

**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 or New Zealand by Penguin Random House Australia Pty Ltd (ABN 28 004 815 703) trading as United Book Distributors (us or we, and includes our successors and assigns).

- The terms **Order** and **Delivery Country** used in these Conditions each relates to the country where Goods are to be delivered, as indicated below:

Order	Delivery Country & Currency
An order from you for Goods to be delivered in Australia	Australia *All values must be in AUD
An order from you for Goods to be delivered in New Zealand	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.

“**Publisher**” means the publisher of the Goods, being either us or a publisher for whom we act as an agent.

“**Trading Terms**” mean any agreed document(s) or 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 reasonable efforts to deliver Goods in the quantities and at the time requested. However, we cannot guarantee delivery or supply. Failure to deliver Goods by the time requested will not constitute a breach of the Agreement. You will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. We will not be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery or failure to deliver.
- We will deliver Goods within the Delivery Country at our cost, except that you will pay delivery costs in the case of requested airfreight, special orders, remainder Goods and cash sales. You agree to pay our demurrage and other costs and expenses in handling and/or holding any Goods once ready for delivery. We will provide to you an invoice to confirm the quantity and type of Goods ordered, the total price, any applicable delivery, demurrage and other costs and expenses 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 Returns Guide or Returns Policy (available at our website) specifies the conditions for returning Goods to us. 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 our Returns Guide/Policy then:
  - for Goods delivered in Australia, we may return them to you at your cost. You agree to pay for them at their invoiced value and we may debit your account for these amounts.
  - for Goods delivered in New Zealand, 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, print-on-demand and special sales Goods.

**CLAIMS**

- Any problems arising from or relating to your Order or the supply of Goods (**Claims**) must be notified to our customer service department at [aftersales@unitedbookdistributors.com.au](mailto:aftersales@unitedbookdistributors.com.au) (or at other contact we provide to you) who will consider your Claim and may facilitate the return or replacement of the Goods, credit in lieu or other remedy.
- You must notify your Claim within the relevant period in accordance with our Returns Guide or Returns Policy 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 may 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 return 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, and you must pay for the Goods at the invoiced amount.
  - for Goods delivered in New Zealand, you bear the costs of their return to us, and we may pulp the Goods 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 email our customer service department at [aftersales@unitedbookdistributors.com.au](mailto:aftersales@unitedbookdistributors.com.au), or call 1800 331 015.

- We will not authorise returns for any duplication caused by your reordering of recorded titles.

**PAYMENT, CREDIT LIMITS, RISK 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, and without any set-off or deduction notwithstanding any claim that you may wish to make against us or the Publisher.
- We may in our absolute discretion allow you to pay within a specified time from the date of our invoice under your credit account with us (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 withdraw or vary the credit limit at any time for any or no reason, by a written notice to you, without any liability to you or any other entity. The withdrawal or variation will apply to all Orders placed after the date of the notice. You agree to pay on demand all sums owing in connection with this credit facility in the event it is withdrawn.
- If you have no credit account or have exceeded your credit limit with us, you agree to pay the invoiced amount in full before we dispatch the Goods to you.
- 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](http://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.
- If we agree to supply Goods at a discount, we may vary that discount for future Goods.
- The supply of Goods may 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 in full by, you.
- Where, in respect of the supply of Goods to you:
  - the Publisher is (or we are, in the case of us acting as agent for the Publisher) a supplier that is a non-resident under the *Goods and Services Tax Act 1985* (New Zealand) (**NZ GST Act**); and
  - the Goods are in New Zealand at the time of the supply, you agree that section 8(4) of the NZ GST Act will not apply to the supply, and that the sale of the Goods to you shall be treated as being made in New Zealand for GST purposes, and New Zealand GST shall apply to the sale.
- Risk in Goods passes to you on our delivery to you.

