
General terms and conditions

of GS1 Germany GmbH (hereinafter referred to as "GS1 Germany") for participation of the GS1 SmartStarter1 service package with the global trade item number (GTIN).

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 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 (coorganisation). 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 trade item number (GTIN)
- hereinafter referred to as "SmartStarter1".

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 and which are not yet or have not been customers of GS1 Germany 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 SmartStarter1 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 the one-time fee as shown in the application. Payment is due on submission of the application.
2. After submission of the application and before notification of the GTIN, the participant is obliged to bindingly specify one product and seven product attributes for each GTIN allocated and for which the GTIN is to be used. The participant may not use the allocated GTIN for any products other than the product specified or for products with attributes other than the seven product attributes specified. It is also not permitted to transfer the GTIN to a product other than the one specified or with attributes other than the seven attributes specified.
3. 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 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.
4. All GTINs may only be used in accordance with the currently applicable implementation regulations, especially in respect of the rules on non-reuse.
5. Misuse of GTINs may result in termination of participation without notice (see Section X.4) and claims for damages by GS1 Germany. Misuse shall be considered to have occurred especially if the numbers are passed to third parties without the written consent of GS1 Germany or are used by the participant for attributes other than the seven attributes specified.

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 pro-cesses, 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 and the binding specification of seven product attributes, GS1 Germany will provide its contractual partner with the required number of GTINs (a maximum of five) including check digits for an unlimited period but subject to withdrawal. Withdrawal is permissible especially in the event of termination in accordance with Section VI or Section X.4. In general, the numbers are provided in the sequence in which applications are received.
2. GS1 Germany will allocate the GTINs 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 annual sales specified in Section II.1 are exceeded, GS1 Germany is entitled to terminate this agreement and is obliged to offer the user participation 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.3 or justifiable doubts permit the conclusion that the sales threshold has been exceeded as set forth in Section II.1.

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 of 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

The user shall pay a one-time fee of €35 (plus applicable 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 via the Company's official corporate body or 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 via the Company's official corporate body or the internet six months before the end of the current financial year.
2. Each user may terminate its participation with notice to GS1 Germany of three months to the end of a year.
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 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 SmartStarter 1 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, May 2021

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