

<b>Title</b>	<b>GS1 Product Launch Terms and Conditions of Use</b>
<b>Date</b>	<b>1 July 2023</b>



## Disclaimer

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**CONTRACT FOR:**

GS1 Product Launch service  
using National Product Catalogue (“NPC”)

**COMMENCEMENT DATE:**

Date of acceptance online

**EFFECTIVE UNTIL:**

Terminated in accordance with the terms of this Agreement

**SCOPE & DELIVERABLES:**

The Product Launch service comprises the following elements / deliverables inclusive for the fee per product submitted:

- Barcode Check
  - Up to 3 barcode verification reports (consumer, inner, carton)
- Photography
  - High resolution image of consumer unit
  - Low resolution planogram images of consumer unit
- National Product Catalogue
  - Data entry including single national price
  - Published to one trading partner
  - Image loaded
  - Image available to one trading partner

This service is an off-site service to your business and is conducted at GS1 premises, assisted with electronic means of communication (e-mail, telephone / conference calls).

National Product Catalogue access is the means by which GS1 shares the image, product item and price information that you have approved with your trading partners.

Unrestricted access to the National Product Catalogue (NPC Plus) can be provided upon request and standard fees and terms will apply.

## INVESTMENT

The GS1 Product Launch service is delivered on a per product basis and requires all products within the hierarchy to be delivered in one delivery.

All work only commences upon receipt of appropriate payment equivalent to the applicable prevailing fee per product as promoted on the GS1 Australia website (and changed from time to time) multiplied by the number of products submitted. Whilst not part of the standard service, any approved travel and living expenses and out of pocket transport will be charged separately, at cost, if incurred.

Any Product Launch order not commenced and completed within two months of the order submission will be required to be submitted as a new order or as a Product Launch Data Maintenance request.

Under this agreement there is no minimum spending commitment. Each product is to be submitted with an appropriate submission form. GS1 Australia will process each Product Launch request upon receipt of the full fees in respect of each product at the then published applicable fee schedule rate.

An ongoing agreement is entered into between GS1 Australia and You to cover any current or future Product Launch requirements on Your behalf. This agreement has no end-date and survives the initial Product Launch Service request and can be terminated at any time at the request of either You or GS1 Australia.

The consideration payable for any supply made or to be made under the agreement has been calculated initially without regard to, and is exclusive of, any goods and services tax ("GST").

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# Product Launch Service Terms and Conditions

These terms and conditions form a legally binding agreement (Agreement) between You, the individual, business, company or organisation who uses the Product Launch Services, and us, GS1. You acknowledge and agree that these Terms and Conditions, as well as the [GS1 Australia Privacy Policy](#) and [Terms of Trade](#), apply to Your access to, and use of, this Product Launch Service. You acknowledge that You have read and understood, and agree to be bound by, these Terms and Conditions.

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## 1.0 GS1 OBLIGATIONS

- 1.1 GS1 must use reasonable commercial efforts to perform Product Launch Services and provide the Deliverables specifically described in the Details in accordance with the Terms.
- 1.2 Unless otherwise agreed, Product Launch Services will be performed during GS1's normal business hours at GS1's office locations.
- 1.3 GS1 may use subcontractors and affiliates to perform Product Launch Services and/or produce Deliverables, in which case Product Launch Services may be performed in the working hours and locations of those subcontractors and affiliates.
- 1.4 GS1 may appoint a representative to supervise and coordinate GS1's performance of Product Launch Services. GS1 may change its representative at any time.
- 1.5 Without limiting any other provision of this Agreement, GS1 may at any time provide Deliverables about Your products to GS1 Services, GS1 Registry Platform, GS1 Registry Services and contracted government agencies.

