

GS1 SOUTH AFRICA TERMS AND CONDITIONS

1. Application

These GS1 Terms and Conditions are applicable to all GS1 Members.

2. Compliance with GS1 Rules

Each GS1 Member shall comply with the General Terms and Conditions and GS1 Terms and Conditions.

3. Commencement Date

These Terms and Conditions come into effect on the date on which the GS1 Global Company Prefix and/or GTIN range/s are issued to a GS1 Member.

4. Fees

4.1. Entrance Fee

4.1.1. On becoming a GS1 member, such GS1 Member will pay an entrance fee as specified in the Application Form.

4.1.2. If a GS1 Member needs to apply for a range of numbers after having applied for a single number or a Global Location Number for Electronic Data Interchange, that GS1 Member will pay an entrance fee as specified in the Application Form.

4.2. Annual Licence Fee

4.2.1. A GS1 Member will pay GS1 an annual GS1 Licence fee.

4.2.2. The annual license fee must be paid within 30 days from date of invoice. GS1 may, from time to time, increase the GS1 Licence fee by giving the GS1 Member at least 30 Business Days written notice. On expiry of the notice period the increase shall be effective and due and payable.

4.2.3. The initial GS1 Licence fee will be a *pro-rata* amount dependent on the month of joining.

4.2.4. The annual license fee will be payable in the manner and within the time periods as described in clauses 4.2.1 to 4.2.3 irrespective of whether a Member has used their GTINs or not.

4.3. Fees Payable after Termination of Membership

Where Products bearing GS1 Global Trade Item Number issued to a GS1 Member are already in the marketplace at the time of termination of the Membership of a GS1 Member, then, notwithstanding such termination, the GS1 Member will remain liable for a fee equivalent to the GS1 Licence fee for the period that those Products remain in the marketplace.

5. GS1 Members Conduct

5.1. Training

GS1 Members are required to register and undergo training, either classroom (one delegate at no cost) or by obtaining the training DVD, within 6 months of becoming a GS1 Member.

5.2. Product Data Training

GS1 Members are required to register, pay and undergo mandatory training on DATAnet.za. Please refer to the GSDN Training Booking form on www.datanetza.org.

5.3. Standards

GS1 Members will abide by and comply with the technical standards set out in the GS1 manuals or guidelines and any such directions as GS1 may give from time to time.

6. GS1 Services

6.1. Use of GS1 Global Trade Item Numbers (GTINs)

6.1.1. A GS1 Member is only entitled to use the GS1 GTINs issued by GS1. Such restriction shall apply only to Members in their capacity as supplier and not to Members in their capacity as retailers.

6.1.2. A GS1 Member must not use any GS1 Global Company Prefix and/or GTIN issued by GS1 to any other GS1 Member.

6.1.3. The GS1 Member may not use any GTINs which purport to be issued by GS1 but which are not genuine GS1 GTINs and must use its best endeavours to be vigilant in this regard. Such restriction shall apply only to Members in their capacity as supplier and not to Members in their capacity as retailers.

6.1.4. A GS1 Member may only use the GS1 GTINs issued to that GS1 Member in connection with the manufacture, sale and identification of that GS1 Member's Products and/or Services.

6.1.5. The GS1 Member may not in any way alter the GS1 Numbers issued to that GS1 Member.

6.1.6. Incorrect use of GS1 GTINs

6.1.6.1. In the event that a Member misuses or incorrectly uses any GS1 GTINs, GS1 shall have the right to take such steps as GS1 may deem necessary in order to –

6.1.6.1.1. assist the GS1 Member to re-label all such products at the GS1 Member's cost; and/or

6.1.6.1.2. recommend to the relevant retailers that such products are removed from the relevant stores and/or blacklisted to the extent that this appears necessary.

6.1.6.2. Any GS1 Member shall be entitled at any time to request from GS1 a certificate of confirmation of the GS1 GTINs issued to such GS1 Member.

6.1.7. Reduction of GS1 GTINs

6.1.7.1. Members who obtained GS1 GTINs prior to 2007/09/01 and who did not apply for a reduction in the number of GS1 GTINs prior to 2007/09/01 are entitled to apply for a reduction in the GS1 GTINs provided to them if they have not done so already.

6.1.7.2. Members who obtained GS1 GTINs after 2007/09/01 will only be entitled to apply for a reduction in the GS1 GTINs provided to them until 1 May 2015.

6.1.8. No dealing with the GS1 GTINs

A GS1 Member recognises GS1's title to the GS1 GTINs 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 GTINs or related Intellectual Property.

