Form" means the GS1 Application form whereby persons apply to become members of GS1 and for the issue of GS1 Numbers.

1.11 "terms and conditions" means these terms and conditions as varied by time to time by GS1 in accordance with clause 9.

1.12 "Trade Marks" means the trade marks associated with GS1 and/or the GS1 numbering system.

1.13 "You" means the person, company, corporation or other legal entity that has signed the Application Form applying for membership of GS1 and the issuance of GS1 numbers. "Your" has a corresponding meaning.

2. GRANT OF MEMBERSHIP AND LICENCE

2.1 If GS1 accepts Your application for membership and issues You with GS1 Numbers, GS1 also grants You a nonexclusive non-transferable licence to use those GS1 Numbers in connection with the supply and sale of Your Products. The Licence will commence on the date that GS1 issues You with Your GS1 Member Number and will continue until terminated as provided in clause 15.

2.2 Notwithstanding the above clause 2.1, the written permission and approval of GS1 South Africa is required in the event that You sell the company, brand name, or individual products to a third party and require that Your GS1 Member Number, or specific GS1 Numbers transfers with the products to the new owner. (Such approval to be granted or withheld at GS1's sole discretion; such approval will not be unreasonably withheld.)

3. COMMENCEMENT DATE

3.1 Effect: These terms and conditions come into effect for You on the later of 1 January 2004 or the date on which the GS1 Numbers are issued to you.

4. FEES

4.1 Entrance Fee: On joining GS1 South Africa, You will pay an Entrance Fee as specified in the Application Form.

4.2 Annual Licence fee is Payable: You will pay to GS1 an annual Licence fee to be invoiced 1st March of every year. This must be paid within 30 days from date of invoice. GS1 may, from time to time, increase the Licence fee by giving You at least 20 Business Days written notice. On expiry of the notice period the increase shall be effective and due and payable.

4.3 Amount of Entrance Fee and Licence fee: As at the commencement of the Membership the

amount of the Entrance Fee and the annual Licence fee is as specified in the Application Form. Your initial Licence fee will be a pro-rata amount dependent on the month of joining.

4.4 Subscription to the Product Data Catalogue: On joining GS1 South Africa, You will automatically be subscribed to the GS1 Product Data Catalogue.

4.5 Fees Payable after Termination of

Membership: Where Products bearing GS1 Numbers issued to You are already in the marketplace at the time of termination of the Membership pursuant to clause 15, notwithstanding such termination You will remain liable for a fee equivalent to the Licence fee for the period that those Products remain in the marketplace.

4.6 Default Interest: You will pay interest on any amount due and not paid within 60 days of due date. Such interest will be payable on the amount outstanding from the due date until payment at the maximum interest rate allowable.

4.7 VAT: All amounts payable under this clause are exclusive of VAT. You will also pay any VAT in addition to the base amount payable.

5. YOUR CONDUCT

5.1 Training: You are required to register and undergo training, either classroom or online, dependant on location, within 6 months of joining GS1 South Africa (one delegate at no cost).

5.2 Product Data Training: You are required to register and undergo training, within 1 year of joining GS1 South Africa at a fee stipulated at the time the training is booked.

5.3 Product Data Catalogue: You are required to publish your product data on the GS1 Product Data Catalogue within 6 months of joining GS1 South Africa.

5.4 Not Prejudice GS1's Goodwill: You will not at any time during the term of the Membership, or after its termination, be a party to any act, matter or thing whereby GS1's goodwill, trade or business may be prejudicially affected or brought into disrepute.

5.5 Standards: You will abide by and comply with the technical standards set out in the GS1 South Africa manuals/guidelines and such other directions as GS1 may give from time to time.

6. USE OF GS1 NUMBERS AND OTHER INTELLECTUAL PROPERTY

6.1 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 may not use any numbers which purport to be issued by GS1 but which are not genuine GS1 numbers 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.

6.2 Not Alter the Numbers: You will not alter the GS1 Numbers licensed to You in any way.

6.3 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.

6.4 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:

6.4.1 Challenge Ownership of Numbers: challenge, call into question or raise any questions concerning the validity or ownership of the GS1 System or related Intellectual Property; or

6.4.2 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.

6.5 Proprietary Notices: You will ensure that all proprietary notices that GS1 may require from time to time, appear on the Products. Terms and Conditions of Membership with GS1 South Africa

7. USE OF GS1 NUMBERS AND TRADE MARKS FOR MARKETING /PROMOTION

7 Use of Trademarks for Marketing /Promotion

With GS1's prior written consent, You may use the GS1 Trade Marks for marketing and promotion of the Products. You must ensure that the Trade Marks are reproduced only in accordance with the manner, form and other guidelines specified to You by GS1 from time to time.