This Content will:

- (a) contain, for Deliverables to be shared other than with the GS1 Registry Platform and GS1 Registry Services, basic product information such as, but not limited to, product number, product description, brand name, category and net content and other "on pack" or consumer label data;
- (b) contain, for Deliverables to be shared with the GS1 Registry Platform and GS1 Registry Services, the following fields: product number or GTIN; brand name; product or label description; medium resolution product image (if available); net content and unit of measure; target market; company name; and product classification (category) subject to such additional or changed fields as be notified by GS1 from time to time; and
- (c) in all cases will be restricted, at the time of sharing, to Publicly Available Product Data depending on the community visibility date setting.

If You do not wish Your Deliverables to be made available to organisations that You have not specifically published to, or requested publishing to, You can opt out through the designated management process or by contacting the Product Launch administration team directly. If You are an Individual or Sole Trader You have the right to be de-identified upon request.

## 2.0 YOUR OBLIGATIONS

- 2.1 You acknowledge that GS1's ability to deliver Product Launch Services is dependent upon Your full and timely cooperation with GS1, as well as the accuracy and completeness of any information and data You provide to GS1. Furthermore, You also acknowledge it is Your responsibility to check all images loaded, including the image restrictions using the service tools provided by GS1 and to advise GS1 promptly of any changes or omissions. Therefore, You must promptly:
- (a) appoint a representative who will provide professional and prompt liaison with GS1, have the necessary expertise and authority to commit Your organisation, and if necessary meet at minimum virtually with the GS1 representative at agreed intervals; and
  - (b) provide GS1 with access to, and use of, all information, data, documentation, services and facilities as GS1 deems necessary for the production of the Deliverables.
- 2.2 You acknowledge and agree that the Product Launch Service is an "entry level" service and if You have a concurrent active subscription to both NPC Services (NPC Master Data and NPC Digital Content), in the event You unsubscribe from one of these services this Product Launch subscription will immediately cease.
- 2.3 You acknowledge and agree that, if You are not already subscribed to any NPC Services (NPC Master Data and NPC Digital Content), You are bound by the terms of those services, published on the GS1 Australia website from time to time, where applicable to Your use of components within those services that comprise part of this Product Launch Service offering for the period of this Agreement. Upon any subscription to either of the NPC Services, then Your Product Launch subscription will cease.
- 2.4 You are liable for any delays to any delivery schedule specified in the Details caused by You or resulting from Your failure to fulfil any of Your obligations. GS1 may charge You for any additional charges or losses incurred by GS1 as a result of such delays and may adjust the affected delivery schedule accordingly.
- 2.5 You agree to provide one full business day notice prior to cancelling or re-scheduling any confirmed and scheduled time for Product Launch Services resource allocation. Failure to provide such notice may result in You being liable to pay 50% of any applicable fees for the delivery of that service.

## 3.0 PRICE AND PAYMENT

- 3.1 Prices for Product Launch Services and Deliverables are specified in the Details. Where the price is related to time and materials, the price includes labour but does not include travel expenses (airfares, taxis, accommodation, parking, taxis, mileage and other incidental expenses) and other expenses needed for production of the Deliverables which will be charged to You at cost. Where the price is per item, the price does not include any provision for any costs incurred returning goods to You.

- 3.2 GS1 will invoice You in advance. Product Launch Services requires payment in full prior to commencement of the works and if payment is not received accordingly GS1 may terminate these Terms pursuant to clause 7.2(a).
- 3.3 If GS1 is liable to pay GST on the supply of Product Launch Services and Deliverables, then You must pay GS1 an additional amount equal to the price set out in the Details multiplied by the prevailing GST rate.
- 3.4 If GS1 personnel are required to work outside of GS1's normal business hours, GS1 reserves the right to increase its quoted rates to meet any additional costs it may incur.
- 3.5 GS1 may, from time to time and as required in order to complete the deliverables of the project, undertake the required work off-site on Your behalf. This work is billable based on the standard rates outlined in the contractual agreement.