6.1.9. No challenge or misuse of GS1 Global Company Prefix and/or GTINs

A GS1 Member shall not at any time, either during the term of the GS1 Licence or after termination, directly or indirectly:

6.1.9.1. challenge, call into question or raise any questions concerning the validity or ownership of the GS1 system or related Intellectual Property; or

6.1.9.2. 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 GTINs or related Intellectual Property without GS1's prior written consent.

6.1.10. Proprietary Notices

A GS1 Member will ensure that all proprietary notices that GS1 may require from time to time, appear on the GS1 Member's Products and/or Services.

7. Use of the GS1 GTINs and the Trademarks for marketing/ promotion

GS1 understands that in the marketing and promotion of a GS1 Member's Products and/or Services a GS1 Member may also wish to use the GS1 GTINs and the associated Trade Marks. The GS1 Member

only has rights to use the GS1 GTINs and the GS1 Trade Marks on marketing and promotional material on the following terms and conditions”

7.1. GS1 Members must be given prior written notice of a GS1 Member’s desire to use the GS1 GTINs and the GS1 Trade Marks in marketing and promotional materials.

7.2. A GS1 Member may only use the GS1 GTINs and/or the GS1 Trade Marks if GS1 gives its prior written approval to such use.

7.3. A GS1 Member will submit samples of the proposed marketing and promotional materials to GS1 for approval at least 15 Business Days prior to the intended date of publication.

7.4. If a GS1 Member is permitted to use the GS1 Trade Marks for marketing and promotional materials, the GS1 Member must ensure that the GS1 Trade Marks are correctly reproduced.

8. Termination of the GS1 Licence and termination of GS1 Membership

8.1. In the event of GS1 ceasing to hold the necessary licence rights to issue GS1 GTINs in South Africa, GS1 shall have the right to terminate the GS1 Member’s GS1 Licence.

8.2. In the event of non payment of any fee payable as per clause 4 above, GS1 shall be entitled to terminate the GS1 Member’s Membership.

8.3. In addition to the remedies provided in clause 6.1.6 above, GS1 may elect to terminate Membership

9. Consequences of Termination

9.1. Upon termination of Membership, GS1 shall be entitled to take any steps that they deem necessary, including but not limited to:

9.1.1. informing the various retailers that the Membership has been terminated and request them to black-list the products of GS1 Members who have had their membership terminated; and

9.1.2. terminate the license that the GS1 Member had to use the GTINs.

9.2. Upon termination of the GS1 license, the GTINs will revert back to CGCSA and an application for new GS1 Membership will be required. GS1 does not guarantee that upon reapplication that the GS1 Member will receive the same GTINs as had previously been allocated to it.

9.3. Upon Termination of a GS1 Member’s Membership, a GS1 Member must cease applying the GS1 Numbers to any of their Products manufactured or sold after the termination date.

9.4. Upon the occurrence of a Liquidation Event, the GS1 Member’s GS1 Licence will terminate.

9.5. All Product information on the GS1 DATAnet.za, being the central repository of supplier product data for retail business partners will be suspended from view.

9.6. In the event that the GS1 Member’s business is sold as a going concern, the Purchaser in such transaction will be required to re-apply for the GS1 Licence or obtain the necessary consents from the GS1 Member to transfer or continue to use the GS1 Member’s GS1 Licence.

APPENDIX - GLOSSARY OF TERMS

1. “**AFSA**” means the Arbitration Foundation of South Africa (or its successor body).

2. “**Affiliates**” means subsidiary companies, holding companies, subsidiary companies of holding companies, officers, representatives, servants and/or agents (as the context may require).

