

Terms and Conditions of Use: firstbase | GS1 Switzerland

1. Scope of application

1.1. The present Terms and Conditions of Use govern the legal framework for the relationships between the GS1 Switzerland Association (referred to as "GS1 Switzerland" below) and the contractual partners and/or users (referred to as "User(s)" below) of the *firstbase* data exchange platform, including *firstbase* healthcare and *firstbase* consumer goods (referred to below as "*firstbase*") in Switzerland and the Principality of Liechtenstein.

1.2. The present Terms and Conditions of Use and the Privacy Policy (<https://www.gs1.ch/de/datenschutz>) are applicable to all Users with binding effect. By registering and/or using, the Users accept the Terms and Conditions of Use and the Privacy Policy, which therefore become integral components of the contractual agreement between the Users and GS1 Switzerland.

1.3. Terms of Participation in GDSN: It is a condition for the use of a subscription service which includes the User's access to the GDSN (Global Data Synchronisation Network) that the User agrees to the Terms of Participation of GS1 GDSN, Inc. (the "GDSN Terms") which apply to all GDSN users worldwide and which may be updated from time to time. GS1 Switzerland is obligated to inform the User about any updates to the GDSN Terms either by post or by using the email address stored for this purpose. The updated GDSN Terms shall enter into effect automatically after an appropriate period stated in GS1 Switzerland's notification unless the User notifies GS1 Switzerland of their refusal to accept the amended Terms within the defined period. If the User continues to use *firstbase* after expiration of the said period without such notification, the User's agreement to the updated GDSN Terms shall be deemed to have been given. If the User is in breach of the GDSN Terms or refuses to accept them, and if GS1 Switzerland is therefore unable to meet its contractual obligations towards the User, GS1 Switzerland is entitled to terminate those subscription services which relate to the User's access to the GDSN and the use thereof. Companies having their registered

office outside of the USA can find the current version of the GDSN Terms at:

http://www.gs1.org/docs/gdsn/supp/ort/GDSN-Terms-of-Participation-non-US_EN.pdf

2. Subject of contract

2.1. The subject of these Terms and Conditions of Use comprises the use of services currently offered, and to be offered in future, by GS1 Switzerland via *firstbase* within the scope of the Usage Agreements concluded with the Users. The contractual conditions between the parties are defined by the present Terms and Conditions of Use, the Privacy Policy, the price list as applicable at the time in question, and the Usage Contracts concluded with the Users.

2.2. GS1 Switzerland offers *firstbase* to the Users as a data exchange platform within the GS1 system with which product master data (including media assets/product images) can be entered, managed, uploaded and obtained in return for a fee, by means of a protected access via the internet. Use of this offering requires a Basic membership.

2.3. In its capacity as a neutral service provider, GS1 Switzerland provides the system and the interfaces, and guarantees secured access to the data. The database and the data stored therein enable the data providers, for example, to communicate the data stipulated for the long-distance transport of pre-packaged foodstuffs in a standardised and uniform manner via a neutral platform, and to allow interested parties to gain direct access to the product master data. For data recipients, the platform serves as a source of product master data "from the source" which can be put to further use in many different ways.

2.4. GS1 Switzerland ensures that the data originates solely from authorised data providers, and that it can only be entered and edited by them or by their appointed representatives. The data providers are solely responsible for the content of the data. Technical aspects of the operation and maintenance of the data exchange platform are handled

by a service provider engaged by GS1 Switzerland.

2.5. The database structures are updated periodically in accordance with technical and organisational circumstances. In order to safeguard the quality standard, but also in view of technical or economic developments, GS1 Switzerland has the right to expand or restrict the database content at any time.

3. Users' rights and obligations

3.1. The User states their agreement to the publication in *firstbase* of the product master data (including media assets/product images) provided by the said User. The User furthermore agrees that the product master data uploaded by them, or extracts therefrom, will be published in the global "GS1 Registry", in the "Verified by GS1" query tool and in other GS1 query tools, and will thus be accessible worldwide. The User also agrees that product master data may be passed on to third parties and made publicly accessible for the purposes of general information.

