

OXFORD UNIVERSITY PRESS AUSTRALIA & NEW ZEALAND

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

In these Terms and Conditions unless the context otherwise clearly requires:-

"Customer" means the person who has acquired the Goods from OUP and includes the Customer's executors, administration, successors and permitted assigns, and where there is more than one person acquiring Goods from OUP then each such person shall be bound jointly and severally by these conditions.

"Customer Premises" shall mean the premises situated at the address for delivery as nominated by the Customer in the Application Form or such other address as may be nominated by the Customer from time to time to OUP in writing.

"Free In Store" (FIS) shall mean delivery of Goods (ordered by the Customer) to the Customer's premises, the cost of carriage, freight and insurance being borne by OUP and where the risk in and to the Goods passes to the Customer upon receipt of the goods at the Customer's premises.

"Goods" shall mean publications and without prejudice to the generality thereof shall include books, journals, video and audio cassettes and computer software.

"OUP" means The Chancellor, Masters and Scholars of the University of Oxford trading as Oxford University Press Australia, ARBN 007 510 125.

"Person" includes a corporation and a firm.

"GST" has the same meaning it has in the GST Legislation.

"GST Legislation" means for Australia a New Tax System (Goods and Services) Tax Act 1999 and all other Acts and Regulations dealing with the imposition of GST and the administration and collection of GST and for New Zealand the Goods and Services Tax Act 1985.

2. PAYMENT

2.1 Payment is required strictly within 30 days net from the end of the month of delivery of the Goods. OUP may charge interest on all amounts overdue, at an annual rate of 20%, from the due date until the account is paid in full.

2.2 A statement will be issued monthly. Where the statement is not paid in full, or a payment is made on a remittance advice, it is the Customer's responsibility to reconcile payments to our monthly statement and advise any discrepancies promptly.

2.3 Invoice or supply queries must be referred to our Customer Service Department within seven (7) days of receipt of Goods. Telephone numbers for Customer Service are printed on our invoice and statement.

2.4 Requests for copy invoices or proof of delivery must be made within 14 days from date of statement. We reserve the right to charge for Proof of Delivery advices of the item appearing on our statement.

2.5 All payments should be sent to the address shown on the invoice or statement, and should be accompanied by a payment advice clearly setting out all invoices being paid. Any deductions made for recognised claims, where the Credit Notes have not been raised, must be accompanied by full details of the invoice numbers, previous credit note numbers and return authorisation numbers.

3. PRICES

3.1 All price lists and prices quoted in respect of Goods:

- (a) are GST-inclusive
- (b) are subject to increase by OUP at any time without notice; and
- (c) will be invoiced at the price ruling at the date of dispatch by OUP.

4. ACCOUNTS AND TAX INVOICES

4.1 In the case of a new Customer, a credit application form must be completed and our terms of supply accepted before a credit account is opened.

4.2 OUP may at any time withdraw or suspend credit once the Customer's authorised limit has been exceeded.

4.3 A Customer operating as a limited liability company may be required to furnish a written guarantee from the Directors, before the account is opened or at some later time.

4.4 Minimum annual purchases of \$2000 are required in order to keep the account open.

4.5 OUP will issue Tax Invoices (as Defined in the GST Legislation) to the Customer where required to do so by the GST Legislation.

4.6 For supplies to New Zealand customers, the parties agree that section 8(4) of the Goods and Services Tax Act 1995 does not apply to any supplies of goods or services made under this contract by Oxford University Press to the customer. As a consequence of the agreement, supplies of goods or services made by Oxford University Press to the customer are deemed to be supplies made in New Zealand and are therefore changeable with Goods and Services Tax.

5. DELIVERY AND RISK

5.1 OUP shall deliver Goods to the Customer's premises.

5.2 Goods are supplied on a Free in Store (FIS) basis.

5.3 OUP may impose a delivery and handling surcharge on orders below \$100 net.

5.4 Where the Customer has requested special delivery arrangements:-

- (i) risk in respect of the Goods shall pass to the Customer upon the Goods leaving OUP's premises.
- (ii) Unless otherwise agreed in writing, OUP shall on behalf of the Customer arrange for the carriage of the Goods and their insurance against all usual risks, the costs of which shall be charged to the Customer's account.

