

## **TERMS & CONDITIONS OF SALE**

### **PEARSON NEW ZEALAND LIMITED**

#### **1. APPLICATION**

- 1.1. These terms and conditions of sale (“**Conditions**”) relate to the pricing, payment, supply and delivery of all books and other materials (“**Goods**”) which are supplied by Pearson New Zealand Limited (“**PNZ**”) to its customers (“**Customer**”) and includes, for the avoidance of doubt, all such books and materials whether or not described by item or kind that enables them to be identified and which are or compromise, or which are capable of being comprising, inventory to the Customer.
- 1.2. These Conditions apply in respect of every supply of Goods by PNZ to the Customer or any employee, agent, Related Company (as defined by section 2(3) the Companies Act 1993) or contractor of the Customer (each a “**Customer’s Representative**”) and are deemed incorporated in each contract or arrangement for the supply of Goods by PNZ to the Customer or the Customer’s Representative. The Customer is bound by these Conditions as soon as:
  - 1.2.1. the Customer or a Customer’s Representative agrees to these terms; or
  - 1.2.2. the Customer or a Customer’s Representative orders Goods; or
  - 1.2.3. PNZ supplies Goods to the Customer or a Customer’s Representative.
- 1.3. It is acknowledged that the Customer may have independent contractual arrangements with publishers, including Penguin Group (NZ) and Pearson New Zealand Limited, (each a “**Publisher**”). For the avoidance of doubt, notwithstanding any contract or other arrangement which the Customer may have with any Publisher, these Conditions apply to the supply of all Goods by PNZ to the Customer including any Goods supplied or distributed by such Publisher.
- 1.4. PNZ reserves the right to vary these Conditions at any time. Any such variation will take effect from acceptance of the first order for Goods following a notice of such a notice of the variation being given to the Customer.

#### **2. PRICE & PAYMENT**

##### **Price**

- 2.1. The Customer agrees to pay the amount invoiced by PNZ in accordance with the terms set out in the invoice and these Conditions.
- 2.2. Unless otherwise agreed the price paid is inclusive of freight.
- 2.3. Prices may be altered by the relevant Publisher, or PNZ if there is no Publisher applicable, at any time. Any change in the price (increase or decrease) of the Goods ordered, but not supplied, including without limitation arising from imposition of or change in Government duties, levies, fees and taxes, will be to the account of the Customer and be invoiced accordingly.
- 2.4. No price adjustment as per 2.3 is available for goods already delivered and invoiced to the customer.
- 2.5. If the Customer has a current credit account with PNZ, the Customer must pay for goods delivered to the Customer as provided in the applicable trading terms.
- 2.6. Any claim for price discrepancies must be made by the customer within 14 days of receipt of the invoice.

##### **Invoices**

- 2.7. PNZ shall invoice the customer, for all Goods supplied by PNZ to the customer pursuant to these Conditions, and any other charges associated with the Goods, at the time of delivery of those goods. Such invoices shall be paid by the Customer as per clause 2.8

## **Payment**

- 2.8. Payment is due on or before the 20<sup>th</sup> of the month following invoice date unless otherwise agreed in writing by PNZ.
- 2.9. The Customer shall not be entitled to withhold payment or make any set off or deduction from the price of the Goods supplied or from any other payment due by the Customer.
- 2.10. If the Customer defaults in payment of any moneys under these Conditions, Pearson New Zealand Ltd may (without prejudice or any other right or remedy of PNZ) cease any further supplies of Goods and/or reallocate any Goods reserved for the Customer.
- 2.11. Interest at 5% per annum above PNZ cost of funds, as certified by PNZ from time to time calculated on a daily basis, may be payable on any moneys outstanding by the Customer to PNZ from the date payment is due until the date payment is received by PNZ but without prejudice to PNZ other rights and remedies in respect of non-payment or late payment. That interest shall be payable on demand by PNZ.