## **4.0 INTELLECTUAL PROPERTY RIGHTS**

- 4.1 All pre-existing Intellectual Property Rights or Moral Rights belong to the party that owned those rights prior to the execution of these Terms.
- 4.2 Nothing in these Terms transfers any Intellectual Property Rights or Moral Rights owned by a party.
- 4.3 GS1 will own all Intellectual Property Rights and Moral Rights in or pertaining to all Deliverables and other materials developed by GS1 in the course of providing the Product Launch Services.
- 4.4 GS1 is entitled to share Deliverables and other materials developed in the course of providing the Product Launch Services to its affiliates, subcontractors and suppliers for the purpose of processing and creating the deliverables.
- 4.5 Upon Your acceptance of a Deliverable, and receipt by GS1 of the associated payment in full, GS1 grants You a non-exclusive, perpetual, non-transferable licence to use such Deliverable for Your own internal purposes. Your licence confers no ownership in the Deliverable and no rights in any associated software source code, and is not a sale of any rights in the Deliverable or the media on which it is recorded or printed.

## **5.0 CONFIDENTIALITY**

- 5.1 GS1's commitment to privacy is set out in the "Privacy Statement" available at the GS1 Website (by clicking "[Privacy](#)"). You acknowledge that you have read and understood the Privacy Statement and consent to the collection, use and disclosure of Personal Information in accordance with the Privacy Statement.
- 5.2 Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

- 5.3 A party may only use or reproduce the Confidential Information of the other party for the purposes of performing the first party's obligations or exercising the first party's rights under these Terms. A party must not use or disclose the Confidential Information of the other party except to its employees or legal advisers or as required by law provided that such use or disclosure is only to the extent necessary for the relevant purpose and provided that the person to whom the Confidential Information is disclosed is specifically made aware of the confidential nature of the information.
- 5.4 Where You are an individual, You understand and agree to GS1 obtaining, using and disclosing Personal Information about You on the terms and for the purposes set out in the GS1 Privacy Statement and for the purposes of providing You with the services contemplated by this contract and the Instructions for Use.

## 6.0 REMEDIES AND LIABILITIES

- 6.1 To the maximum extent permitted by law, GS1's liability under any guarantee, condition or warranty (including, without limitation, any guarantee, condition or warranty of merchantability, acceptable quality, fitness for purpose or fitness for disclosed result), or any other right or remedy, under any legislation or implied into this Agreement by any legislation ("**Statutory Warranties**") is hereby excluded. Where GS1 is liable under any Statutory Warranties, and any legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties, GS1's liability for any breach of such Statutory Warranties shall be limited, at GS1's option, to one or more of the following:
- (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the cost of replacing the goods or of acquiring equivalent goods; or the cost of having the goods repaired; and
  - (b) if the breach relates to services: the supplying of the services again or the cost of having the services supplied again.
- You acknowledge and agree that reliance by GS1 on this limitation of liability is fair and reasonable in all the circumstances.
- 6.2 Without limiting clause 6.1, GS1 or its affiliates do not represent or warrant that Product Launch Services will be available at or for any particular time or that it will be free from interruption, error-free or defect free, or that errors or defects will be corrected. GS1 specifically disclaims the implied warranties of merchantability and fitness for a particular purpose.
- 6.3 To the maximum extent permitted by law, GS1 excludes all liability (whether arising in contract, tort or otherwise) that it may have for any Loss arising from:
- (a) the use of, or reliance on, Product Launch Services;
  - (b) the use of, or reliance on, any other GS1 or third party which integrates, in any way, with Product Launch Services;

- (c) the use of, or reliance on, any content on, or in, Product Launch Services including, but not limited to, the availability, quality, correctness, accuracy, completeness or suitability of such content;
- (d) the use of, or reliance on, any Deliverables of, or in, Product Launch Services including, but not limited to, the availability, quality, correctness, accuracy, completeness or suitability of such Deliverables; or
- (e) any support services, documentation or other products or services provided to You by GS1 in respect of Your use of Product Launch Services;

whether that Loss is direct, indirect or consequential Loss (including loss or corruption of data, loss of any agreement, loss of any business revenue, loss of profits, failure to realise expected profits or savings or any other commercial loss or economic loss of any kind).