3.2. If GS1 Switzerland determines that product master data transmitted to *firstbase* violates these Terms and Conditions of Use (e.g. by infringing the intellectual property rights of a third party), appropriate measures may be taken against this (e.g. temporary or permanent removal of the said data from *firstbase* and/or blocking of access to *firstbase*).

3.3. Use in the intended manner and for the intended purpose comprises, on the one hand, searching and viewing search results for individual products or their master data, as well as downloading and using product master data. On the other hand, the Users should enter, upload and publish their product master data (including media assets/product images) in *firstbase*.

3.4. Users shall ensure that their product master data in *firstbase* is maintained in the required quality, is constantly up to date, complete and correct, and shall implement any changes in *firstbase* without delay.

3.5. Incomplete data must be

corrected, amplified or entirely deleted within an appropriate period following a notification from GS1 Switzerland. If the data providers themselves do not do this, GS1 Switzerland reserves the right to delete the relevant data itself. GS1 Switzerland is under no obligation to take account of data other than that which is communicated via the secured access, nor itself to undertake follow-up research regarding the content of this data.

3.6. If the User is acting on behalf of a trademark owner (e.g. as distributor, marketer, authorised representative/agent or other service provider) in order to create, maintain, manage and/or supply the data for the trademark owner concerned, the User must at all times be able to prove, in response to a request from GS1 Switzerland, that these activities are taking place by agreement with the trademark owner.

3.7. Without prejudice to clause 3.8 below, Users have the right to use, store, print or distribute the product master data for their own purposes.

3.8. Any use of the product master data made available via *firstbase* which deviates from the foregoing statements is prohibited; likewise, the uploading of product master data into *firstbase* that diverges from the above descriptions is prohibited. The following actions, in particular, are deemed to be impermissible and therefore constitute abusive use of *firstbase* (this list is not exhaustive):

- Offering product data that is not up to date for the products stored on *firstbase*;
- Offering product data, for which the data provider does not possess the right of ownership or information sovereignty;
- Offering product data from *firstbase* which is more than 24 hours old and for which updated versions are available on *firstbase*;
- Systematic use for commercial purposes, including disposal of product data that has not undergone further processing/amplification;
- Offering product master data which could convey an incomplete, misleading or inappropriate picture to the recipient due to falsifying addition or omission of data;
- Using or taking account of product master data in tests, test reports and comparative publications in violation of the

Guidelines on Tests / Fairness in Commercial Communication of the Swiss Commission for Fairness in Commercial Communication dated April 2001.

3.9. The User is obligated to maintain secrecy regarding the access data issued by GS1 Switzerland and to protect the said data against access by unauthorised third parties. The right of use is due solely to the *firstbase* contractual partner of GS1 Switzerland and it must not be assigned to other group companies or to legal entities or natural persons who are affiliated or related to the contractual partner in any other way.

3.10. Users are responsible for ensuring that all billing, contact and other account data (such as email addresses, telephone numbers and billing addresses) are always kept up to date, and for notifying GS1 Switzerland immediately of any changes. The User shall nominate one or more service contacts to receive billing from GS1 Switzerland as well as technical, administrative and other service-related communications within the scope of the contract. The User shall ensure that all the service contacts have consented to receive such communications and that GS1 Switzerland may use the personal data of these service contacts for these purposes.

3.11. The User shall ensure that the technical requirements for access to the platform are met, and shall implement the precautions required to make its systems secure.

3.12. If it is GS1 Switzerland's opinion that there are justified indications of abusive use of *firstbase*, if such use is disclosed by third parties, or if GS1 Switzerland determines that a User is not adhering to the aforementioned obligations, GS1 Switzerland may, according to its assessment of the situation, require the delinquent User to behave in compliance with the law and the contract, may discontinue the provision of services without prior notice and without compensation, or may extraordinarily terminate the contract pursuant to clause 6.4 without notice and without compensation. GS1 Switzerland furthermore reserves the right to demand compensation for damages as appropriate.

4. GS1 Switzerland's obligations

4.1. GS1 Switzerland provides the

User of *firstbase* with the non-exclusive right to use *firstbase* for the intended purpose and in the intended manner; this right cannot be transferred to third parties, is not subject to limitations on location, and its duration is limited to the term of the Usage Contract. The software shall remain the property of GS1 Switzerland or of the service provider.

