

# My-SDS

## PRODUCT VENDORS AGREEMENT

### AGREEMENT TERMS

Please read these Agreement Terms carefully before submitting your **Registration Form** from the Website.

By submitting your **Registration Form**, you agree to be bound by these Agreement Terms.

*It is recommended a copy of these Agreement Terms are printed or saved for future reference.*

#### **1. Registration**

- 1.1 To use the features of the Application and the Website to submit Data in accordance with your supplier obligations to enable Retailers to access Data you must register with Safeware Quasar.
- 1.2 To register with Safeware Quasar please complete the online Registration Form and submit it to us.
- 1.3 We will notify you by email when your application is accepted. Please allow up to 7 Working Days for processing Registration Forms.
- 1.4 By sending the Registration Form you are warranting to Safeware Quasar that:
  - 1.4.1 all the information on the Registration Form is true, accurate and complete as at the date it is given;
  - 1.4.2 you will notify Safeware Quasar with updated contact details required to maintain the account throughout the Term;
  - 1.4.3 you will comply with the conditions of use set out in these Agreement Terms as varied from time to time;
  - 1.4.4 you are in business as a supplier of Products to Retailers (subscribing to the My-SDS service)
- 1.5 Sending a completed Registration Form to Safeware Quasar will, if accepted by us, form a legally binding contract between Safeware Quasar and yourself incorporating these Agreement Terms.

## 2. Definitions

2.1 In this Agreement, unless inconsistent with the context or otherwise specified, the following definitions will apply:

'Agreement'	means the agreement for use of the Website set out in the Registration Form and incorporating these Agreement Terms;
'Application'	an online application for the provision of product information to be utilised in accordance with this Agreement and accessed through the Website;
'Commencement Date'	the date on which we accept your registration and notify you by email;
'Data'	any data or Documents put into the Application by you or by anyone using your password;
'Document'	an electronic computer file;
'Intellectual Property Rights'	all intellectual property rights whether registered or unregistered in respect of any aspect of the Application or the Website together with any related materials or documentation including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, design rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off;
'Number of Documents'	the number of Documents shown on the Registration Form or as varied in accordance with these Agreement Terms;
'Products'	products sold by you to Retailers for which Data or Documents are required;
'Retailer Agreement'	an agreement between Safeware Quasar and a Retailer permitting a retailer to access Data;
'Retailer'	a retailer of Products, which subscribes to the My-SDS service and is authorised by you in accordance with the terms of this Agreement to access Data and download Documents;
'Safeware Quasar' or 'we' or 'us'	Safeware Quasar Limited a company incorporated in England and Wales (company number 02926612) whose registered office is at 1 Queen Street, Shepshed, Loughborough, Leicestershire, LE12 9RZ;
'Support'	the support services we provide in respect of the Application as detailed in these Agreement Terms;
'Term'	the period starting on the Commencement Date and ending on the date of termination of this Agreement in accordance with clause 11;
'Updates'	such modifications to the Application and the Website as we consider desirable to reflect changes of practice or new legal requirements;
'User'	a competent trained member of your organisation authorised by you to use the Application;
'Website'	the website at <a href="http://www.my-sds.co.uk">www.my-sds.co.uk</a> or at such other

‘Working Days’	address as we notify you from time to time; Monday to Friday, during UK office hours (9:00 – 17:00), excluding English bank holidays;
‘You’ or ‘yourself’	the person, firm, company or organisation named in the Registration Form.

### **3. Use of the Application**

- 3.1 The Website will enable you to upload and make available Data to Retailers to access and download that Data on the basis and subject to the limitations referred to in these Agreement Terms.
- 3.2 After you submit your Registration Form you will receive an automatically generated message on the My-SDS site acknowledging that your application has been submitted. Note this does not mean that your application has been accepted. All applications are subject to acceptance by us.
- 3.3 If we accept your application we will confirm acceptance by sending you an e-mail (the confirmation). After we send you the confirmation both parties will be bound by the Agreement.
- 3.4 In the confirmation email the login credentials entered in the initial form application, minus the password will be provided indicating your application for an account has been accepted in accordance with the terms of the Agreement.
- 3.5 We shall ensure the Website contains sufficient guidance and information to enable all Users to upload Data and access and use all the facilities and functions of the Application.

### **4. Data Upload**

- 4.1 Data relating to the Products can be uploaded onto the Website in the form of Documents. You will have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Data.
- 4.2 Additional Documents loaded which cause the account to fall into a higher product subscription band will incur additional charges and trigger an additional invoice or invoices to be raised. The additional invoiced amount will equate to the difference between the previous band and the higher price band pro rata for the period to the end of the calendar year and is payable within 7 days.
- 4.3 Existing Data can be updated by you at any time (provided your account remains active) without incurring any additional fee. It is your responsibility to ensure the Data on the web site remains current in accordance with new or revised regulatory requirements.

### **5. Payments**

- 5.1 The only cost for use of the Application regardless of the number of Retailers you authorise to access your Data to is payment of the annual subscription fee which is

payable on the Commencement Date and any additional fee if you increase the number of Documents loaded in accordance with paragraph 4.2.