## 7.0 TERM AND TERMINATION

- 7.1 These Terms commence on the Commencement Date set out in the Details and continue (unless terminated earlier) until terminated in writing by You.
- 7.2 These Terms may be terminated immediately upon notice in writing:
  - (a) by GS1, if You fail to pay any sums due under these Terms within the time period specified in Clause 3;
  - (b) by GS1 if You subscribe to NPC Services;
  - (c) by either party if the other party is in material breach of any of its obligations and fails to remedy such breach within 30 days of receipt of a written notice by the other party which specifies the material breach;
  - (d) by either party if the other party has a receiver appointed, or makes an assignment for the benefit of creditors or other controller, or in the event of any insolvency or inability to pay debts as they become due by the other party; or
  - (e) by You at any time without cause, providing that there are no outstanding sums payable to GS1.
- 7.3 Upon termination of these Terms, You must pay GS1 for all Product Launch Services performed and all charges and expenses incurred by GS1 up to the date of termination, and You will receive all work in progress for which You have paid. If the sum of those amounts is less than any advance payment received by GS1, GS1 must refund the difference within 30 days of receipt of an invoice from You.
- 7.4 Clauses 4, 5, 6, 7, 8 and 9 and 10 survive termination of these Terms.

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## 8.0 ONGOING DATA MAINTENANCE

- 8.1 An ongoing agreement is automatically entered into between You and GS1 Australia to cover any current or future assistance requirements for managing and maintaining the Deliverables on Your behalf ("**Product Launch Data Maintenance**"). This agreement has no end-date and survives the initial service request.
- 8.2 Product Launch Data Maintenance has no end date and survives the initial Product Launch order request and can be terminated at any time upon issuance of a request in writing by either You or GS1 Australia.
- 8.3 Product Launch Data Maintenance has no minimum spending commitment. GS1 Australia will provide estimates for each Product Launch Data Maintenance request. Each estimate will include the estimated effort required to meet the requirements as well as the time and materials rate applicable at the time of the estimate. Each estimate will expire 14 days from the date of each request.

## 9.0 GENERAL

- 9.1 **Non-exclusivity.** Nothing in these Terms precludes or limits GS1 from providing professional, development or other services of any kind or nature to any other person or entity.
- 9.2 **No partnership.** Nothing contained in these Terms creates an agency, partnership or employment relationship between the parties, and neither party has the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.
- 9.3 **No Assignment.** Neither party may assign any rights or obligations under these Terms without the prior written consent of the other party.
- 9.4 **Force Majeure.** Neither party is liable for performance delays or for non-performance due to causes beyond its reasonable control.
- 9.5 **Notices.** All notices required under or regarding these Terms must be in writing by email or hard copy mail and will be considered given upon personal delivery of a written notice to GS1 or You, or within five days of mailing, postage prepaid and appropriately addressed.  
  
It is Your responsibility to ensure that notices sent to You by email are able to be received by the intended recipient i.e. are not blocked, bounced or sent to offline folders.
- 9.6 **Waiver.** Neither party's failure to exercise any of its rights under these Terms is a waiver or forfeiture of those rights.
- 9.7 **Severability.** If any term of these Terms is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Terms is not affected.

9.8 **Precedence.** If there is a conflict between the provisions of these Terms and the Details, the Details will to the extent of that conflict take precedence.

If there is a conflict between the provisions of these Terms and the terms and conditions for contracted or subscribed NPC Services, the terms and conditions of those NPC Services will, to the extent of that conflict, take precedence.

9.9 **Entire Agreement.** These Terms and the Details constitute the entire agreement between GS1 and You and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Terms. GS1, in its sole discretion, reserves the right to make changes to the Terms. Each submission for Product Launch Services will be governed by the then current Terms for the Product Launch Service.

