

UNITED BOOK DISTRIBUTORS

(a division of Pearson Australia Group Pty Ltd ACN 004 245 943)

CONDITIONS OF SALE

APPLICATION

- These Conditions apply to all orders placed by **you**, the purchaser, for the supply and delivery of books and other materials (**Goods**) in Australia and New Zealand (for New Zealand and Fiji) by United Book Distributors (**us** or **we**, and includes our successors and assigns).
- The terms Order, us, we, ours, Delivery Country used in these Conditions each relates to the country where Goods are to be delivered, as indicated below:

Order	we, us, ours	Delivery Country & currency
An order from you for Goods to be delivered in Australia	Pearson Australia Group Pty Ltd ABN 40 004 245 943	Australia *All values must be in AUD
An order from you for Goods to be delivered in New Zealand or Fiji	Pearson New Zealand Ltd Company Number 85621	New Zealand *All values must be in NZD

'**Agreement**' means each contract created by our acceptance of your Order and governed by these Conditions, the Trading Terms and any terms and conditions incorporated by reference in these Conditions or set out in the applicable invoices.

'**Trading Terms**' mean any document(s) or agreed terms and conditions applicable to your Orders in addition to these Conditions, including those governing the pricing of Goods, discounts, credit limits, credit terms, special promotions, e-commerce transactions and online purchases.

ORDERS, DELIVERY, SUPPLY

- For each Order placed, in our absolute discretion we may either accept or reject all or part of that order, or offer to supply you Goods on terms other than requested in your Order. Without limitation, we may do so for reasons that include unavailability, exceeding a credit limit or that a particular book may not lawfully be published in your jurisdiction.
- If we accept all or part of your Order, we will use our best efforts to deliver Goods in the quantities and at the time requested. However, we cannot guarantee delivery or supply.
- We will deliver Goods within the Delivery Country at our costs, except for requested airfreight, special orders and cash sales. We will send an invoice to confirm the quantity and type of Goods delivered, the total price due, and any applicable discounts.
- If we intentionally deliver Goods that you have not requested or ordered, you are not liable to pay if they are specified to be free samples. If they are not so specified, we may within 90 days of your receipt of the Goods (or within 30 days of a written notice from you that they are unsolicited goods), require you to return them or make them available to be collected by us. If through any act or omission you failed to return or hinder our ability to collect them, we will be entitled to require payment for them and you will be deemed to have ordered them and agreed to pay the amount invoiced by us.

SALE, RETURN, BACKORDERS

- Our Trading Terms and Returns Guide or Returns Policy (the latter are available at our websites) specify the conditions for returning Goods to us and for refunds. You must obtain a "returns authorisation" - if required in the Returns Guide/Policy - before returning any Goods.
- If you return Goods to us contrary to those Trading Terms or Returns Guide/Policy then:
 - for Goods delivered in Australia, we may return them to you at your costs. You agree to pay for them at their invoiced value and we may debit your account for these amounts.
 - for Goods delivered outside Australia (including NZ and Fiji), we may pulp them and you agree to pay the invoiced amount for them even though they have been destroyed.
 - for any goods not supplied by us, they fall outside this clause and will be pulped if returned to us.
- Some Goods are supplied on firm sale and cannot be returned or credited unless we agree in writing. This will be indicated on the invoice and may include indented goods and special sales.

CLAIMS

- Any problems arising from or relating to the order or supply of Goods (Claims) must be notified to our customer service department at aftersales@unitedbookdistributors.com.au (or at other contact we provide you) who will consider your Claim and may facilitate the Goods' return, credit in lieu, replacement or other remedy.
- You must notify your Claim within 30 days of the date of our invoice and quote our invoice number for the Goods. Otherwise the Goods invoiced will be deemed accepted.
- We may need to inspect the Goods to assess your Claim. Therefore we will provide a "returns authorisation" form for you to complete and attach to the Goods being returned.
- If Goods have been supplied by us in error (eg, over-supply) or in damaged condition (eg, damaged in transit, faulty binding or printing errors), we will pay for the costs of their returns from anywhere in the Delivery Country, and provide a freight note to facilitate the return.
- If in our reasonable opinion our inspection of Goods does not justify the Claim, we may reject it:
 - for Goods delivered in Australia, you bear the costs of their return to us and then back to you.
 - for Goods delivered in New Zealand or Fiji, we may pulp them and you must pay for them at the invoiced amount, notwithstanding their destruction.

