

ALLIANCE DISTRIBUTION SERVICES PTY LTD
ABN 83 081 516 529
STANDARD TERMS & CONDITIONS OF SUPPLY

General

ADS is the agent for the distribution of books and other goods of publishers that retain ADS as their agent for that purpose. These conditions are the terms on which ADS supplies books and other goods to Customers. They should be read in conjunction with each publisher's own terms of trade. To the extent of any inconsistency between these conditions and the publisher's terms of trade, the publisher's terms of trade prevail. These conditions apply to the exclusion of all other terms, including any terms which may be contained on a Customer's order. These conditions may only be varied with the written authority of the Distribution Director of ADS.

The Customer acknowledges that:

- a) under these Terms and Conditions of Supply it grants 'Security Interest(s)' (as defined in the Personal Property Securities Act 2009 (Cth) (**PPS Act**)) to ADS including without limitation each of the following security interests:
 - i. First, a retention of title in respect of the goods (in accordance with paragraph 9); and
 - ii. Secondly, a charge over the goods (in accordance with paragraph 10); and
- b) these Terms and Conditions of Supply constitute a 'Security Agreement' for the purposes of the PPS Act; and
- c) ADS may perfect its Security Interests by lodging a Financing Statement (as defined in the PPS Act) on the Personal Property Securities Register established under the PPS Act.

1. Orders

Supply of orders

Goods ordered by Customers are supplied subject to availability. ADS will attempt to meet scheduled delivery dates:

- a) but is not liable for any loss or damage resulting from a delay in or failure to supply; and
- b) reserves the right to reduce the size of an order or not supply an order where goods are out of stock, in short supply or otherwise not available.

Back orders

Goods which are out of stock but which are expected to be available at a future date will be recorded by ADS for later supply unless the Customer otherwise notifies ADS in writing.

Minimum orders

A minimum order is any order which is currently less than the ADS minimum order threshold stated in the ADS schedule of charges, calculated on the Recommended Retail Price (RRP). Any part of any order that includes NYP, NST or OP titles is not taken into account in determining a Minimum Order. 'New Releases' are subject to the same minimum order threshold and ADS reserves the right to apply minimum order conditions.

Subject to the following paragraph, ADS will hold any order which is less than the Minimum Order until the earlier of 28 days (in which case the surcharge in the following paragraph will apply) or until further orders are received from the same Customer which bring the order to a Minimum Order, or

On the written request of the Customer, ADS will release orders of less than the Minimum Order on acceptance by the Customer of a small order surcharge will apply as stated in the ADS schedule of charges.

Electronic order processing

Orders placed electronically are considered to be valid orders if:

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

2. Price

RRP

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

Point of sale price

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

3. Delivery

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 minimum order charge.

Shortages

All claims for shortages must be received by ADS within 7 days after delivery and must specify the relevant invoice number and the details of the shortage including ISBN, title and quantity. ADS is not liable for claims received after this time.

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 ADS immediately on demand an amount determined by ADS to recover ADS's costs.

Damaged or defective goods

ADS will issue a Returns Authorisation and, if required by the customer, re-invoice freight free on replacement of the goods (subject to availability):

- a) defective goods; and
- b) goods damaged in transit,

subject to the Customer notifying ADS 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 ADS prior to the expiry date as noted on the Returns Authorisation. ADS will issue a credit note for any such approved returns upon receipt at ADS of the defective goods.

4. Goods Supplied on a Sale or Return Basis

Credit

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

Supply of goods on a 'sale or return basis'

The Customer must bear the cost of returning authorised returns to ADS unless otherwise agreed in writing between ADS and the Customer.

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 ADS has supplied goods on the basis that the Customer can apply to ADS to return the goods to ADS if they are not sold.

Returns must be authorised by ADS and are subject to:

- a) the returns being authorised as per the individual publisher terms of trade; and
- b) the returned goods being received at ADS in mint, saleable condition and without in-store pricing, or promotional markings.

Any goods returned to ADS that are considered by ADS to be in non-mint or unsaleable condition or bearing any in-store pricing may be returned to the Customer at the Customer's expense, including a handling fee.

Returns authorisation

ADS or Publishers distributed by ADS 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 ADS with a

request for return in writing or electronically. All requests for returns must specify the relevant ISBN, title and quantity.

Once a request for return has been authorised ADS will issue a returns authority in writing -.

Unauthorised returns

If any goods are returned to ADS other than in accordance with this paragraph 4, ADS may:

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

Not our publication

ADS will not accept returns of goods which were not or have subsequently ceased to be distributed by ADS. ADS may, at its own discretion, dispose of any such goods as it sees fit. **Backlist** Backlist titles are supplied on a firm sale basis. A title becomes Backlist on the anniversary of the first day of the month following the month of the publication (for example, a title which is published on 15 March 2011 becomes Backlist on 1 April 2012).

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.

Packaging of authorised returns

The Customer must return the goods in cartons which:

- a) arrive in the ADS warehouse prior to the expiry date as noted on the return authorisation;
- b) bear the ADS 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.

Delivery of authorised returns

In all cases, delivery of returns will be at the Customer's risk and cost. ADS will not be responsible for any non-delivery, damage or shortage. The Customer may use the carrier nominated by ADS to deliver returns to ADS. ADS may change the nominated carrier from time to time without notice to Customers.

If the Customer uses the nominated ADS carrier, a charge for freight and handling will be deducted from the Customer's credit note or account as stated in the ADS schedule of charges. ADS may vary this charge from time to time without notice to Customers.

Freight charges levied by any carrier will not be accepted by ADS. Goods delivered by any other carrier other than the ADS nominated carrier will only be accepted by ADS if the delivery is pre-paid.

