

Terms and Conditions of Sale

University of New South Wales Press Limited ABN 40 000 382 669 (NewSouth Books)

1 General

- (a) NewSouth Books (**NSB**) distributes books and other goods (**Goods**) on behalf of publishers.
- (b) These terms and conditions (**Conditions**) apply to all orders placed by customers for the supply and delivery of Goods (**Customers**).

2 Orders

2.1 Supply of orders

- (a) Goods ordered by Customers are supplied subject to availability.
- (b) NSB will attempt to meet scheduled delivery dates but is not liable for any loss or damage resulting from delay or failure to supply.
- (c) NSB may reduce the size of an order or not supply an order where Goods are out of stock, in short supply or otherwise not available.

2.2 Back orders

- (a) NSB may notify the Customer in writing if:
 - (i) NSB reduces the size of an order, or does not supply an order under paragraph 2.1(c); and
 - (ii) the component of the order not supplied are expected to be available later.

(Back Order Goods).

- (b) A Customer can cancel any order for Back Order Goods by providing notice to NSB in writing. That written notice must be provided within 14 days of written notice given to NSB under paragraph 2.2(a).

2.3 Minimum orders

- (a) A '**Minimum Order**' is any order which is less than the NSB minimum order threshold stated in the relevant NSB Schedule of Charges available on the NSB website, calculated using the Recommended Retail Price (**RRP**). Not yet published, non-stockholding titles or out-of-print titles are not taken into account in determining a Minimum Order. 'New Releases' are subject to the same minimum order threshold and NSB reserves the right to apply minimum order conditions.
- (b) Subject to paragraph 2.3(b)(iii), NSB will hold any order which is less than the Minimum Order until the earlier of:
 - (i) 28 days (in which case the surcharge in paragraph 2.3(b)(iii) will apply); or
 - (ii) until further orders are received from the same Customer which bring the order to a Minimum Order, or
 - (iii) if requested by the Customer in writing, NSB will release orders that are less than the Minimum Order if the Customer pays the small order surcharge stated in the NSB schedule of charges.

2.4 Electronic order processing

Orders placed electronically are considered to be valid orders if they meet the following criteria:

- (a) for orders placed by Electronic Data Interchange - the Customer's standard address number and password are used; or
- (b) for orders placed by other electronic means (such as barcode scanners, etc.):
 - (i) a valid Order Number is used; or
 - (ii) an Order Confirmation is signed by the Customer.

3 Price

3.1 RRP

Publishers will determine the RRP (inclusive of GST) of their goods and may vary the RRP from time to time without notice.

3.2 Point of sale price

The Customer is not obliged to sell goods at the RRP.

4 Delivery

4.1 Freight

Freight on delivery of Goods to the Customer is charged as follows:

- (a) for each order equal to or greater than the Minimum Order - no charge; and
- (b) for each order less than the Minimum Order - see freight charges in the NSB Schedule of Charges.

4.2 Shortages

All claims for shortages must be received by NSB within 7 days after delivery and must specify the relevant invoice number and the details of the shortage including International Standard Book Number (**ISBN**), title and quantity. NSB is not liable for claims received after this time.

4.3 Goods refused

If a Customer refuses delivery of goods ordered by the Customer (other than where the goods are damaged or defective), the Customer must pay NSB within 5 days of a demand an amount determined by NSB (acting reasonably) to recover NSB's costs.

4.4 Damaged or defective goods

NSB will issue a Returns Authorisation and, if required by the Customer, re-invoice freight free on replacement of the following Goods (subject to availability):

- (a) defective goods; and
- (b) goods damaged in transit, subject to the Customer notifying NSB of the defect or damage within 7 days after delivery (including the ISBN, title, quantity and related invoice number) and the Customer returning the goods to NSB prior to the expiry date as noted on the Returns Authorisation. NSB will issue a credit note for any approved returns on receipt of the defective goods.

5 Goods Supplied on a Sale or Return Basis

Goods may be returned to NSB for credit only, under the following conditions.

5.1 Supply of goods on a 'sale or return' basis

- (a) The Customer is responsible for the cost of returning authorised returns to NSB unless otherwise agreed in writing between NSB and the Customer.