BACKORDERS

- If we have not accepted or supplied an Order because the Goods ordered are not yet published in the Delivery Country, or are temporarily unavailable, then provided you have instructed us to do so we will keep a record of your Orders and may supply them to you when they are next available.
- All Orders for 'back-list' (previously published) Goods will be recorded for later supply unless:
 - we have received your instruction not to record any Orders or that particular Order; or
 - the Goods are out-of-print, or we expect unreasonable delay in completing the Order. If requested, we will provide to you a monthly 'Backorders by Customers' report.
- You may cancel a recorded backorder by giving us 30 days written notice specifying the goods to be cancelled. If you have any query about your Order, you can contact our customer service department by phone on +613 9811 2555 or 1800 338 836, or by email at aftersales@unitedbookdistributors.com.au
- We will not authorize returns for any duplication caused by your reordering of recorded titles.

PAYMENT, CREDIT LIMITS AND DISCOUNTS

- You must pay all invoiced amounts in the currency of the Delivery Country specified in clause 2 above, according to the terms set out in the invoice, these Conditions and the Trading Terms.
- We may in our absolute discretion allow you to pay within a specified time after delivery (a "credit account"), up to a specified total dollar value for all Orders (a "credit limit"):
 - you agree not to exceed your credit limit. We are not obliged to supply Goods if you do.
 - we may vary the credit limit at any time for any or no reason, by a written notice to you. The variation will apply to all Orders placed after the date of the notice.
- If you have no credit account or have exceeded your credit limit with us, you agree to pay the invoiced amount before we dispatch the Goods to you.
- If you exceed your credit limit, or fail to pay any amounts due to us, or are in breach of this or any other agreement with us, then without prejudice to any other right or remedy available to us we shall be entitled to:
 - stop supplying any or all Goods to you, including those under accepted Orders; and/or
 - treat any Orders yet to be filled as withdrawn by you, in which event the Orders shall be deemed withdrawn at the date of a breach.
- If any amount due and payable under the Agreement remains unpaid for more than 30 days:
 - we may charge interest at 2% above the then current base rate for business lending published by the National Australia Bank at www.nab.com.au, on the overdue amount, from the date it

- became due and payable to the date it is paid in full by you;
- you must indemnify us for all costs, expenses and liabilities we incur in their recovery; and
- we may stop supplying Goods to you until you have paid the overdue amounts in full.

24. If we agree to supply Goods at a discount, we may vary that discount for future Goods.

25. The supply of Goods will generally attract a GST. The applicable GST and any other tax, import or duty payable for the supply of Goods shall be passed on to, and payable by, you.

RISK AND TITLE

- Risk in Goods passes to you on our delivery to you. You must insure them against that risk.
- Title and ownership in Goods will remain with us until we have received from you their full purchase price and all other moneys owing whether for the Goods delivered or otherwise. Until then, you hold all Goods as bailee and fiduciary agent on our behalf. As such you:
 - must store them safely, and in a manner so they are clearly identifiable as ours;
 - must not enter into a forward sale contract with any third party, or assign or factor any book debts without our prior written consent which we may refuse at our sole discretion;
 - may sell the Goods and pass title to bona fide buyers for valuable consideration in ordinary course of business, but only if clause 28 does not apply to you;
 - must, if you sell any Goods, hold that portion of the proceeds from sales that is equal to the prices invoiced by us on trust and for our sole benefit: (i) for cash sales, in a separate bank account; and (ii) for credit sales, separately account for those book debts in your financial records;
 - must immediately pay us all amounts held on trust for us by their due dates specified in the relevant invoices, or thereafter on demand, without any deduction or set-off; and
 - must institute a reporting system satisfactory to us that would enable us to match the proceeds from your sale of Goods to the Goods supplied by us.
- If you fail to pay any or all invoiced prices for Goods when due; or if before title or property passes you become insolvent or, whether voluntarily or involuntarily, you are subject to winding up, insolvency administration or receivership, or if you cease or become unable to trade in the Goods supplied to you, we shall have the immediate right to:
 - recover possession of Goods wherever they may be; and
 - on reasonable notice, enter into your premises or any other premises on which they are held to search for and remove them.