(iii) OUP will not under any circumstances accept liability for damage, shortage or loss during transit.

5.5 Where a Customer refuses OUP's carrier's deliveries of parcels that have been ordered by the Customer, OUP may place the Customer on Stop Supply and cancel all orders held until OUP receives an agreement in writing from the Customer, that the Customer will accept delivery from OUP's carriers, of orders placed by the Customer.

5.6 OUP will not be liable for any loss incurred or suffered as a result of a failure to observe any of these Terms and Conditions or as a result of any delay in performance of any obligations due to any cause or circumstance beyond OUP's control, including, but not limited to any failure or delay in performance caused by any strikes, lock-outs, labour disputes, fires, acts of God or public enemy, delays in transport, breakdown in machinery, restrictions or prohibitions by any government or any semi-government authorities or embargos.

6. STOP SUPPLY

6.1 Failure to adhere to these terms will result in the account being placed on Stop Supply without notice.

6.2 OUP has the right to suspend back orders for accounts on Stop Supply.

6.3 Where OUP has placed a Customer in the hands of a debt collection agency or a solicitor for collection in respect of non-payment of account, OUP may withdraw all credit facilities, close all accounts and transfer any debt recovery costs to the Customer.

7. RESERVATION OF TITLE

Until the moment of payment in full of the purchase price of the Goods comprised in any order and until all other sums due by the Customer to OUP upon any account whatsoever have been paid or satisfied in full for those Goods and all cheques and other negotiable instruments relating to payment have been cleared:

(a) Title to the Goods comprised in any order shall remain the property of OUP notwithstanding the delivery of the Goods and the passing of risk therein.

(b) OUP may at any time recover the Goods if they are in the Customer's possession and resell the Goods if any payment owed by the Customer on any account is overdue or if OUP considers that the amount outstanding from the Customer on the general statement of account between the parties is in excess of the credit limit which OUP is willing to accord to the Customer and for this purpose OUP and its servants or agents may enter upon the Customer's premises or other premises upon which the Goods are situated in order to seize the same.

(c) The Customer shall possess all Goods comprised in this contract as bailee for OUP and on a fiduciary basis only and the Customer shall store such goods for OUP in proper manner without charge to OUP so that they are clearly identified as belonging to OUP.

(d) The Customer has the right to dispose of the Goods in the ordinary course of its business as agent for the account of OUP and to pass good title to the Goods to its customer being a bona fide purchaser for value without notice of OUP's rights.

(e) The Customer shall, whilst any moneys are owed by the Customer to OUP, not be at liberty to use or dispose of the Goods save as provided in clause 7(d) above.

(f) The Customer must at all times to the satisfaction of OUP maintain adequate insurance cover with a reputable insurer to cover any loss in respect of Goods which are the property of OUP in the possession of the Customer, and the Customer will produce to OUP upon request certificates of currency relating to all such policies of insurance.

8. CUSTOMER DEFAULT OR INSOLVENCY

If:

(a) the Customer fails for any reason whatsoever to pay punctually any monies due to OUP;

(b) in the sole opinion of OUP the financial circumstances of the Customer known to OUP so warrant;

(c) distress or execution is levied or enforced upon or against any of the assets or property of the Customer and is not withdrawn or satisfied within seven (7) days of its levy or issue;

(d) the Customer suspends payment of or is deemed to be insolvent within the meaning of Section 95A of the Corporations Law or otherwise enters or proposes to enter into any arrangement, scheme or composition with its creditors or any of them;

(e) (in the case of the Customer being a corporation) a petition is presented seeking the winding up of the Customer or a resolution proposed for the winding up of the Customer is effectively passed or if a receiver or administrator or an official manager is appointed or any encumbrancee takes possession of the undertaking or any property of the Customer;

(f) (in the case of the Customer being an individual) the Customer does or commits an act of bankruptcy;

(g) any inspector is appointed to investigate the affairs of the Customer; or

(h) the Customer defaults in the performance or observance of any of its obligations to OUP, then, in addition to any other rights and remedies which OUP may have at law or under this Agreement:-

- (i) all monies owing by the customer to OUP will become immediately due and payable;
- (ii) OUP may stop any Goods in the course of delivery or in transit to the Customer;
- (iii) OUP may, in addition to its rights under clause 7(b), repossess the Goods if they have been delivered and

are in the Customer's possession or control (and in such event OUP reserves the right of disposal of such Goods);

(iv) OUP may cease performance of and may thereupon cancel any contracts between OUP and the Customer for the sale of Goods, reserving to OUP all OUP's rights and remedies against the Customer; and/or

(v) OUP may suspend deliveries of Goods for such periods as OUP thinks fit.

