

[GS1 KENYA LICENCE TERMS AND CONDITIONS

such other directions as GS1 may give from time to time.

1. GRANT OF LICENCE

GS1 Kenya (hereon known as GS1) grants You a non-exclusive non-transferable licence to use the GS1 numbers and Bar codes in connection with the supply and sale of Your Products.

2. TERM

The Licence and these terms and conditions come into effect for You on the date on which GS1 notifies You of its acceptance of Your Registration Form and continues until terminated as provided in clause 11.

3. FEES

You must pay the Licence Fee to GS1 annually within 30 days of the date of GS1's invoice.

GS1 may, from time to time, increase the Licence Fee by giving You at least 30 day's written notice.

Where products bearing GS1 Numbers issued to You are already in the marketplace at the time the Licence is terminated, notwithstanding such termination You will remain liable for a fee equivalent to the then current Licence Fee for the period that You continue to distribute those Products.

You must pay an administration fee for any overdue amount calculated at the rate of 10% per annum.

4. VAT AND OTHER TAXES

All amounts payable under this Licence are inclusive of VAT.

GS1 will issue a tax invoice to You for the Licence Fee.

You must pay all the taxes imposed in Kenya in respect of this Licence.

5. YOUR CONDUCT

You must.

- a. not at any time during the term of the Licence or after its termination, do or omit to do anything whereby GS1's goodwill, trade or business may be prejudicially affected or brought into disrepute.
- b. Comply with the technical standards set out in the GS1 manuals/guidelines and

6. USE OF GS1 NUMBERS, BAR CODES AND OTHER INTELLECTUAL PROPERTY:

You:

- a. may use only the GS1 Numbers issued to You by GS1;
- b. must not use any numbers issued by GS1 to any other person;
- c. must not use any numbers that copy the GS1 numbering system
- d. must only use the GS1 numbers issued to You in connection with the manufacture, sale and identification of Your Products;
- e. must not alter the GS1 Numbers licensed to You in any way;
- f. recognize GS1's title to the GS1 Numbers and related intellectual property and must not at any time do or allow to be done any act or thing which may in any way impair GS1's rights in regard to GS1 Numbers or related intellectual property
- g. must not permit anyone else to use or display the GS1 Numbers issued to You;
- h. must ensure that the products bear all proprietary notices that GS1 may require from time to time.

7. USE OF TRADE MARKS 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. INDEMNITY

You agree to indemnify GS1 against all 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 caused by GS1's negligence or wilful misconduct).

9. LIMITATION OF LIABILITY

To the maximum extent permitted by law:

- a. all terms, conditions and warranties which would otherwise be implied into contract are excluded; and
- b. where any implied term may not be excluded, GS1 limits the liability for breach of that term to the resupply or payment of the cost of resupply of the relevant services.

To the full extent permitted by law, GS1 excludes all liability (whether arising in negligence, breach of contract or breach of any law) in connection with this licence for any indirect or consequential loss or damage, including lost profits and revenue.

- 9.3. to the full extent permitted by law, GS1's total liability to You for loss or damage if any kind arising out of this Licence which is not excluded by clause 9.2 is limited, for any and all claims, to the total Licence Fees paid during the 12 month period prior to the relevant liability accruing.

10. PRIVACY AND CONFIDENTIALITY

- 10.1. You must always keep confidential and secure, and not use or disclose any information of GS1's that is identified as or would reasonably be expected to be, proprietary, confidential or commercially sensitive except as permitted by this Licence. You must only disclose that information:
 - a. to the extent necessary to perform Your obligations under the Licence and on a "need-to-know" basis only;
 - b. if GS1 authorizes it in writing ; or
 - c. as required by law.

11. TERMINATION

- 11.1. GS1 may terminate the Licence immediately by giving notice if:
 - a. You fail to pay the Licence Fee by its due date;
 - b. You commit a breach of Your obligations under these terms and conditions;
 - c. You are declared bankrupt, go into liquidation, have a receiver or other controller

appointed, or (being a company) are wound up otherwise than for the purpose of a reconstruction; or

- d. GS1 ceases to hold the necessary licence rights to issue GS1 Numbers in Kenya.

11.2 Either GS1 or You may terminate this Licence in any other circumstances

by giving six months written notice to the other party.

11.3 Termination of this Licence does not relieve either GS1 or You from

liability arising from any prior breach of the terms of the Licence.

12. CONSEQUENCES OF TERMINATION

12.1. On termination of this Licence, Your rights under this Licence terminate and

You must:

- a. immediately cease applying the GS1 Numbers and Bar codes to any of Your Products manufactured or sold by You after the termination date; and
- b. within 7 days, pay to GS1 all amounts due to GS1 under this Licence at the termination date

12.2. You are not entitled to any rebate or refund of the Licence Fee or any other fees

or charges paid under this Licence, unless this Licence expressly states

otherwise.