## **3. DELIVERY**

### **Delivery**

- 3.1. Delivery shall be made:
  - a) To the customers premises, unless otherwise agreed with PNZ,
  - b) In such manner as indicated by the Customer or if no such manner is indicated by the Customer, in the manner elected by PNZ at its sole discretion,and if the Customer fails or refuses, or indicates to PNZ that it will fail or refuse to take delivery, delivery shall be deemed to have occurred when PNZ was willing and in a position to deliver the Goods.
- 3.2. Without prejudice to any of its other rights or remedies, PNZ may, by written notice to the Customer, require the Customer to immediately reimburse PNZ for all expenses, including without limitation any storage expenses, which PNZ has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to take delivery.
- 3.3. PNZ reserves the right to deliver the goods in installments unless otherwise specified by the customer in their terms of trade or on the order.
- 3.4. PNZ reserves the right to consolidate all orders into a single delivery on one invoice.
- 3.5. PNZ reserves the right to recover costs associated with delivery to delivery addresses other than the customer's premises.
- 3.6. PNZ reserves the right to charge for freight costs associated with non-standard deliveries.

### **No Liability for Late or Non Delivery**

- 3.7. PNZ shall not be liable for any costs, loss or damage (including any consequential loss) incurred or suffered by the Customer as a result of a late or non delivery.

### **Time for Delivery Approximate**

- 3.8. Any time for delivery given by PNZ shall, unless otherwise expressly stated in writing by PNZ, be approximate only and shall not be of the essence of these Conditions. Failure by PNZ to satisfy a delivery date contained in any order may class the goods as SOR.
- 3.9. In the event that goods are delivered to the Customer which have not been ordered by the Customer the Customer shall notify Assessment and Information immediately. The Customer will be deemed to have ordered and accepted the goods in the event that the Customer retains the goods for a period of more than 2 weeks after the time of delivery.

### **Non-delivery or short supply**

- 3.10. The customer must notify PNZ within 14 days of delivery, or receipt of invoice, of any claim for non-delivery of goods or a short shipment of goods.

### **Delivery of damaged goods**

- 3.11. In the event that goods are received by the customer in a damaged condition the customer must notify PNZ within 5 working days. Failure to do so will deem the customer as having accepted delivery of the goods.

### **Returns**

- 3.12. Returns are only accepted in accordance with the returns policy from time to time advised by each individual publisher.
- 3.13. Returned goods must clearly identify the Customer and the PNZ invoice number the goods were invoiced on.
- 3.14. The Customer is responsible for all freight costs for returned goods unless otherwise agreed to in writing by PNZ or the publisher.
- 3.15. Returns must have any Customer labels or stickers removed prior to return. PNZ reserves the right to charge to recover any costs associated with removing stickers or labels, or refuse to accept the return.
- 3.16. Returns that do not comply with the returns policy and are not otherwise approved by the publisher will be pulped and no credit note issued.
- 3.17. PNZ reserves the right not to accept a return where the carton weight exceeds recommended Occupational Health & Safety guidelines.

## **4. RISK, TITLE & INSURANCE**

### **Risk**

- 4.1. Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the time the Goods are delivered by PNZ (or its carrier agent) or deemed delivered to the Customer in accordance with clause 3.1.

### **Insurance**

- 4.2. From the time the Goods are delivered or deemed delivered in accordance with clause 3.1 until title in the Goods passes to the Customer pursuant to clause 4.4, the Customer shall, at its own cost, keep the Goods insured at their full replacement value (in the names of PNZ and the Customer, if so required by PNZ) and shall produce to PNZ upon receipt from PNZ of written demand to do so, such evidence as PNZ may reasonably require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, PNZ shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to PNZ upon written demand for payment by PNZ.

### **Damage/Destruction Prior to Title Passing**

- 4.3. If any Goods are damaged or destroyed during the period from the time Goods are delivered or deemed delivered under in accordance with clause 3. Until title in those Goods passes to the Customer pursuant to clause 4.4, PNZ may (without prejudice to any of its other rights and remedies under these Conditions) receive all insurance proceeds which are payable in respect of such Goods (whether or not the price of those Goods has become payable under these Conditions). The insurance proceeds shall be applied by PNZ as follows:
- a) First, if the price of the Goods which are damaged or destroyed is unpaid, in payment of that price;
  - b) Secondly, in payment of the outstanding price of any Goods supplied to the Customer by PNZ (whether under these Conditions or otherwise);
  - c) Thirdly, in payment of any other sums payable to PNZ by the Customer (whether under these Conditions or otherwise); and
  - d) Fourthly, any balance shall be paid to the Customer.