**PAYMENT SECURITY**

- In the clauses under the heading “Payment Security” herein:
  - Collateral** means: (i) the Goods, (ii) any property that the Goods may become part of or mixed with, (iii) all accounts (receivables), chattel paper, currency and other intangibles, rights or interests generated from the sale or other provision or fulfillment of the Goods, (iv) all ADI accounts into which cash, currency or other proceeds from the sale, provision or fulfillment of or in respect of the Goods may be deposited, (v) all associated property, accounts, books and records, and (vi) all proceeds of any of the foregoing, and any other property the subject of security interests granted hereunder;
  - PPS Act (Australia)** means the *Personal Property Securities Act 2009* (Cth);
  - PPS Act (New Zealand)** means the *Personal Property Securities Act 1999*;
  - PPS Act** means the PPS Act (Australia) or the PPS Act (New Zealand) as the context requires; and
  - Insolvency Event** means: (i) you take any steps towards, or become an externally administered body corporate or take any steps towards appointing or appoint a controller or trustee for creditors in respect of your property, or (ii) you suspend payment of your debts, you are, or state that you are, or you are presumed by the law to be, insolvent or unable to pay your debts or you take any step for the purposes of entering into a compromise or arrangement with any of your creditors or members, or (iii) any security interest is enforced against any of your property.

If a term used in the Agreement has a particular meaning in the PPS Act, it has the same meaning in the Agreement. References to sections under a PPS Act shall include any corresponding section in another jurisdiction.
- Goods sold by us as agent** We may sell the Goods to you as: (i) Publisher, or (ii) agent for a Publisher as principal.
- Retention of Title** Title in the Goods is retained by the Publisher, and title to the Goods does not pass to you, until the price for the Goods is paid in full and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by you to us on any account at any time are paid in full.
- Security interest** You grant a security interest to the Publisher (and us in the case of us acting as agent for the Publisher) in the Collateral, and all of your present and after-acquired property, under the PPS Act (Australia) if the Delivery Country is Australia, or the PPS Act (New Zealand) if the Delivery Country is New Zealand.
- Looking after the Collateral** Until you pay in full the price for the Goods and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by you to us on any account at any time, you:
  - must store the Goods properly, safely and separately from any other goods and mark the Goods to identify them as being owned by the Publisher and subject to the applicable security interest(s);
  - must fully insure the Collateral against loss or damage, ensuring the Publisher’s interest (and our interest in the case of us acting as agent for the Publisher) as a secured party is noted on the insurance policy, and promptly give the Publisher (and us in the case of us acting as agent for the Publisher) upon request a copy of the insurance policy and evidence of its currency;
  - must not sell or transfer (except as permitted in clause 29(e)), or encumber, or grant or permit to attach any security interest (other than that referred to in clause 28) over, the Collateral;
  - must not assign or factor any book debts without the Publisher’s (or our, in the case of us acting as agent for the Publisher) prior written consent which the Publisher (or we, in the case of us acting as agent for the Publisher) may refuse at the Publisher’s (or our, in the case of us acting as agent for the Publisher) sole discretion; and
  - may sell the Goods to bona fide buyers for valuable consideration in the ordinary course of business, but only if any event in clause 36 (Enforcement) does not apply to you. You have no authority to bind us to any liability by contract or otherwise and must not purport to do so.
- Registration of security interest** You acknowledge that the Publisher (and we, in the case of us acting as agent for the Publisher) may register a financing statement in relation to its (and our, in the case of us acting as agent for the Publisher) security interest in the Collateral. You waive your right under section 157 (or other relevant section) of the PPS Act (Australia) to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- Proceeds** You undertake that you will not allow any security interest to exist over the Collateral if that security interest could rank ahead of the Publisher’s (and our, in the case of us acting as agent for the Publisher) security interest in the Collateral. You must institute a reporting system satisfactory to us that would enable us to match the proceeds from your sale of the Goods to the Goods supplied by us.
- Application of amounts received** We can apply amounts we receive from you in any order we choose.
- Confidentiality** Neither we nor you will disclose information of the kind mentioned in section