8. INTELLECTUAL PROPERTY INFRINGEMENT

In the event that it comes to Your notice that:

(a) there is an infringement or suspected infringement of the Intellectual Property in the GS1 Numbers or the Trade Marks; or

(b) the GS1 Numbers infringe or are suspected of infringing intellectual property rights of others, You will promptly notify GS1 in writing. GS1 will have control over any steps GS1 may wish to take in relation to the suspected infringement and all such steps shall be at GS1's cost. You will provide information and assistance in respect of such suspected infringement as GS1 reasonably requests.

(c) should you fail to notify GS1 SA, legal action may be taken against you. Clause 15 may take effect.

9. VARIATION OF TERMS AND CONDITIONS

GS1 has the right to vary these terms and conditions at any time by giving written notice to You. Any such variation notified by GS1 shall take effect immediately (unless a later date is specified in the notice).

10. COMPLIANCE WITH GS1 RULES

As long as You remain a member of GS1 You must comply with the rules of GS1, as contained within these Terms and Conditions as well as with the GS1 General Specifications. GS1 South Africa reserves the right to inspect Your operations and Products which relate to the GS1 Numbers at regular intervals to ensure that these terms and conditions are being observed and complied with.

11. SURVIVAL

The covenants and acknowledgements contained in clauses 4.3, 5.2, 8, 12, 13 and 15 shall remain in force and effect after the termination or expiry of the Licence for any reason and shall not be deemed waived, merged or extinguished upon such termination or expiry.

12. INDEMNITY (Data controlling by GS1 SA)

You agree to indemnify GS1 against claims, suits, losses, damages or costs suffered or incurred by GS1 as a result of Your conduct, Your use of the GS1 Numbers and any breach of these terms and conditions by You (except to the extent GS1 causes or contributes to the claims, suits, losses, damages or costs).

13. CONFIDENTIALITY

You will always keep confidential and secure, and not exploit or otherwise misuse, any information of GS1's which is identified as or would reasonably be expected to be, proprietary, confidential or commercially sensitive. You will only disclose that information to the extent:

(a) necessary to perform Your obligations under the Licence and on a "need-to know" basis only;

(b) GS1 authorises it in writing; or

(c) as required by law.

14. ASSIGNMENT AND SUBLICENCES

You shall not assign, transfer or sublicense Your rights and obligations under the Licence.

15. TERMINATION

GS1 shall have the right to terminate the Licence immediately by giving notice if:

15.1 Failure to Pay Licence fee: You fail to pay the annual Membership fee by its due date;

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15.2 Breach: You commit a breach of Your obligations under these terms and conditions, and you fail to remedy such breach;

15.3 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

15.4 Head Licence Terminates: GS1 ceases to hold the necessary licence rights to issue GS1 numbers in South Africa.

15.5. Termination by either Party: Either GS1 or You may otherwise terminate this Licence in any other circumstances by giving six months written notice to the other party.

15.6. 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.

16. CONSEQUENCES TERMINATION

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

16.1. Cease to Use Intellectual Property: cease all direct or indirect use of the GS1 Numbers and related Intellectual Property save in respect of products bearing GS1 numbers that are already in the market place at the date of termination of membership;

16.2. 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

16.3. Cease applying GS1 Numbers to Products: cease applying the GS1 Numbers to any of Your Products manufactured or sold by You after the termination date.

16.4 All your product information on the GS1 Product Data Catalogue will be suspended from view.

17. DISPUTE RESOLUTION

Where any dispute arises in relation to the Licence or any matter arising under it, GS1 and You will make genuine efforts to resolve the dispute by negotiation, within 2 months of the dispute arising. Nothing in this clause prevents either GS1 or You from applying to a court for urgent relief.

18. NOTICES

All notices and other communications required or permitted under this Licence shall be in writing and shall be delivered personally, sent by registered post (within South Africa), sent by facsimile transmission (and promptly confirmed by registered post or, in the case of overseas mail, by air courier service), or via the GS1 South Africa Newsletter. Any such notice shall be deemed given when so delivered personally, or if sent by facsimile transmission on the next following business day in the country in which it is received, or the next day after sending by registered or ordinary post within South Africa. Notices for You will be sent to the address specified on Your Application Form (or such other address as You may notify GS1 of from time to time). Notices for GS1 must be sent to the Chief Executive Officer (Jacolien.richards@gs1za.org) of GS1 at GS1's address as notified to You from time to time.

19. GENERAL LEGAL PROVISIONS

19.1 Governing law: The terms and conditions are governed by the law of South Africa and GS1 and You submit to the nonexclusive jurisdiction of the South African courts.

19.2 Waiver: No waiver, extension or excuse (as the case may be) shall be deemed to arise unless it is in writing and signed by the relevant party providing it.

19.3 No favour, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on such party in terms of this agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any other power or right under this agreement.

19.4 Severance: If any provision contained in these terms and conditions is held to be illegal, invalid or unenforceable, it shall be severable, shall be deemed to be deleted from these terms and conditions and shall not affect the validity or enforceability of other provisions in these terms and condition.