- (b) Goods are supplied on a sale or return basis unless they are designated 'Firm Sale', 'NST (non-stockholding titles)' or 'indent'. For the purpose of this paragraph, 'sale or return' means where NSB has supplied goods on the basis that the Customer can apply to NSB to return the goods to NSB if they are not sold.
- (c) Returns must be authorised by NSB and are subject to:
 - (i) the returns being authorised as per the individual publisher terms of trade available on the NSB website or as disclosed to the Customer from time to time;
 - (ii) the returned goods being received at NSB in mint, saleable condition and without in-store pricing, or promotional markings; and
 - (iii) the return being authorised no earlier than 3 (three) months after the invoice date and no later than 12 (twelve) months after the invoice date.
- (d) Any Goods returned to NSB that NSB considers (acting reasonably) are in non-mint or unsaleable condition or have any in-store pricing may be returned to the Customer at the Customer's expense, including a reasonable handling fee.

5.2 Returns authorisation

- (a) NSB or Publishers distributed by NSB may at any time limit the quantity of sale or return goods which it will authorise for return. To facilitate authorisation of returns, the Customer must provide NSB with a request for return in writing or electronically. All requests for returns must specify the relevant ISBN, title and quantity.
- (b) Once a request for return has been authorised NSB will issue a returns authority in writing.

5.3 Unauthorised returns

If any Goods are returned to NSB other than in accordance with paragraphs 5.1-5.2, NSB may:

- (a) return them to the Customer at the Customer's expense, including a reasonable handling fee; or
- (b) if the Customer's account details do not enable NSB to return the Goods, dispose of the unauthorised returns as it sees fit without any credit to the Customer.

5.4 Not our publication

NSB will not accept returns of Goods which were not or have subsequently ceased to be distributed by NSB. NSB may, at its own discretion, dispose of any such Goods as it sees fit.

5.5 Tertiary and educational titles

Each publisher will determine the return rights in relation to text orders for tertiary, professional and educational titles, including orders placed for student course use.

5.6 Packaging of authorised returns

Customers must return the Goods in cartons which:

- (a) arrive at the warehouse prior to the expiry date, as noted on the return authorisation;
- (b) bear the NSB returns authorisation number clearly marked on the exterior of each carton;
- (c) indicate clearly the number of cartons being returned (for example, carton 1 of 1, carton 2 of 2); and
- (d) do not exceed 16 kg weight per carton.

5.7 Delivery of authorised returns

- (a) In all cases, delivery of returns will be at the Customer's risk and cost. NSB is not responsible for any non-delivery, damage or shortage. The Customer may use the carrier nominated by NSB to deliver returns to NSB. NSB may change the nominated carrier from time to

time without notice to Customers. The Customer acknowledges that this right is required to protect the legitimate business interests of NSB and so that deliveries can be accommodated in peak periods.

- (b) If the Customer uses the nominated NSB carrier, a charge for freight and handling will be deducted from the Customer's credit note or account as stated in the NSB schedule of charges. NSB may vary this charge from time to time without notice to Customers. The Customer acknowledges that this right is required to protect the legitimate business interests of NSB and so that deliveries can be accommodated in peak periods.
- (c) Freight charges levied by any carrier will not be accepted by NSB. Goods delivered by any other carrier other than the NSB nominated carrier will only be accepted by NSB if the delivery is pre-paid.
- (d) It is the Customer's responsibility to investigate non-deliveries with the chosen carrier even if that carrier is the NSB nominated carrier. All deliveries will be accepted pending verification of the contents.

5.8 Credit for returns

All adjustments for returns will be by way of credit note adjusting the Customer's account with NSB. Credit notes and credit balances cannot be redeemed in cash.

6 No release

The Customer must not release or disclose titles prior to the 'In Store Date' or 'On Sale Date' notified by the publisher.

7 Invoices

7.1 Price

All goods are invoiced by NSB at the RRP (including GST) less any discount agreed between the Customer and the publisher or at a net price agreed between the Customer and the publisher.