3. "**Applicant**" means the person, company, corporation or other legal entity that has signed the Application Form applying to become a Member of an applicable Initiative and/or CGCSA.
4. "**Application Form**" means the application form which a person, company, corporation or other legal entity has signed in applying to become a Member of the applicable Initiative and/or CGCSA and which will be subjected to an approval process.
5. "**Business Day**" means any day of the week except Saturday, Sunday or a national public holiday in South Africa.
6. "**Business Hours**" means shall be from 08h00 to 17h00 on a Business Day;
7. "**CGCSA**" means the Consumer Goods Council of South Africa (Registration Number.1982/006710/08), a non-profit company duly incorporated and registered in accordance with the company laws of South Africa.
8. "**CGCSA Member**" means a successful Applicant who becomes a member of CGCSA.
9. "**CGRI**" means the Consumer Goods Risk Initiative, a division of CGCSA.
10. "**CGRI ID Cards**" means the identification cards produced by the CGRI for access to retail stores in accordance with the CGRI Terms and Conditions.
11. "**CGRI Member**" means a Member of CGRI.
12. "**CGRI Terms and Conditions**" means those terms and conditions set-out in Part C of this Document.
13. "**Companies Act**" means the Companies Act, No. 71 of 2008 (as amended from time to time);
14. "**Consumer Protection Act**" means the Consumer Protection Act, No. 68 of 2008 (as amended from time to time).
15. "**Document**" means this document containing the Terms and Conditions.
16. "**FSI**" means the Food Safety Initiative South Africa, a division of CGCSA.
17. "**FSI Licence**" means the licence granted by FSI to a FSI Member to use the Website and related information in accordance with the FSI Terms and Conditions.
18. "**FSI Member**" means a Member of FSI.
19. "**FSI Terms and Conditions**" means those terms and conditions set-out in Part B of this Document.
20. "**General Terms and Conditions**" means those terms and conditions set-out in Part A of this Document.
21. "**GS1**" means GS1 South Africa, a division of CGCSA.
22. "**GS1 Licence**" means the licence granted by GS1 to a GS1 Member to use the GS1 Numbers in accordance with the GS1 Terms and Conditions.
23. "**GS1 Global Company Prefix**" means a number that represents a unique global range of barcodes. The prefix is issued and administered by GS1 for restricted circulation.
24. "**GS1 Global Location Number for Electronic Data Interchange**" means a barcode number that can be used to identify any location, globally and uniquely. This location number is usually used in Electronic Data Interchange messages to identify the sender or recipient of such message.
25. "**GS1 GTIN/s**" means the GS1 global trade item numbers issued to a GS1 Member by GS1 for use by the GS1 Member in accordance with the GS1 Terms and Conditions.
26. "**GS1 Member**" means a Member of GS1.
27. "**GS1 Terms and Conditions**" means those terms and conditions set-out in Part D of this Document.
28. "**Initiative**" means the initiatives conducted and/or facilitated by CGCSA from time to time being FSI, CGRI, and/or GS1, and shall include any one or more of them as the context may require.

29. "**Initiative Member**" means a successful Applicant who becomes a member of one or more Initiatives.
30. "**Intellectual Property**" means (in relation to CGCSA and/or the Initiatives) patents, registered designs, utility models, trademarks, applications for any of the foregoing, inventions, unregistered trademarks, 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 and the Website.
31. "**Liquidation Event**" means, in relation to a Member, any of the following events or circumstances:
- 31.1. a provisional or final order or declaration is made or a meeting of the directors or shareholders of that Member is convened to consider the passing of, or a resolution is passed or filed (in the case of business rescue proceedings pursuant to the provisions of Chapter 6 of the Companies Act) for the administration, custodianship, receivership, bankruptcy, liquidation, sequestration, winding-up, dissolution or placing under supervision for business rescue proceedings of it or its estate, other than pursuant to an internal restructure or refinancing in circumstances other than insolvency; or
- 31.2. an application is made by any affected person for an order placing it under supervision for business rescue proceedings as contemplated in section 131(1) of the Companies Act; or
- 31.3. it admits inability to pay its debts generally as they fall due or admits to being otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or
- 31.4. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step other than pursuant to an internal restructure or refinancing in circumstances other than insolvency;
32. "**Losses**" means collectively any losses, costs, expenses, penalties, liabilities and/or damages.
33. "**Member**" means CGCSA Members and/or Initiative Members (as the context may require).
34. "**Membership**" means the state of being a Member of CGCSA and/or any Initiative.
35. "**Products**" means the products manufactured, marketed, distributed and/or sold by a Member.
36. "**Services**" means the services rendered by CGCSA and/or any Initiative from time to time.
37. "**South Africa**" means the Republic of South Africa.
38. "**Terms and Conditions**" means the General Terms and Conditions, CGRI Terms and Conditions, and FSI Terms and Conditions .
39. "**Trade Marks**" means the trade-marks of and/or associated with CGCSA and/or any Initiative.
40. "**VAT**" means value-added tax, as levied in terms of the VAT Act.
41. "**VAT Act**" means the Value-Added Tax Act No. 89 of 1991 (as amended from time to time).
42. "**Website**" means the CGCSA website which Members will have access to by using their unique username and password found at <https://www.cgcsa.co.za>.