### **Title (Personal Properties Security Act 1999)**

- 4.4. Title in the Goods shall not pass until such time as the Customer has paid all moneys owing in connection with such Goods by the Customer to PNZ under these Conditions. Until such sums due to PNZ by the customer have been paid in full PNZ has a security interest in all goods. Until such time, the Customer shall:
- a) Store and identify the Goods in such a way that the Goods are clearly identifiable as the property of PNZ ;
  - b) Maintain the Goods supplied in good order and condition and return the Goods to PNZ immediately, if required to do so by written notice from PNZ
- 4.5. The customer gives PNZ irrevocable rights to enter any premise occupied by the customer or on which the goods are situated at any reasonable time after default by the customer to remove and repossess the goods. PNZ will credit the customers account with the invoice value thereof less such sum as PNZ reasonably determines on account of wear and tear, obsolescence, or cost.
- 4.6. Where goods are retained by PNZ pursuant to clause 4.5 the customer waives the right to receive notice under s.120 of the Personal Properties Security Act 199 and to object under s.121 of the Act.

## **5. LIMITATION OF LIABILITY AND DEFECTIVE GOODS**

- 5.1. Subject to clause 3.3:
- 5.1.1. PNZ shall be liable to the Customer under these Conditions, subject to clause 5.1.2., only for any direct loss or damage which is actually suffered by the Customer as a result of a breach by PNZ of any of its express obligations under these Conditions;
  - 5.1.2. PNZ sole liability in relation to defective Goods shall, subject to clauses 5.2 and 5.3, be to refund or replace any defective Goods at PNZ sole option.
- 5.2. In relation to defective Goods, PNZ shall not be liable to either refund or replace any defective Goods unless:
- a) written notice of the defect is received by PNZ from the Customer, as soon as reasonably possible following discovery of such defect; but in any event no later than 5 working days following discovery of such defect; and the defective Goods have been delivered to PNZ warehouse (or such locations as it may advise from time to time) within 10 working days following discover of such defect.
- 5.3. In relation to defective Goods, PNZ shall have no liability to the Customer whatsoever if:
- a) The defect is the result of incorrect storage or handling by the Customer or any other person not under the direct control of PNZ; or
  - b) Any attempt to rectify the defect is made by any person not authorized by PNZ to do so
- 5.4. PNZ shall not be obliged to replace any defective Goods or refund the Customer for such Goods while the Customer is in default in the performance of any of its obligations under these Conditions.
- 5.5. To the Fullest extent permissible at law;
- 5.5.1 All representations, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability an/or fitness for a particular purpose, are excluded.
  - 5.5.2 PNZ shall have no liability to Customer or any Customer's Representative for anything, other than a breach by PNZ of an express provision of these Conditions (including but not limited to negligence on the part of Seller or its employees or agents).
- 5.6. The customer acknowledges that it does not rely on any representation or statement made by or on behalf of PNZ or its employees or agents other than the express provisions of these Conditions.

- 5.7 Notwithstanding anything else contained in any contract between PNZ and the Customer, including these Conditions, the liability of PNZ to the Customer shall not in aggregate exceed the invoice price for the Goods in respect of which the liability arises.

## **6. CONSEQUENTIAL LIABILITY**

- a) PNZ shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by the Customer in connection with or arising out of these Conditions.
- 6.1. For the purposes of the Consumer Guarantees Act 1993:
- a) If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply; and
- b) If the Goods are not acquired by the Customer for business purposes, the Customer acknowledges that it may have rights under the Consumer Guarantees Act 1993 which override provisions of these Conditions.