7.2 Goods and Services Tax (GST)

- (a) In relation to any GST payable by NSB for a taxable supply (as defined under GST law) of goods, the Customer must pay the GST subject to NSB providing a tax invoice (as defined under GST law).
- (b) GST is payable by the Customer without any deduction or set off for any other amount at the same time as the payment for the goods is due.

7.3 Currency

Prices are expressed in Australian currency, unless otherwise stated.

7.4 Discount

Each publisher will determine the discounts for individual Customers and may vary these discounts at any time.

8 Credit

8.1 Credit limit

- (a) NSB will determine a credit limit for each Customer.
- (b) NSB may, acting reasonably, terminate a Customer's credit at any time.
- (c) NSB is not liable for any loss or damage suffered by the Customer as a result of termination of a Customer's credit or a change in a Customer's credit limit.
- (d) NSB is not obliged to fill an order where the Customer's order exceeds the Customer's credit limit.

8.2 Cash with Order

- (a) NSB accepts cash with order when a Customer does not wish to utilise credit facilities or is otherwise unable to satisfy credit account requirements.

- (b) All cash with order sales are sold 'firm sale' unless otherwise agreed by the parties and at a discount off the RRP as stated in the NSB Schedule of charges, unless otherwise agreed. NSB accepts Visa, or MasterCard credit and debit cards for payment of 'cash with order' sales.
- (c) Credit and debit card sales incur a surcharge in compliance with the *Competition and Consumer Act 2010* (Cth) and as stated in the NSB schedule of charges.
- (d) NSB will only supply and charge for Goods which are currently available.

8.3 Change of Ownership

A Customer remains liable for outstanding unpaid invoices regardless of a change in its ownership, unless the former owner advises NSB in writing that it accepts liability for the unpaid invoices. The new owner has no right of return until the invoices have been paid.

8.4 Change in business structure

The Customer must inform NSB in writing within 7 days of any change in its business or corporate structure, including a change in ownership.

9 Payment

9.1 Payment terms

- (a) The Customer must pay NSB in full for Goods supplied by NSB on credit within 30 days after the end of the month in which they are invoiced unless otherwise agreed.
- (b) NSB may charge interest on overdue amounts at a rate of 1% above the National Australia Bank Base Indicator Rate (Business) calculated on a daily basis from the due date to the date of payment.

9.2 Stop supply

- (a) If payment is not received by the due date, NSB may stop supplying Goods to the Customer until payment is received in full, including any applicable interest.
- (b) On the second or subsequent occasion a Customer hasn't made a payment by the due date, NSB may without further notice terminate the Customer's credit.

9.3 Unauthorised deduction of returns claims

The Customer must make payments in full without any set-off or deduction, including any deduction for returns claims which are not subject to a credit note issued by NSB.

9.4 Disputed Amounts

- (a) The Customer must advise NSB of any disputed invoices or accounts within 10 days after the date of invoice and, if the matter cannot be resolved between the Customer and NSB, must refer the matter to dispute resolution in accordance with paragraph 13.
- (b) If there is an amount in dispute, the Customer must pay the undisputed amount by the due date.

9.5 Collection costs

The Customer must reimburse all costs incurred by NSB in collecting outstanding amounts, including the fees of any agents or lawyers engaged by NSB for this purpose.

9.6 Immediate payment

Notwithstanding any other term of these Conditions, the Customer must pay all outstanding amounts immediately if the Customer:

- (a) breaches any of these conditions, any undertaking given to NSB or any term of any credit arrangement;
- (b) is a natural person and is declared bankrupt or commits an act of bankruptcy; or

- (c) is a company and is unable to pay its debts when due, is wound up, has a receiver or receiver and manager appointed, is placed under official management, enters into any arrangement or compromise with its creditors or members, or if any resolution is proposed which would, if passed, result in its being wound up voluntarily or otherwise becomes subject to any form of external administration.

9.7 Personal property securities

The Customer must pay to NSB all costs and expenses which NSB may incur in:

- (a) preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) in relation to any Security Interest(s) that are granted to NSB under these Conditions;
- (b) maintaining those registrations; and
- (c) enforcing any Security Interest(s) granted to NSB under these Conditions.