- 5.2 The first year's annual subscription fee is the amount shown on the Website calculated pro-rata for the period from the Commencement Date to the following 31<sup>st</sup> December. We will notify you of the licence fee for subsequent years by e-mail each November based upon the number of active Documents (excluding archived Documents) loaded onto the site at that time. Any inactive Documents should therefore be archived before November to ensure the correct amount is invoiced for subsequent years. All subscription fees are payable in advance before the start of the calendar year to which they relate.
- 5.3 Payment of the annual subscription fees and any additional fees is facilitated online by credit/debit card. Alternate payment methods may be accepted subject to an additional administrative charge equating to a minimum of 10% of the invoice total and result in delays in activating your account.
- 5.4 All fees under this Agreement are exclusive of VAT, which shall be payable in addition at the applicable rate.
- 5.5 If any annual subscription fee or other fee remain unpaid for any reason we may, at our discretion, suspend your access to the Website or terminate this Agreement.

## **6. Support**

- 6.1 If you have any difficulties or queries in using the Application or the Website during the Term you may contact us by email at [mysdssupport@safeware.co.uk](mailto:mysdssupport@safeware.co.uk). We shall provide you with such advice by email as we consider necessary to resolve difficulties and queries so that you can gain full advantage of the Application and the Website during Working Days.
- 6.2 We shall use reasonable endeavours to provide a response within two Working Day of receipt of a request for support.
- 6.3 We shall be under no obligation to provide Support in respect of any:
- 6.3.1 incorrect use of the Application or operator error;
  - 6.3.2 fault in your computer equipment or Internet connection;
  - 6.3.3 defects or errors caused by the use of the Application as specified within the user instructions on the Website.
  - 6.3.4 regulatory advice.

## **7. Updates**

- 7.1 From time to time during the Term we may make such Updates as we consider appropriate.

## **8. Hosting**

- 8.1 We shall host the Website or contract for the hosting of the Website so that, subject to the limitations set out in this Agreement and your account being paid up in full, you can access all the functions of the Application through the Website at any time.

- 8.2 In the event of any difficulty arising out of the hosting of the Website we undertake to take reasonable steps to procure the restoration of the Application to full operational capacity as soon as reasonably practicable.

## **9. Security and Control**

- 9.1 You undertake to us that you will not authorise anyone to access the Application other than a User.
- 9.2 During the continuance of this Agreement you agree to:
- 9.2.1 effect and maintain adequate security measures to safeguard the Application from access or use by any unauthorised person using your login details including the password; and
  - 9.2.2 comply with our reasonable instructions with regard to the use of the Application, including, without limitation, the implementation of any security measures which we may specify from time to time.

## **10. Limitations of the Application**

- 10.1 The Application may from time to time be inoperative or only partly operative as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes outside our control in relation to:
- 10.1.1 the servers and equipment on which the Website is hosted;
  - 10.1.2 the world wide web; or
  - 10.1.3 your computer equipment.
- 10.2 The accuracy of the information to Retailers will depend amongst other things upon:
- 10.2.1 the accuracy of the Data you upload onto the Website for the Product for which you will accept full responsibility in accordance with paragraph 4.1;
  - 10.2.2 the downloading by the Retailer of the Data for the correct Product.
- 10.3 From time to time during the Term we will need to carry out maintenance to the Application and to the Website which may interfere with access and use until the maintenance is complete.

## **11. Term**

- 11.1 The Term shall commence on the Commencement Date and shall remain in force until the end of that particular calendar year and continue in subsequent calendar years until such time the subscription is not renewed.
- 11.2 In addition we may terminate this Agreement immediately on giving notice to the other if you commit any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request so to do, to remedy the breach (such request to contain a warning of the party's intention to terminate).
- 11.3 If you opt not to renew your annual subscription you will not be required to pay any subsequent subscriptions for any subsequent calendar years but we will not

reimburse any payments you have made and any payments that are outstanding will remain payable.

- 11.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities, nor shall it affect the coming into force or the continuance in force of any term of this Agreement which is expressly or by implication intended to come onto or continue in force on or after such termination.
- 11.5 On the termination of this Agreement for any reason you shall cease to be entitled to access and use the Application and maintain or update Data.

## **12. Our Warranties**

- 12.1 We warrant that:
  - 12.1.1 we have all the rights in relation to the Application that are necessary to grant all the rights we grant to you under the terms of this Agreement;
  - 12.1.2 we have used reasonable care in preparing the Application; and
  - 12.1.3 we will back up the Data periodically and use all reasonable endeavours to ensure that Data is held securely during the Term.
- 12.2 Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the satisfactory quality, fitness for purpose, or ability to achieve a particular result, of the Application is given by us, and all such warranties, conditions, undertakings and terms are excluded.
- 12.3 You agree that your sole remedy in respect of any non-conformance with any term of this Agreement is that we will remedy such non-conformance (either ourselves or through a third party) as soon as reasonably possible after notification by you.