## **7. TERMINATION**

- 7.1. These Conditions shall terminate:
- a) If the Customer commits any act of bankruptcy, enters into any composition with the Customer's creditors or (in the case of a company) does any act which would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation of the Customer or if a receiver, statutory manager or similar functionary is appointed in respect of all or any of its assets; or
- b) If the customer ceases to trade; or
- c) If the customer consistently fails to pay in within the terms of trade; or
- d) If the ownership of the customer changes; or
- e) If the customer performs a major breach of the conditions in this agreement; or
- f) If the level of transactions is not sufficient to warrant the maintenance of a credit account; or
- g) Upon mutual agreement between the Customer and PNZ.
- 7.2. Any termination of these Conditions shall be without prejudice to the rights of either party in existence prior to termination.
- 7.3. Upon termination of these Conditions for whatever reason:
- a) Such termination shall be without prejudice to the rights and remedies of the of the Customer and PNZ in respect of any breach of these Conditions by the Customer or PNZ , where such breach occurred prior to the termination of these Conditions; and
- b) The provisions of clauses 5.1 and 6.1, together with those other provisions of these Conditions which are intended to survive termination, shall remain in full force and effect.
- c) Any monies owing to PNZ must be paid in full
- d) Any property of PNZ or Assessment and Information must be returned to United Book Distributors.

## **8. INTELLECTUAL PROPERTY**

- 8.1. The Customer must notify the publisher or PNZ immediately in writing if the Customer:
- a) Becomes aware of any claim made that any of the Goods infringe patent, copyright, design, trade mark or any other rights; or

- b) Becomes aware of any infringement of a Publisher or PNZ patent, copyright, design, trade mark or other rights.

## **9. FORCE MAJEURE**

9.1. Neither PNZ nor the Customer shall be liable for any act, omission or failure under these Conditions if that act, omission or failure arises directly from a cause beyond the reasonable control of the party concerned, provided that:

- a) The party claiming the protection of this clause shall, as soon as possible after becoming aware of such cause or the likelihood of such cause, give the other party written notice accordingly,
- b) Notwithstanding the intervention of such cause, each party shall continue to use its best endeavours to perform its obligations required under these Conditions; and
- c) In any such event, neither the Customer nor PNZ shall be deemed to have accepted any extra costs which may be incurred or sustained by the other party through a delay resulting from that cause.

but nothing in this clause shall excuse a party from any obligation to make a payment when due under these conditions.

## **10. MISCELLANEOUS**

### **Non Waiver**

10.1. No waiver by PNZ of any breach of failure to enforce any provision of these Conditions shall in any way affect, limit or waive PNZ right to subsequently enforce and compel strict compliance with these Conditions.

### **Publisher Termination or Waiver**

10.2. No termination or waiver by a Publisher under any contract for the supply of Goods between a Publisher and the Customer shall in any way affect limit or operate as a waiver or cancellation of these Conditions which (except as agreed to by PNZ in writing from time to time) shall remain in full force and effect between PNZ and the Customer.

### **Non Assignment**

10.3. The Customer may not transfer or assign or part with possession of all or any of the Customer's rights or obligations under these Conditions without the prior written consent of PNZ.

### **Partial Invalidity**

10.4. If any provision of these Conditions is or becomes invalid or unenforceable, that provision shall be deemed deleted from these Conditions and such invalidity or unenforceability shall not affect the other provisions of these Conditions, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

### **Privacy Act**

10.5. Where the Customer is an individual, the Customer irrevocably authorises PNZ :

- a) (Subject to any confidentiality obligations) to obtain from any third party such information in respect of the Customer as PNZ may require in connection with its lawful commercial purposes including (without limitation) determining whether to extend credit to the Customer and to verify such information.
- b) To provide any such information to any third party in connection with its lawful commercial purposes including (without limitation) determining whether to extend credit and to verify any such information.

- 10.6. The Customer acknowledges that it is aware of the rights of access to, and correction of, personal information under the Privacy Act 1993.

**Notice Provisions**

- 10.7. Any notice to be given by a party to the other shall be in writing and shall be given by:
- a) personal delivery;
  - b) mailing by pre-paid post, and shall be deemed to be given two days after the date of mailing; or
  - c) facsimile transmission, and shall be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice, to the address or facsimile number specified on the first page of these Terms or to such other address or number as is notified in writing by a party to the other.