10 Title and Risk

10.1 Title

- (a) Title to Goods delivered to the Customer remains with NSB until NSB has been paid in full for the Goods. If payment is made by cheque, payment occurs when NSB receives the amount of the cheque in cleared funds.
- (b) NSB will not accept payment by way of credit card (unless cash with order).
- (c) If NSB does not receive payment for Goods when payment is due, NSB or its nominee is entitled to enter the Customer's premises and re-take possession of the goods.
- (d) The Customer must insure the Goods from the date of delivery to the date title in them passes to the Customer or until the sale of the Goods in accordance with this paragraph, whichever is the earlier. Until title to the Goods passes to the Customer:
 - (i) the Customer holds the Goods solely as fiduciary and bailee for NSB; and
 - (ii) subject to this paragraph, the Customer may sell the Goods but as fiduciary and bailee for NSB and the proceeds of sale or any other proceeds arising from the Goods or an insurance claim regarding the Goods must be held in a separate account in trust for NSB.
- (e) If the Customer suffers from any form of external administration, the Customer's right to sell the Goods automatically terminates.
- (f) The Customer acknowledges that until title to any Goods passes to the Customer in accordance with this paragraph 10, NSB has a Security Interest in the Goods and any proceeds (as defined in the PPS Act) of the Goods. This Security Interest is a "purchase money security interest" under the PPS Act to the extent that it secures payment of the amounts owing in relation to those particular Goods. The Customer will do anything reasonably required by NSB to:
 - (i) enable NSB to register a financing statement on the PPS Register in relation to that Security Interest, with the priority NSB requires; and
 - (ii) to maintain that registration.

The Security Interest arising under this paragraph 10 attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any Security Interest arising under this paragraph 10 attaches at any later time.

10.2 Risk

Goods delivered to the Customer are at the Customer's risk from the time of delivery to the Customer or such person or premises as the Customer directs.

11 Charge

In addition to the rights of NSB under paragraph 10, as security for the due and punctual payment of the Secured Moneys to NSB, the Customer:

- (a) charges to NSB all of the Goods supplied to the Customer by NSB; and
- (b) charges to any proceeds (as defined in the PPS Act) of any goods supplied to the Customer by NSB including without limitation any Accounts, Chattel Paper or other rights or choses in action that arise as a result of a dealing with the Goods or any part of them.

For the purposes of this paragraph 11:

- (c) **'Secured Moneys'** means, in relation to a charge of goods, all debts and monetary liabilities that the Customer owes to NSB who supplied the Goods on any account or under or in relation to any agreements between NSB and the Customer in connection with the sale of Goods and in any capacity and irrespective of whether the debts or liabilities:
 - (i) are present or future;
 - (ii) are actual, prospective, contingent or otherwise;
 - (iii) are at any time ascertained or unascertained;
 - (iv) are owed or incurred by or on account of the Customer alone, or severally or jointly with any other person;
 - (v) are owed to or incurred for the account of NSB alone, or severally or jointly with any other person;
 - (vi) are owed to any other person as agent (whether disclosed or not) for or on behalf of NSB;
 - (vii) are owed or incurred as principal, interest, fees, charges, taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;
 - (viii) are owed to or incurred for the account of NSB directly or as a result of:
 - (A) the assignment to NSB of any debt or liability of the Customer; or
 - (B) any other dealing with any such debt or liability;
 - (ix) are owed to or incurred for the account of NSB before the date of these Conditions; or
 - (A) comprise any combination of the above;
 - (B) 'Account' means an account within the meaning of the PPS Act; and
 - (C) 'Chattel Paper' means chattel paper within the meaning of the PPS Act.

12 Liability

(a) In this paragraph 12:

- (i) **Australian Consumer Law (ACL)** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

(ii) **Consumer** has the meaning given in section 3 of the ACL. **Consumer Guarantee** means a consumer guarantee applicable to this contract under the ACL.

(iii) **Title Guarantee** means a guarantee pursuant to any of sections 51, 52 or 53 of the ACL.

(b) Except where paragraph 12(c) applies, NSB's liability under these Conditions is limited to the amount paid by the Customer for the Goods. In no event will NSB be liable to the Customer (whether in contract, tort or otherwise) for any consequential, special, incidental or indirect loss or damage including loss of profit which may arise under these conditions or otherwise in respect of Goods ordered or supplied.