OUP shall not be liable for any loss suffered or incurred by the Customer by reason of or in consequence of any cessation of performance or suspension of deliveries by OUP in accordance with this clause.

Customer covenants in favour of OUP that OUP will not be liable for any loss (whether through the negligence of OUP or its servants or agents or otherwise) suffered by the Customer as a result of OUP or its servants or agents entering the Customer's premises and removing all or any of the Goods or otherwise exercising its rights under this clause. The Customer hereby consents to such entry and to OUP taking any action necessary to take possession of the Goods.

9. RETURNS

9.1 OUP shall neither supply Goods on an "approval" basis nor shall it accept returns of Goods for reasons other than imperfection or damage, unless a written agreement is made with OUP stating otherwise.

9.2 Misbound, faulty or incorrect supply copies will be accepted for return with an authorisation issued by OUP. This Returns Authorisation will be mailed to the Customer. The Customer should ensure that:

- (a) the returns documentation is included.
- (b) the books are returned by OUP's carrier to the address shown on returns authorisation sticker.
- (c) the entire books must be returned unless otherwise indicated on the returns authorisation.
- (d) replacement Goods for misbound and faulty copies, will be supplied to the Customer at OUP's discretion.

9.3 The Customer must obtain a written authorisation from OUP for all other returns.

For other returns:

- (a) all books must be in a mint resaleable condition.
- (b) non-publisher price stickers must be removed.
- (c) books must be packaged for return with adequate protection to prevent damage during transit.

9.4 The Customer must use the carton label supplied. Cartons arriving without the labels will be returned to the Customer freight forward. The Customer will be charged freight at the prevailing rate for each carton returned.

9.5 If the Customer uses a carrier other than the one specified on the consignment note provided, OUP will not accept the charges from that courier.

9.6 Unauthorised returns will not be accepted. Unauthorised returns received by OUP will be returned at the Customer's expense.

10. WHOLE TERMS AND CONDITIONS

The Customer acknowledges that these Terms and Conditions are the only Terms and Conditions applicable to a contract for sale of Goods between the Customer and OUP and no other Terms and Conditions or parts of other Terms and Conditions form part of any contract between the parties for the sale of Goods (save for any non-excludable Terms and Conditions that may be implied by any relevant statute) unless otherwise agreed to by OUP in writing. These Terms and Conditions supersede all previous Terms and Conditions and may be varied by OUP in its discretion without notice. No employee, servant, representative or agent of OUP has any authority to vary these Terms and Conditions or any of them unless otherwise indicated in writing by one of the authorised managers of Oxford University Press.

11. GOVERNING LAW

The contract (of which these Conditions form part) shall be governed by and construed in accordance with the laws of the State of Victoria and the Federal Court of Australia and OUP and the Customer hereby unreservedly submit to the jurisdiction of the Courts.

12. ASSIGNMENT

The contract is personal to the Customer and may not be assigned or novated in any circumstances.

13. CANCELLATIONS

Cancellation of orders should be made in writing to OUP's Melbourne office.

14. WAIVER

Any failure or delay on the part of OUP in insisting upon strict performance by the Customer of any provision of the contract (including these Conditions) shall not be taken to be a waiver of such provision or of any rights of OUP under or in relation thereto and in particular but without limiting the generality of the foregoing shall not be taken to be a waiver of the same provision on any subsequent occasion.

15. NOTICE

Any notice required to be given by OUP to the Customer pursuant to the contract (including these Conditions) shall be in writing and shall be given by OUP to the Customer by delivering or posting such notice to the address of the Customer last known to OUP and shall deem to have been properly given. If delivered, on the day of such delivery or, if posted, on the day being two (2) days after the day on which such notice was posted to the address of the Customer.