- 275(1) of the PPS Act (Australia), except where such disclosure is required under section 275(7)(b), (c), (d) or (e) of the PPS Act (Australia) or where we consider such disclosure to be necessary to comply with our obligations under the PPS Act (Australia) or otherwise at law.
33. **Chapter 4 under the PPS Act (Australia)** To the extent that Chapter 4 of the PPS Act (Australia) would otherwise apply to an enforcement of security interest(s) in the Collateral, you agree that the following provisions of the PPS Act (Australia) do not apply, to the extent the PPS Act (Australia) allows them to be excluded: sections 95, 118, 121(4), 125, 127, 129(2) and (3), 130, 132, 134(2), 135, 136(5), 137, 138B(4), 142 and 143. At the Publisher's (or our, in the case of us acting as agent for the Publisher) election to be exercised at any time in its (or our) sole discretion, any section of the PPS Act (Australia) specified in Section 115 will not apply to the extent permitted by Section 115.
34. **Further assurances** You must promptly do anything the Publisher requires (or that we require, in the case of us acting as agent for the Publisher) to ensure that its (and our, in the case of us acting as agent for the Publisher) security interest is a perfected security interest and has priority over all other security interests in the Collateral.
35. **Enforcement** If you: (A) exceed your credit limit, fail to pay any or all invoiced prices for Goods when due or fail to pay any other amount owing by you to the Publisher (or us, in the case of us acting as agent for the Publisher) under any other agreement between you and the Publisher (or us, in the case of us acting as agent for the Publisher); (B) you become subject to an Insolvency Event; or (C) you breach any term of the Agreement or any other agreement between you and the Publisher (or us, in the case of us acting as agent for the Publisher), the Publisher (or we, in the case of us acting as agent for the Publisher) shall have the immediate right to:
- stop supplying any or all Goods to you, including those under accepted Orders;
  - treat any Orders yet to be filled as withdrawn by you;
  - take possession of the Collateral wherever they may be, even if the Goods have been paid for in full, towards satisfaction of all debts owing to us;
  - on reasonable notice, enter your premises or any other premises on which the Collateral are held to search for and remove them;
  - appoint a receiver, controller, administrator or other manager to any Collateral;
  - demand the return of all Goods, in which case you shall deliver those Goods to the address specified by the Publisher (or us, in the case of us acting as agent for the Publisher) at your sole expense; and/or
  - exercise any or all rights or remedies available to the Publisher (or us, in the case of us acting as agent for the Publisher) as a secured party under the PPS Act, otherwise at law or under the Agreement.
- You must notify the Publisher (and us, in the case of us acting as agent for the Publisher) promptly on any such event arising and assist and indemnify the Publisher (and us, in the case of us acting as agent for the Publisher) in all recoveries (including, without limitation, entry on the premises and taking possession of the Collateral). Where the Publisher (or we, in the case of us acting as agent for the Publisher) enter(s) any premises pursuant to this clause 36, you must procure the consent of all persons having any interest in the premises, to allow the Publisher (or us, in the case of us acting as agent for the Publisher) and its (or our) officers, employees, agents and authorised representatives entry. Where Goods referenced with a particular ISBN are ordered by you, any goods with the same ISBN remaining in your stock at any one time are deemed to be Goods purchased from us.
36. **Return of Goods** If, under the Agreement, you are entitled to return Goods after title or ownership in the Goods has passed to you:
- all title and ownership in the Goods will revert to the Publisher on the Publisher's (or our, in the case of us acting as agent for the Publisher) agreement to their return.
  - all risk in them shall remain with you until their delivery to the Publisher's (or our, in the case of us acting as agent for the Publisher) nominated warehouse.
37. **New Zealand** If the Delivery Country is New Zealand, you agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the PPS Act (New Zealand) shall not apply to enforcement of any security interest(s) created or provided for under the Agreement, and you waive any rights you have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPS Act (New Zealand) on such enforcement.
38. **Set Off** The Publisher (or we, in the case of us acting as agent for the Publisher) may set off any debt, liability or other amount owing by you to the Publisher (or us, in the case of us acting as agent for the Publisher), against any debt, liability or other amount the Publisher (or we, in the case of us acting as agent for the Publisher) may owe to you, at any time, without prior notice or demand. For that purpose, amounts due by you to the Publisher (or us, in the case of us acting as agent for the Publisher) in the future may be treated as payable now, and the Publisher (or we, in the case of us acting as agent for the Publisher) may place reasonable estimates on contingent liabilities. The Publisher (or we, in the case of us acting as agent for the Publisher) may pay amounts owing to you in any currencies at exchange rates reasonably determined by the Publisher (or us, in the case of us acting as agent for the Publisher).
39. **Trusts** Where you enter into the Agreement as trustee of a trust, you represent, warrant, agree, confirm, covenant and undertake in favour of the Publisher (and us, in the case of us acting as agent for the Publisher) that: (a) the trustee is liable under the Agreement in its personal capacity as well as in its capacity as trustee of the trust, (b) the trust is duly constituted and validly existing, (c) the trustee has the full legal capacity, power and authorisation under the trust deed to own, manage, administer, transfer, deal with and otherwise dispose of the trust property, and to enter into the Agreement both personally and on behalf of the trust, (d) the entry into the Agreement by the trustee has been approved by the beneficiaries of the trust should that be necessary, (e) the trustee has the right to be fully indemnified out of the trust property in relation to any debts or liabilities arising under or in connection with the Agreement, (f) the rights of the beneficiaries to, and the interests of the beneficiaries in, the trust property are subject and subordinate to the creditors of the trust, including the Publisher's (and our, in the case of us acting as agent for the Publisher) claims against you, (g) the Publisher is (and we are, in the case of us acting as agent for the Publisher) subrogated to the trustee's right of indemnification from and lien over trust assets and may proceed against the trust property to recover any amounts owing to the Publisher (and us, in the case of us acting as agent for the Publisher); and (h) you indemnify and hold the Publisher (and us, in the case of us acting as agent for the Publisher) harmless against any liabilities, losses, costs, charges and expenses incurred or suffered by the Publisher (and us, in the case of us acting as agent for the Publisher) in connection with any breach of any of the above representations, warranties, agreements, confirmations, covenants and undertakings.
40. **Inspection** You irrevocably authorise the Publisher (and us, in the case of us acting as agent for the Publisher) and its (and our) officers, employees, agents and authorised representatives, at any time, to enter your premises or any other premises on which the Collateral are held, to inspect the Collateral and inspect and take copies of records relating to the Collateral.
41. **Change of control** If you sell or dispose of in any way your business:
- adequate arrangements for the settlement of outstanding monies will be required by the Publisher (or us, in the case of us acting as agent for the Publisher) before or at settlement of such sale or disposal; and
  - all Goods held by you in respect of which title has not passed to you under clause 27A remain the property of the Publisher and cannot be transferred to the new owner unless authorised in writing by the Publisher (or us, in the case of us acting as agent for the Publisher).
43. **Attornment** For the purpose of giving effect to your obligations pursuant to the Agreement, you hereby irrevocably appoint us your attorney in all things. We may appoint any of our officers as a sub-attorney for the purposes of this clause 43.