12.3. the termination or expiry of this Licence does not affect those provisions which

by their nature survive termination, including clause 8,9 and 10.

13. NOTICES

13.1. All notices and other communications in connection with this Licence:

- a. must be in writing; and
- b. take effect from the time they are received unless a later time is specified.

13.2. If sent by registered post, notices and other communications are taken to be received the day after posting (or seven days after posting if sent to or from a place outside Kenya).

- 13.3. if sent by facsimile, notices and other communications are taken to be received at the time shown in the facsimile transmission report at the time that the whole facsimile was sent.
- 13.4. Notices for You will be sent to the address specified on Your Registration 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 of GS1 at GS1's address as notified to You from time to time.

14. GENERAL PROVISIONS

- 14.1. This Licence and Registration Form constitute the entire agreement of the parties about its subject matter and supersedes all previous agreements, understanding and negotiations on that subject matter.
 - 14.2. This Licence is governed by the laws in force in Kenya. Each party submits to the non – exclusive jurisdiction of the courts of Kenya.
 - 14.3. A provision of this Licence or a right created under it may not be waived except in writing, signed by the party giving the waiver.
 - 14.4. GS1 may vary these terms and conditions at any time by written notice to You. Any such variations notified by GS1 takes effect immediately (unless a later date is specified in the notice).
 - 14.5. You must not assign, transfer or sublicense Your rights or obligations under this Licence.
15. GS1 is a subscribing member of the Credit Reference Bureau Ltd (CRB) and by Your application for membership of GS1 You agree that GS1 will:
 - a. Obtain from time to time status reports from CRB.
 - b. Report any instances to CRB of cheques dishonoured, breaches or other defaults relating to the terms and conditions of membership including the Licence agreement.
 - c. Report to CRB and retailers generally all cancellations of membership and bar codes allocated to You.

16. DEFINITIONS.

These m GS1ings apply to this Licence unless the contrary intention appears:

“ **GS1**” means GS1 Kenya Ltd, P.O Box 3243-00200, Nairobi, Kenya, a Company limited by guarantee.

“ **GS1 Numbers**” means the EAN.UCC System identification numbers that are issued to You by GS1 in accordance with the Licence.

“**Bar codes**” means the EAN.UCC System data carriers designed to carry the GS1 Numbers and other attribute information.

“**VAT**” means the Value Added Tax as imposed by the Kenya Revenue Authority.

“**Licence**” means the licence granted by GS1 to You to use the GS1 Numbers.

“**Licence fee**” means the fee payable annually by You to GS1 specified in the Registration Form (as varied from time to time according to clause 3.2.).

“**Products**” means the goods or services manufactured, distributed and/or sold by You.

“Registration Form” means the GS1 registration form whereby persons apply to become subscribers to GS1 and for the issue of GS1 Numbers.

“**Trade Marks**” means the trademarks associated with GS1 and or the GS1 numbering system.

“**You**” means the person, Company, corporation or other legal entity that has signed the Registration Form applying for membership of GS1 and the issue of GS1 Numbers. “**Your**” has a corresponding meaning.

Annexure 3.

Scale of fees, Commissions, Annual Subscriptions:

Part 1: Sets out the scale of the entrance (Licence) and registration fee payable when You join. Thereafter You are only required to pay the subscription on an annual basis on the 1st March each year.

To enable us to establish the rate of the Annual Subscription payable by You please ask Your Auditors to complete the attached statement and send it to us.

Part 2: Sets out the commission payable by You for Your initial requirement for bar codes and the commission payable for additional bar codes as and when required.

Where You require bar codes in stick on labels form we contract this out to our authorized printers who will raise charges. These are payable by You not GS1 Kenya.

Part 3: Sets out the commission charged by us where You ask us to carry out bar code verification on Your behalf.

Part 4: Sets out the fees charged by us where You ask us to carry out training on Your behalf in respect to Your staff.

Notes:

1. We will only issue Your certificate of membership of GS1 Kenya and the bar codes You require once You have paid Your entrance (registration) fee, Annual subscription and sent us the statement by Your Auditors.
2. We reserve to ourselves the right in our sole and absolute discretion to ask You from time to time to submit a fresh statement from Your Auditors as to Your annual turnover for the purposes of confirmation of the rate of Annual Subscription payable by You.

If Your reported turnover has increased placing You in a higher scale, then the increased subscription will come into effect on the next renewal date.

3. All subscriptions are payable within 30 (thirty) days of the date of issue on the renewal (invoice).

NOTICE failure to pay may lead to us cancelling Your membership and withdrawing Your allocated bar codes.

Signed this day _____

Name

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Signature

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Designation

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Company Stamp