You must notify us promptly on any such event arising and assist and indemnify us in our recovery.

29. If you are entitled to return Goods after title or ownership has passed to you:

- all title and ownership in the Goods will revert to us on our agreement to their return.
- all risk in them shall remain with you until their delivery to our nominated warehouse.

LIABILITY LIMITATION

- Except for terms expressly written, to the maximum extent permitted by law we exclude all implied terms, conditions, representations, warranties, statements and assurances in relation to the Goods and any other matters arising under the Agreement.
- If for any reason a provision in the Agreement is declared illegal or void; or a term that was breached cannot be excluded by agreement then, at our sole discretion, our entire liability and your exclusive remedy shall be limited to the replacement of Goods or supply of equivalent goods.
- Our maximum cumulative liability under the Agreement shall not exceed the total income we received from you in the last 3 months. In no event will we (including our agents, employees or contractors) be liable for any loss or liability however caused and on any theory of liability including contract or tort (including negligence or otherwise) arising during or caused by our performance or non-performance of the Agreement, including without limitation:
 - any loss that is foreseeable, or which we were aware of its likelihood arising; and
 - any indirect or consequential loss, including without limitation loss of profits, production, data, opportunity or goodwill; or business interruption.
- For the purposes of the *Consumer Guarantees Act 1993* (New Zealand), you agree that: a) this Act does not apply if Goods acquired by you are for business purposes; and b) if the Goods are not acquired by you for business purposes, you may have rights under this Act which override inconsistent provisions of these Conditions.

INTELLECTUAL PROPERTY RIGHTS, RECOMMENDED PRICES

- If you become aware of any claim or risk that any Goods supplied by us has infringed, or is likely to infringe any third party patent, copyright, design, trade mark or any other rights, you agree to notify us immediately and provide all information related to the risk or claim.
- Prices applied to Goods, or recommended in relation to Goods, are recommended prices only. There is no obligation to comply with the recommendation.

GOVERNING LAW, FORCE MAJEURE, WAIVER, SEVERABILITY, ENTIRE AGREEMENT

- The governing law for the Agreement is the law of:
 - the State of Victoria - if the Delivery Country is Australia.
 - the law of New Zealand - if the Delivery Country is New Zealand.You and we both unconditionally submit to the jurisdiction of Courts in the specified jurisdiction.
- If we are prevented from, or delayed in, complying with any obligation under these Conditions or our Trading Terms by an event or a thing beyond our reasonable control, that obligation is automatically suspended until the event or thing has passed.
- We may vary or terminate any or all of these Conditions or of our Trading Terms, by giving you 30 days written notice before the change or termination.
- Any waiver or failure by us in exercising a right, or enforcing an obligation against you in any instance under the Agreement shall not be construed as our waiver of that right or obligation in any subsequent or other instances.
- If a provision of the Agreement is held invalid or unenforceable in a jurisdiction for any reason, that provision is deemed severed from it in that jurisdiction, without affecting its validity in any other jurisdictions or the validity of the remaining provisions in that jurisdiction.
- Each Agreement as defined in clause 2 constitutes the entire agreement between you and us pursuant to your Order. If any conflict exists between the different documents in an Agreement, provisions in the Trading Terms shall prevail. You agree that none of the terms of purchase, offer or similar terms provided to us by you form part of any Agreement.

SECURITY INTEREST UNDER THE PERSONAL PROPERTY SECURITIES ACT

- You expressly agree that:
 - each Order accepted by us creates a new agreement and we have registrable security interests under the Personal Property Securities Act 2009 (Cth) (for delivery in Australia) or the Personal Property Securities Act 1999 (for delivery in New Zealand) in any goods supplied under it;
 - if we register a security interest under the applicable Act, we may exercise any or all remedies afforded to us as a secured party under it, without prejudice to any other rights or remedies arising out of a breach by you of the Agreement; and
 - if the Delivery Country is New Zealand, you agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the Act shall not apply to our enforcement of any security interest created or provided for by the terms of the Agreement; and you waive any rights you have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the Act on such enforcement.