#### LIABILITY LIMITATION

44. Except for terms, conditions or warranties that are implied by law and cannot be lawfully excluded, you agree that no term, condition, warranty, representation, understanding or agreement, other than the Agreement, is made or given by us or is relied on by you in relation to the subject matter of the Agreement (including, without limitation, the Goods).
45. If a term, condition or warranty that was breached cannot be lawfully excluded by agreement, then, to the maximum extent permitted by law, at our sole discretion, our entire liability and your exclusive remedy shall be limited to the:
- replacement or repair of Goods;
  - supply of equivalent goods; or
  - payment of the cost of replacing or repairing the Goods or of acquiring equivalent goods.
46. To the maximum extent permitted by law, in no event will we (and our officers, employees, agents, and contractors) be liable for any loss, damage, expense, cost or liability howsoever arising and on any theory of liability including contract, tort (including negligence) or statute, that arises during or is caused by our performance or non-performance of the Agreement, or arises in relation to the Goods or advice, recommendations, information, representations or services in or in relation to the Goods, including without limitation:
- any loss that is foreseeable, or in respect of which we were aware of its likelihood arising; and
  - any indirect or consequential loss or damage, including without limitation loss of profits, loss of revenue, loss of anticipated savings, loss of data, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of or damage to goodwill, loss of or damage to reputation, loss of management time, business interruption, damage to credit rating, or loss of business, whether or not such loss or damage is reasonably supposed to have been in the contemplation of you and/or us as the probable result of the relevant breach or act or omission.
47. If the Goods are acquired by you as a consumer under *the Competition and Consumer Act 2010* (Cth), our Goods come with guarantees that cannot be excluded under the Act. You are entitled to a replacement or refund, or compensation for any drop in value of the Goods, where there is a major failure in respect of the Goods. This clause does not apply to you if you are not a consumer within the meaning of the Act.

#### INTELLECTUAL PROPERTY RIGHTS, RECOMMENDED PRICES

48. 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.
49. 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

50. The governing law for the Agreement is the law of:
- the State of Victoria - if the Delivery Country is Australia.
  - New Zealand - if the Delivery Country is New Zealand.
51. If we are prevented from, or delayed in, complying with any obligation under the Agreement by any event or a thing beyond our reasonable control, that obligation is suspended until the event or thing has passed.
52. We may vary any or all of these Conditions at any time in our sole discretion, provided that such variation shall not affect any Order accepted by us prior to such variation.
53. 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.
54. 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.
55. 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