

General terms and conditions

of GS1 Germany GmbH (hereinafter referred to as “GS1 Germany”) for participation in the GS1 SmartStarter 10 service package with the global location number (GLN), the global trade item number (GTIN) and other GS1 identification numbers in the Federal Republic of Germany.

GS1 Germany is a limited liability company (GmbH) registered in the Commercial Register. The Company’s registered office is in Cologne, Germany (District Court of Cologne No. 6276). GS1 Germany is a member of the International Global Standards Organisation GS1 headquartered in Brussels, Belgium.

The following hold equal shares in the limited liability company (GmbH):

- Markenverband e.V., Berlin, Germany
- EHI-Verwaltungsgesellschaft mbH, Cologne, Germany

The corporate bodies of the Company are:

- the shareholders’ meeting
- the supervisory board
- the managing board

The supervisory board appointed by the users of the GS1 identification numbers is responsible for defining the principles and guidelines for the Company’s work. The supervisory board monitors compliance with the orderly process pursuant to the relevant “directives” and is the decision-making body.

I. General

The purpose of GS1 Germany is to compile and publish recommendations or other work results which serve to rationalise the transfer of data and products and the organisational processes between users (industry, retail, service providers, etc.) and facilitate the implementation of these results. The general terms and conditions of participation apply only in respect of entrepreneurs as defined in section 14 of the German Civil Code (BGB). They regulate the application of GS1 identification numbers such as, for example:

- global location number (GLN)
- global trade item number (GTIN)
- serial shipping container code (SSCC; NVE in Germany)
- title number (VDZ in Germany)

hereinafter referred to as “SmartStarter10”.

The identification numbers are defined in the publications issued by GS1 Germany. All interested parties, e.g. economic enterprises and their commercial combinations, may participate. Users who apply these GS1 Standards and recommendations are obliged to do so in a manner that is system-compatible; in particular, the defined implementing regulations are binding.

II. Participation

1. All users named in Section I and their combinations with annual pre-tax sales of less than €250,000 are entitled to participate.
2. Registration is made in writing using the GS1 Germany form. This is considered an application for the provision of the GS1 SmartStarter 10 service package. By registration, the user accepts these terms and conditions of participation.
3. GS1 Germany will decide whether to approve the application for provision of the GS1 identification numbers.

4. If the application is approved, participation is deemed to be justified and identifies the full company name, possibly also the business establishment name and the address. A contract is thereby established between GS1 Germany and the applicant. Unless the user objects in the application, it consents to the rationalisation of the inter-business exchange of information by the submission of its data. Any changes to these data must be notified to GS1 Germany without delay.
5. Users of the GS1 identification system are obliged to check the application confirmation immediately upon receipt and notify GS1 Germany of any corrections that may be necessary.

III. Obligations of participants

1. The user undertakes to pay GS1 Germany the annual fees as shown in the application. These are payable in advance on January 1 each year. The first fees are payable on submission of the application.
2. On submitting an application and thereafter each year, the user shall provide suitable verification of its annual sales or, if appropriate, anticipated sales. This verification must be sent in writing without delay to GS1 Customer Services. Calculation of the annual usage price is based on the total reported sales of the participant’s company. GS1 Germany reserves the right to perform a review and possible reclassification, coupled with a recalculation.
3. All users of the GS1 SmartStarter10 service package should use their GLN (incl. check digit) with the prefix “GLN” for an appropriate period, usually twelve months from provision, on correspondence with other participants, especially on order forms, invoices, invoice lists, etc.
4. The applicant may use the Type 2 GLN with integrated core number to individually assign GLNs to business areas, GTINs for numbering articles, SSCCs (NVEs) for identifying logistic units and other identification numbers from GS1 Germany for its own business.
5. All GS1 identification numbers (incl. GLNs, GTINs) may only be used in accordance with the currently applicable implementation regulations, especially in respect of the rules on non-reuse.
6. Misuse of GS1 identification numbers (incl. GLNs, GTINs) may result in termination of participation without notice (see Section X.5) and claims for damages by GS1 Germany. Misuse exists in particular if the numbers are passed on to third parties without the written consent of GS1 Germany.

IV. Participants' obligation to provide information in respect of medical devices; liability disclaimer

1. In order to comply with the UDI requirements of the US Food and Drug Administration (FDA), the participant shall notify GS1 Germany when applying for a license if a GS1 key is to be used to identify a medical device.
2. If a GS1 key is to be used to comply with FDA UDI requirements, the participant shall notify GS1 Germany of this fact within five working days of applying for the license. If the participant does not meet its aforementioned obligation to provide information within the due time, its data cannot be reported in the annual report submitted by GS1 Germany to the FDA. **GS1 Germany does not accept any liability for consequences arising therefrom (e.g. costs, administrative processes, queries from regulatory authorities).**
3. The participant is and remains at all times responsible for the information in respect of medical devices that it provides to GS1 Germany and for compliance with all applicable legal and regulatory obligations and shall ensure that all information provided to GS1 Germany is at all times correct and up to date.