4.2. The usual waiting times are applicable to access. GS1 Switzerland shall at no time warrant or guarantee that *firstbase* is free of defects or that it functions without interruptions.

4.3. *firstbase* is a hosted solution for the management of product information. GS1 Switzerland is entitled to avail itself of the services of one or more third-party providers (including cloud-based storage providers), in particular for the purposes of hosting the system, acquiring or storing the customers' content, making *firstbase* secure, establishing an internet connection and/or for the provision of other elements of GS1 Switzerland's relevant services.

5. Payment

5.1. Fees are charged for the use of *firstbase*; these fees are defined in the application and/or the Usage Agreement. GS1 Switzerland's invoices must be paid by the User within 30 days of the invoice date. GS1 Switzerland is entitled to adjust the fees during the term of usage, on 1 January of any calendar year. GS1 Switzerland shall give advance notice of the increase in fees to the User in good time, but no later than 4 months before the end of a calendar year, in a suitable manner.

6. Conclusion of contract, term and termination, amendments to contract and contractual penalty

6.1. The contractual relationship between GS1 Switzerland and the Users comes into being on acceptance of the individual application, and enters into effect on the date agreed in the application.

6.2. The User may terminate access to *firstbase* by giving notice to terminate the Usage Contract. Attention must be paid to the Terms and Conditions of Use in such cases. Termination of membership of GS1 Switzerland also means termination of the use of *firstbase*. The same applies to any exclusion that may be implemented by GS1 Switzerland.

6.3. The User may give notice to terminate *firstbase* to take effect at the end of a calendar year. Notice of termination must be submitted in writing. The notice period is 3 months. Both the User and GS1 Switzerland have the right to regular termination.

6.4. The right of both parties to termination without notice for good reason remains unaffected by clause 6.2 above. "Good reason" is present, in particular, if: a) The User continues to upload product master data that is in breach of the foregoing descriptions, despite a prior written warning from GS1 Switzerland. b) The User continues to make abusive use of the product master data made available via *firstbase*, despite a prior written warning from GS1 Switzerland.

6.5. In case of terminations without notice as per clauses 6.4 letters a) and b), GS1 Switzerland is additionally entitled to demand a contractual penalty in the sum of CHF 50,000.00 from the User. GS1 Switzerland is furthermore entitled to demand compensation for damages or forfeiture of profits from the other party. Any annual contributions that may have already been paid shall not be refunded.

6.6. Prior to the end of the contract term, the User must unpublish the data published by said User and must refrain from making further use of data obtained from *firstbase*. If Users themselves are not able to ensure this, GS1 shall ensure that it is done, and this will result in costs.

7. Data protection and data processing

7.1. GS1 Switzerland may use the User's personal contact information for its own marketing purposes, but may not disclose such information to third parties. If processing of personal data takes place within the scope of the contractual relationship, GS1 Switzerland shall only process the said data and – insofar as necessary – disclose such data to vicarious agents to the extent required in order to perform the contract.

7.2. GS1 Switzerland undertakes to comply with the provisions of the Federal Act on Data Protection (FADP) at all times. This also includes implementation of the appropriate technical and organisational security measures. The User must ensure compliance with the relevant

provisions on the part of its employees and of third parties who use its offerings and systems. The User is responsible for informing the parties concerned and their business partners about the processing of data relating to them and, where appropriate, to obtain the consents required for this purpose, including the authorisation to transfer data processing to GS1 Switzerland. GS1 Switzerland only collects, stores and processes such data as is required in order to provide the services, for the security of its operation and infrastructure, and for invoicing purposes. The User agrees that GS1 Switzerland shall track and analyse the usage behaviour.

7.3. If a service is provided by GS1 Switzerland jointly with third parties, GS1 Switzerland may disclose the transferred data to third parties insofar as this is necessary in order to perform the contract or to issue invoices. The User agrees to the storage, processing and disclosure of data transferred by the User, relating both to the latter's company and products. Subject to compliance with the relevant legal provisions, GS1 Switzerland is also authorised to transfer this data to countries other than Switzerland for this purpose, if necessary. GS1 Switzerland shall adhere to the applicable legislation in its handling of data.