(c) If the Customer is a Consumer:

(i) paragraph 12(b) does not apply to any liability of NSB for failure to comply with a Consumer Guarantee;

(ii) subject to paragraph 12(c)(iii) below, the liability of NSB for loss, however caused, (including by the negligence of NSB), suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee to NSB (at its election) is limited to:

- (A) Replacing the goods or supplying equivalent goods; Repairing the goods; or
- (B) Paying the cost of replacing the goods or of acquiring equivalent goods; or Paying the cost of having the goods repaired, and

(iii) paragraph 12(c)(ii) above does not apply in relation to a Title Guarantee or if it is not fair or reasonable for NSB to rely on it.

13 Dispute Resolution

(a) This paragraph 13 applies to any dispute arising out of or relating to these Conditions including a dispute about the breach, termination, validity, or subject matter of these Conditions, or a claim in equity or in tort relating to the performance or non-performance of these Conditions which arises between the parties in connection with these Conditions (**Dispute**). Each party must follow the dispute resolution process in this paragraph before it commences litigation or takes similar action, except to seek an urgent injunction or declaration.

(b) If a party considers that a Dispute has arisen (**Initiating Party**), it must give notice in writing of the Dispute to the other party (**Receiving Party**), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).

(c) Within thirty (30) days of the service of the Dispute Notice by the Initiating Party on the Receiving Party, the Chief Executive Officer of each party, or their delegates who have appropriate authority to resolve the Dispute (collectively, the **Senior Representatives**) will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.

(d) If the Dispute is not resolved within thirty (30) Business Days after the Dispute is referred to Senior Representatives, the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.

(e) Where a Dispute is referred to mediation under paragraph (d) above:

- (i) the mediation will be conducted in accordance with the ADC Guidelines for Commercial

Mediation operating at the time the matter is referred to ADC (**Guidelines**); and

- (ii) the terms of the Guidelines are hereby deemed incorporated into these Conditions.
- (f) Prior to the resolution of a Dispute, each party must continue to perform its obligations under these Conditions:
 - (i) unless the nature of the Dispute renders it impossible to do so; or
 - (ii) unless and until such obligations are terminated or expire in accordance with this Agreement.
- (g) This paragraph 13 survives termination of these Conditions.

14 Personal Property Securities Act

14.1 Confidentiality

The Customer and NSB agree that neither party will disclose to an "interested person" (as defined in section 275(9) of the PPS Act) or any other person, any information of the kind described in section 275(1) of the PPS Act. The Customer must not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

14.2 Notices

NSB does not need to give the Customer any notice under the PPS Act (including a notice of a verification statement) unless the notice is required by the PPS Act and that requirement cannot be excluded.

14.3 Enforcement of Security Interests

- (a) All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under these Conditions, except as excluded below.
- (b) The following provisions of the PPS Act will not apply to the enforcement of the Security Interest(s) created under these Conditions:
 - (i) section 95 (notice of removal of accession), to the extent that it requires NSB to give a notice to the Customer;
 - (ii) section 121(4) (enforcement of liquid assets – notice to grantor);
 - (iii) section 130 (notice of disposal), to the extent that it requires NSB to give a notice to the Customer;
 - (iv) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (v) subsection 132(4) (statement of account if no disposal);
 - (vi) section 135 (notice of retention);
 - (vii) section 142 (redemption of collateral); and
 - (viii) section 143 (reinstatement of security agreement).

15 General

15.1 Waiver

A failure by NSB to exercise a right under these Conditions or to enforce any of these Conditions does not constitute a continuing or future waiver of any right.

15.2 Force majeure

If NSB is prevented from or delayed in complying with any obligation under these conditions by anything which is beyond the reasonable control of NSB, that obligation will be suspended during the time that NSB is prevented from or delayed in complying with the obligation.

15.3 Severance

If any provision in these Conditions is wholly or partially void or unenforceable that provision is deemed severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of these Conditions is not affected.

15.4 Variation

NSB may from time to time by notice to Customers vary these Conditions.

15.5 Governing law and jurisdiction

The Laws of New South Wales, Australia govern these Conditions, and the parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.