9.10 **Applicable Law.** These Terms are governed by the laws of Victoria, Australia and the courts of that State will have non-exclusive jurisdiction.

## 10.0 DEFINITIONS

**"Confidential Information"** means:

- (a) information or material proprietary to or deemed to be proprietary to that party; or
- (b) information designated as confidential by that party;  
but excludes any information, which:
  - i. is publicly available;
  - ii. is disclosed to either party by a third party and either party reasonably believes the third party is legally entitled to disclose such information;
  - iii. was known to either party prior to its receipt from the other party;
  - iv. is developed by either party independently of any disclosures previously made by the other party;
  - v. is disclosed with the other party's prior written consent; or
  - vi. is required to be disclosed by either party by order of the court, other legal process or other professional standard.

**"Deliverable(s)"** means the tangible result(s) or outputs of the GS1 Services provided by GS1 to You as described in the Details. Deliverables include, but are not limited to, bar code verification reports, product images and digital content about Your products or items.

**"Details"** means the document(s) (which may also be a GS1 quotation) to which these Terms are attached which describes a specific project, engagement or assignment for which GS1 will provide Product Launch Services to You.

**"GS1"** refers to GS1 Australia Limited ABN 67 005 529 920, a company limited by guarantee.

**"GS1 Registry Platform"** means a registry of keys that includes components including but not limited to infrastructure, global data dictionary, GS1 key registry, data in services and data out services.

**"GS1 Registry Services"** means a set of capabilities to get data into the GS1 Registry Platform ("GS1 Registry Data In Services") and a set of capabilities to get data out of the GS1 Registry Platform ("GS1 Registry Data Out Services").

**"GS1 Services"** means any services or supplies offered by GS1 from time to time other than the Services under this Agreement such as, but not limited to, GS1 Registry Platform and GS1 Registry Services, Trusted Content Services, Smart Media, Recall and Recall Health.

**"GST"** means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**"Intellectual Property Rights"** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**"Loss"** means any liability, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses or damages including those arising of any third party claim.

**"Moral Rights"** means a right of attribution of authorship, a right not to have authorship falsely attributed and a right of integrity of authorship.

**National Product Catalogue** means the suite of on-line catalogue services operated by GS1 for the maintenance and publishing, retrieval or synchronisation of master data and digital content which is currently provided at the following website: <https://www.gs1au.org/mygs1/login-mygs1/> or such other website as is notified by GS1 from time to time. It includes the publishing and distribution platforms FSANZ NPC Portal, NPC Publisher, National Product Catalogue, NPC Recipient and NPC Digital Content (formerly known as Smart Media), a validation component National Product Catalogue Business Validation Rules for the validation of all inbound on-line messages, and the GDSN Global Registry which records the GTIN, Publisher's GLN, GPC code and Target Market code of each item. For avoidance of doubt, the GS1 Registry Platform is separate from the National Product Catalogue.

**"NPC Services"** means any services that GS1 offers, currently or in the future, to facilitate the publishing, maintenance, retrieval and synchronisation of master data and digital content of the National Product Catalogue and includes the services NPC Master Data and NPC Digital Content.

**"Product Launch Data Maintenance"** has the meaning given in Clause 8.1.

**"Product Launch Services"** means activities such as product photography, bar code verification, content creation and use of the National Product Catalogue for delivery as described in the attached Details. Product Launch Services may also include other types of services described more specifically in the Details.

**"Publisher"** means a person who has subscribed to the Product Launch service with the intent of Deliverables concerning their products being published to one or more recipients.

**"Recipient"** means a person who has access to Deliverables published to them by, or on behalf of, Publishers.

**"Statutory Warranties"** has the meaning given in Clause 6.1.

**"Terms"** means these GS1 Product Launch service Terms and Conditions.

**“You”** means the entity (the individual, business, company or organisation) that has accepted the terms of this Agreement. You, **“you”**, **“your”** and **“Your”** has a corresponding meaning.