7.4. The User agrees that product master data (including media assets/product images) uploaded by the said User shall be published in accordance with the purpose of *firstbase* and can be directly viewed and downloaded by registered data recipients and consumers. The User furthermore agrees that the product master data shall be published in the global "GS1 Registry", in the "Verified by GS1" query tool and in additional GS1 query tools, and that such data can therefore be accessed all over the world.

7.5. The Users acknowledge that GS1 Switzerland may store the customer data (customer identification, user information and usage data) in machine-readable form and may process the said data as required. Details regarding the queries submitted by the Users shall be treated as confidential by GS1 Switzerland. GS1 Switzerland is authorised to use this data for the purposes of usage management or administration, and for market research purposes.

7.6. Reference is furthermore made

to the Privacy Policy of GS1 Switzerland (<https://www.gs1.ch/de/datenschutz>)

8. Intellectual property

8.1. *firstbase* is a registered trade mark and is the intellectual property of GS1 Switzerland. All intellectual property rights in respect of existing services and products (or those which come into being in the course of the performance of the contract) in connection with *firstbase* shall remain with GS1 Switzerland or the entitled third parties. Use of intellectual property by the User is restricted to use for the agreed purpose.

8.2. The protected rights to *firstbase* and to all documents, materials, concepts, designs and drafts, ideas and know-how (the "Materials") made available or developed by GS1 Switzerland within the scope of the services that form the subject of the contract shall remain with GS1 Switzerland or entitled third parties. The User undertakes not to reproduce, distribute, or modify these Materials, or to create other materials derived from them. In this case, the User is obligated to mark every copy with the same copyright notice as appears on the original documentation.

8.3. The protected rights to the User's data content shall remain with the User. The User grants GS1 Switzerland the non-exclusive worldwide right, with no time limitation, to reproduce, display, store and use the data content on *firstbase*.

8.4. If the User decides to send images, videos or other digital content to GS1 Switzerland, the User thereby grants GS1 Switzerland the right to display and store such digital content in *firstbase*. This includes cloud-based servers via which this digital content can be made accessible for viewing and downloading by means of unique product URLs assigned by *firstbase*. When making use of a subscription service which includes the User's access to the GDSN, the User can then decide whether to make these product URLs available to their trading partners or other parties, either by publishing them via the GDSN or by distributing them in some other way. The User clearly understands that these URLs and the digital content are not secured or encrypted, even though each unique product URL is a complex internet address. Thus, any third party who is

able to determine the product URL may also access, view and download all digital content associated with the URL.

8.5. If, while using *firstbase*, a User makes use of media assets/product images from third-party providers as part of their customer content so that such content can be displayed, the User shall also grant GS1 Switzerland and *firstbase* the rights to customer content in respect of these media assets/product images from third parties. This also includes the right to display and temporarily store these media assets/product images from third parties within *firstbase* (also including cloud-based servers).

8.6. When making use of a subscription service which includes the User's access to the GDSN, the User clearly understands and agrees that GS1 Switzerland grants no rights, gives no assurances and provides no warranties in respect of third-party content which the User may access via *firstbase* or the GDSN, because such third-party content is distributed by the third parties in question. It is therefore the User's sole responsibility to verify the accuracy and completeness of the relevant content before making use of it or relying on it. The User shall furthermore make use of third-party content accessed via *firstbase* or the GDSN solely in accordance with applicable law, the authorisations, consents and conditions that these third parties have stipulated for the said content, and with these Terms and Conditions of Use.

9. Due diligence obligation and guarantee

9.1. GS1 Switzerland provides its services to the required standards of expert diligence, reliability and availability. The entire content of the database is made available to *firstbase* by the Users and is accepted by GS1 Switzerland for use within the scope of the offering. GS1 Switzerland provides no guarantee of the correctness and completeness of database content offered by third parties.

9.2. *firstbase* is generally available on a 24/7 basis, but GS1 Switzerland provides no guarantee that it is accessible without interruptions, that a connection to the servers can always be established, or that the stored data shall remain stored under all circumstances. GS1 Switzerland does not guarantee any specific availability. *firstbase* is offered and operated via a platform of a third-

party provider. Notification of scheduled interruptions will be given as early as possible, but the provider is entitled to implement updates and changes at any time, and likewise to perform maintenance work which could lead to operational interruptions of usage at any time.