V. Obligations of GS1 Germany

1. In accordance with the implementation regulations and immediately upon receipt of application, GS1 Germany shall provide the contractual partner with the required number of Global Location Numbers including check digits. In general, the numbers are provided in the sequence in which applications are received.
2. GS1 Germany will allocate the location numbers it issues to just one participant and will ensure that there are no overlaps in allocation (avoidance of collision).
3. If necessary, the GS1 Germany implementation regulations shall be supplemented. Participants shall be notified of such supplements at least six months before they come into effect.
4. GS1 Germany shall deploy working groups in the development and promotion of rationalisation projects to ensure the appropriate involvement of the affected business groups.

VI. Exceeding the sales threshold and contractual amendment

1. In the event that the sales threshold specified in Section II is exceeded, GS1 Germany is entitled to oblige the user to participate in the GS1 Complete service package in line with its individual needs.
2. This shall apply *mutatis mutandis* in the event that the user fails to provide verification as set forth in Section III.2 or justifiable doubts permit the conclusion that the sales threshold has been exceeded as set forth in Section V.1.
3. GS1 Germany shall notify the user in writing of the switch to the GS1 Complete service package. From that point in time, the user shall be obliged to pay the fees for this service package as set forth in the valid price list.
4. The user shall have a special right of termination from the time at which the amendment comes into effect. If the user does not give written notice of termination (e.g. by letter or e-mail) within six weeks of receiving notification of the amendment, the amendment will become an integral part of the contract from the time at which it comes into effect. The notification of the amendment will specifically draw the user's attention to this consequence.

VII. Liability

1. GS1 Germany shall be liable under statutory provisions if the user seeks to assert claims for damages on the basis of wilful intent or gross negligence, including wilful intent or gross negligence by a representative or agent of GS1 Germany. Unless GS1 Germany is accused of a wilful breach of contract, its liability shall be restricted to foreseeable and typically occurring damages.
2. GS1 Germany shall be liable under statutory provisions if it has culpably breached a material contractual obligation. In such case too, however, its liability shall be restricted to foreseeable and typically occurring damages.
3. This shall be without prejudice to liability for culpable injury to life, limb or health, which shall apply *mutatis mutandis* to mandatory liability in accordance with product liability legislation.
4. Unless otherwise regulated in the foregoing, liability shall be excluded.

VIII. Joint liability

1. Any further liability for damages other than that set forth in Section VII. shall be excluded, irrespective of the legal nature of the claim being asserted. This applies in particular to claims for damages arising from *culpa in contrahendo*, other breaches of obligations or claims in tort for the indemnification of material damages as defined by section 823 of the German Civil Code (BGB).
2. The limitation pursuant to paragraph 1 shall apply *mutatis mutandis* to a claim for compensation for damage instead of a claim for reimbursement of wasted expenses.
3. To the extent that the liability if GS1 Germany for claims for damages has been excluded or restricted, this shall apply *mutatis mutandis* to personal claims for damages from employees, representatives and agents of GS1 Germany.

IX. Contributions

Users shall pay an annual fee of €55 (plus 19% value-added tax). These fees may be utilised solely for the purposes specified in the statutes of GS1 Germany. In accordance with section 315 of the German Civil Code (BGB), any changes to the contractual considerations of users for implementing the purpose of GS1 Germany shall be decided by the supervisory board and enter into effect at the beginning of the next financial year (calendar year). Such changes shall be notified to the users in writing or via the internet six months before the end of the previous financial year.

X. Amendment of the general terms and conditions of participation and termination

1. The supervisory board, as the representative of the users, may decide on any objectively necessary changes to these general terms and conditions of participation. Such changes shall not enter into force until the beginning of the next financial year (calendar year) and shall be notified to the users in writing or via the internet six months before the end of the current financial year.
2. Each user may terminate its participation with notice of three months to the end of a year. The termination will become effective upon receipt of the registered letter to GS1 Germany.
3. With notice of termination, the user undertakes to cease using the GS1 identification numbers provided by GS1 Germany at the end of the period of notice. In the case of Type 2 GLNs, this shall apply irrespective of the granting of appropriate use-by periods for materials. In the case of improper further use, i.e. if the former user deliberately ignores the foregoing provision, it shall be liable for all damages incurred by GS1 Germany, including those asserted against GS1 Germany by other system participants.
4. Termination of participation by GS1 Germany is only possible for good cause, especially but not restricted to the non-payment of fees, a sustained breach of these terms and conditions of participation or a threat to the functioning of the systems. Moreover, GS1 Germany reserves the right to terminate the provision of the GS1 SmartStater 10 service package for strategic reasons.

XI. Use of data and transfer of data to authorities

1. GS1 Germany is entitled to use the user's data – especially the electronic mail address – for the direct promotion of its own similar products or services. The user may make an objection to the use of its data at any time to GS1 Germany GmbH, Stolberger Str. 108a, 50933 Cologne, Germany, **phone:** +49 221 94714-0, **fax:** +49 221 94714-990, **e-mail:** widerspruch@gs1-germany.de. Only the applicable standard rates will apply for the means of communication used.
2. If required to do so by law or due to a decision by a court or administrative authority, GS1 Germany reserves the right to transmit the user's data to the respective administrative authority, also outside the European Economic Area.

XII. Place of jurisdiction and place of performance

Provided the user is a business person, the place of jurisdiction and place of performance will be the registered office of GS1 Germany. Substantive German law shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

Cologne, April 2021

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