## **13. Liability**

- 13.1 Nothing in this agreement shall operate to exclude or limit our liability for:
  - 13.1.1 death or personal injury caused by our negligence; or
  - 13.1.2 any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 13.1.3 fraud; or
  - 13.1.4 any other liability which cannot be excluded or limited under applicable law.
- 13.2 We shall not be liable for a Retailer relying on the Data uploaded by you or anyone using your password or any third party who does not have authority to access the Application.
- 13.3 You acknowledge that we have no control over the Data and that we do not purport to monitor the content of the Website. We reserve the right to remove content from the Website where we reasonably suspect such content is not required for the operation of the Application or which infringes any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights).

- 13.4 In the event of any loss or damage to Data your sole remedy will be that we use our best endeavours to restore the lost or damaged Data from the latest back up of the Application.
- 13.5 As we cannot know the individual circumstances of any User or Retailer, in no event will we be liable for any damages resulting from damage that is an indirect, consequential or secondary consequence of any act or omission by us.
- 13.6 Our maximum liability to you under this Agreement or otherwise for any cause whatsoever will be limited to the last annual subscription fee paid, whether or not such damages were reasonably foreseeable or actually foreseen.
- 13.7 We both acknowledge and agree that the limitations contained in this clause are reasonable in the light of all the circumstances known to either of us at the date of this Agreement.

#### **14. Your Warranties**

- 14.1 You warrant that:
  - 14.1.1 you have not relied on any oral representation made by us or upon any descriptions, illustrations or specifications contained in any publicity material produced by us which are only intended to convey a general idea of the Application and the Website;
  - 14.1.2 you will take all reasonable steps to ensure that nobody other than an authorised User has access to the login details including the password needed to access and use the Application; and
  - 14.1.3 except to the extent and in the circumstances expressly permitted by law, you shall not alter, modify, adapt or translate the whole or any part of the Application in any way nor permit the whole or any part of the Application to be combined with or become incorporated in any other computer programs and or Website, nor decompile, disassemble or reverse engineer the same nor attempt to do any such things.

#### **15. Intellectual Property Rights**

- 15.1 The Intellectual Property Rights are and shall remain our property or that of our licensor. The copying or incorporation of all or any part of the material available on this Website (other than Data) is prohibited although you may print or download information for using the Application.
- 15.2 You will notify us immediately if you become aware of any unauthorised use by any person of the Application or the Website or any part of the Application or the Website.
- 15.3 If the use of the Application in accordance with this Agreement is held by a court of competent jurisdiction to constitute an infringement of a third party's intellectual property rights, then we shall promptly and at our own expense use reasonable endeavours to:
  - 15.3.1 procure for you the right to continue using the Application; or
  - 15.3.2 modify or replace the Application without detracting from the overall performance of the Application, so as to avoid the infringement;

and provided we comply with this clause the infringement shall not constitute a breach of this Agreement.

## **16. Confidential Information**

- 16.1 We undertake to treat as confidential and keep secret the Data and not disclose any of it to any third party other than a Retailer.
- 16.2 All Data (including historic data) will remain available indefinitely to the Retailer for any purposes including regulatory compliance, ecommerce transactions, internal use, in case of emergencies, to consumers, government agencies and other third parties who may require access from time to time.
- 16.3 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

## **17. Entire agreement**

This Agreement constitutes the entire agreement and understanding between us with respect to all matters that are referred to.

## **18. Correspondence**

- 18.1 All correspondence to us should be through the Website, by email to [mysdssupport@safeware.co.uk](mailto:mysdssupport@safeware.co.uk) or by first class post to Safeware Quasar, 9 Langley House, Wheatcroft Business Park, Edwalton, Nottingham, NG12 4DG.
- 18.2 All correspondence from us should be by email or by first class post to the addresses shown in the Registration Form or any later addresses notified to you by us.
- 18.3 Correspondence shall be deemed to have been received:
  - 18.3.1 when sent by e-mail twenty-four hours after sending , assuming the next day is a Working Day, or should this fall over a weekend or Bank Holiday the next Working Day ; or
  - 18.3.2 on the third Working Day following mailing, if mailed by first class registered post.

## **19. Third Parties**

A Retailer or any other person who is not a party to this Agreement has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of the third party which exists or is available apart from that Act.

## **20. Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.



**21. Waiver**

No delay, neglect or forbearance on the part of either of us in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either of us is exclusive of any other right, power or remedy available to us.

**22. Sub-contracting**

We may perform any or all of our obligations under this Agreement through agents or sub-contractors, provided that we shall remain liable for such performance and shall indemnify you against any loss or damage suffered by you arising from any act or omission of such agents or sub-contractors in accordance with paragraph 13.

**23 Proper law and jurisdiction**

- 23.1 This Agreement and all matters arising from it shall be governed by and construed in accordance with English law.
- 23.2 The parties submit to the exclusive jurisdiction of the courts of England for the purposes of hearing and determining any dispute arising out of this Agreement.