9.3. GS1 Switzerland is available to the Users for information and support relating to the offering from Monday to Friday between 8:00 a.m. and 12:00 noon, and between 1:30 p.m. and 5:00 p.m..

10. Liability

10.1. Users are liable for the product master data which they publish in *firstbase*, and the User shall fully indemnify GS1 Switzerland in connection with third-party claims on account of violations of third-party rights, when first requested to do so.

10.2. GS1 Switzerland shall be exclusively liable for loss or damage due to intent or gross negligence on the part of GS1 Switzerland. GS1 Switzerland shall not be liable for minor negligence. Likewise, liability on the part of GS1 Switzerland is explicitly excluded – insofar as legally permitted – in respect of indirect loss or damage and consequential loss or damage, lost profit, unrealised savings, loss of competitive advantages, loss of data and goodwill, business interruptions and third-party claims.

10.3. GS1 Switzerland declines all liability for loss or damage incurred by the Users due to abuse or loss of the access data made available to them. Furthermore, all liability is excluded in respect of losses or damage originating from the incompatibility of the end devices used by the User with the system operated by GS1 Switzerland, or from the interruption of data transmission from the provider to the User, or from lack of access security.

10.4. In case of functional disruptions or system outages, GS1 Switzerland shall endeavour, in collaboration with the third parties responsible for the technical aspects of the platform's operation, to rectify such situations as quickly as possible. GS1 Switzerland excludes all liability for losses or damage that may be incurred by the Users due to the non-availability of the operated data exchange platform.

10.5. The User shall be solely responsible for the utilisation of the

query results. In particular, the User is responsible for ensuring that updated data is requested again after no more than 24 hours.

10.6. If use is made of the EUDAMED Health Connector, which includes the User's access to EUDAMED, the User clearly understands that the EUDAMED Health Connector is still in the process of regulatory and technical development. Accordingly, the EUDAMED Health Connector is being developed and assembled by GS1 Switzerland to the best of its knowledge and ability but, in response to ongoing regulatory and technical developments, it will be subject to further adaptations given that EUDAMED itself is undergoing constant development. In addition, the User is solely responsible for compliance with the legal EUDAMED requirements. GS1 Switzerland does not verify whether the legally relevant features are described correctly in the relevant product information, does not provide any guarantee or warranty of legal compliance, does not assess facts from the legal perspective, and does not provide any legal advice regarding the EUDAMED requirements. This provision shall also apply to the usage of other Health Connectors (e.g. swissdamed).

10.7. The liability limitations stated in this Article shall apply jointly to GS1 Switzerland, its affiliated national companies, vicarious agents and any third parties who are engaged.

11. General provisions

11.1. GS1 Switzerland explicitly reserves the right to review and amend the present Terms and Conditions of Use at periodic intervals. Any amendments and additions to the present Terms and Conditions of Use shall be communicated to the User in writing, or in another suitable form (e.g. on the website of GS1 Switzerland). Notification shall be given at least 4 months prior to the end of the calendar year, and the User shall at all times have the option of terminating the contract in accordance with the specified notice period, in order to avoid becoming subject to the new Terms and Conditions of Use.

11.2. Should one or more of the provisions of these Terms and Conditions of Use be or become ineffective and/or incomplete, the ineffective and/or incomplete provision shall be replaced by a legally valid regulation whose effect

most closely approximates to that of the ineffective and/or incomplete provision. The ineffectiveness and/or incompleteness of one provision shall not affect the effectiveness of the other provisions.

11.3. All legal relationships between GS1 Switzerland and the Users of *firstbase* shall be governed exclusively by Swiss law, with the total exclusion of conflict-of-laws provisions and of the United Nations Convention on Contracts for the International Sale of Goods, concluded on 11 April, 1980 ("CISG").

11.4. The exclusive place of jurisdiction in case of disputes is the location of the registered office of the GS1 Switzerland Association.

GS1 Switzerland, 6 December 2022