It is the customers responsibility to investigate non-deliveries with the chosen carrier even if that carrier is the ADS nominated carrier. All deliveries will be accepted pending verification of the contents.

Credit for returns

All adjustments for returns will be by way of credit note adjusting the Customer's account with ADS.

Credit notes and credit balances cannot be redeemed in cash.

5. Release

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

6. Invoices

Price

All goods are invoiced by ADS 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.

Goods and Services Tax (GST)

In relation to any GST payable by ADS for a taxable supply (as defined under GST law) of goods, the Customer must pay the GST subject to ADS providing a tax invoice (as defined under GST law).

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.

Currency

Prices are expressed in Australian currency, unless otherwise stated.

Discount

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

7. Credit

Credit limit

ADS will determine a credit limit for each customer.

ADS may for any reason terminate a Customer's credit at any time.

ADS 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.

ADS is not obliged to fill an order where the Customer's order exceeds the Customer's credit limit.

Cash with Order

ADS accepts cash with order when a customer does not wish to utilise credit facilities or is otherwise unable to satisfy credit account requirements. All cash with order sales are sold 'firm sale' and at a discount of off the RRP as stated in the ADS Schedule of charges, unless otherwise agreed. ADS accepts Visa, or MasterCard credit and debit cards for payment of 'cash with order' sales. Credit and debit card sales incur a surcharge in compliance with the Competition and Consumer Amendment (Payment Surcharges) Act 2016 and as stated in the ADS schedule of charges.

ADS shall only supply and charge for those goods which are currently available.

Change of Ownership

Any Customer who has transferred ownership of its business to a new owner remains liable for outstanding invoices unless the new owner advises ADS in writing that it accepts liability for these invoices. The new owner has no right of return until the invoices have been paid.

Change in business structure

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

8. Payment

Payment terms

The Customer must pay ADS in full for goods supplied by ADS on credit within 30 days after the end of the month in which they are invoiced or as otherwise agreed.

The Customer may be charged interest on any overdue amount 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.

Stop supply

If payment is not received by the due date, ADS may without notice to the Customer place the Customer on stop supply until payment is received in full, including any applicable interest.

On the second or subsequent occasion a Customer is placed on stop supply, ADS may without further notice terminate the Customer's credit.

Unauthorised deduction of returns claims

The Customer must not deduct from an invoice or payment returns claims which are not subject to a credit note issued by ADS.

Disputed amounts

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The Customer must advise ADS 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 ADS, must refer the matter to dispute resolution in accordance with paragraph 12.

If there is an amount in dispute the Customer must pay the undisputed amount as it is due.

Collection costs

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

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

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

Personal property securities

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

- a) preparing, lodging or registering any Financing Statement or Financing Change Statement (each as defined in the PPS Act) in relation to any Security Interest(s) that are granted to ADS under these Terms and Conditions of Supply;
- b) maintaining those registrations; and
- c) enforcing any Security Interest(s) granted to ADS under these Terms and Conditions of Supply.

9. Title and Risk

Title

Title to goods delivered to the Customer remains with ADS until ADS has been paid in full for the goods. If payment is made by cheque, payment occurs when ADS receives the amount of the cheque in cleared funds.

ADS will not accept payment by way of credit card (unless cash with order).

If ADS does not receive payment for goods when payment is due, ADS or its nominee is entitled to enter the Customer's premises and re-take possession of the goods.

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:

- a) the Customer holds the goods solely as fiduciary and bailee for ADS; and
- b) subject to this paragraph, the Customer may sell the goods but as fiduciary and bailee for ADS 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 ADS.

If the Customer suffers from any form of external administration, the Customer's right to sell the goods automatically terminates.

The Customer acknowledges that until title to any goods passes to the Customer in accordance with this paragraph 9, ADS 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 ADS to:

- enable ADS to register a financing statement on the PPS Register in relation to that Security Interest, with the priority ADS requires; and
- to maintain that registration.

The Security Interest arising under this paragraph 9 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 9 attaches at any later time.

Risk

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

10. Charge

In addition to the rights of ADS under paragraph 9, as security for the due and punctual payment of the Secured Moneys to ADS the Customer:

- a) charges to ADS all of the goods supplied to the Customer by ADS; and
- b) charges to any proceeds (as defined in the PPS Act) of any goods supplied to the Customer by ADS 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 10:

- a) "Secured Moneys" means, in relation to a charge of goods, all debts and monetary liabilities that the Customer owes to ADS who supplied the goods on any account or under or in relation to any agreements between ADS 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 ADS 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 ADS;
 - 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 ADS directly or as a result of:
 - A. the assignment to ADS 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 ADS before the date of these Terms and Conditions for Supply; 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.

11. Liability

a) In this section:

- Australian Consumer Law (ACL) means Schedule 2 to the Competition and Consumer Act 2010 (Cth)
- Consumer has the meaning given in section 3 of the ACL. Consumer Guarantee means a consumer guarantee applicable to this contract under the ACL
- Title Guarantee means a guarantee pursuant to any of sections 51, 52 or 53 of the ACL

b) Except where clause (c) applies, ADS's liability under these conditions is limited to the amount paid by the Customer for the goods. In no event will ADS 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:

1. clause 11(b) does not apply to any liability of ADS for failure to comply with a Consumer Guarantee;
2. subject to paragraph 3 below, the liability of ADS for loss, however caused, (including by the negligence of ADS), suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee to ADS (at its election):
 - Replacing the goods or supplying equivalent goods;
 - Repairing the goods;
 - Paying the cost of replacing the goods or of acquiring equivalent goods; or
 - Paying the cost of having the goods repaired, and
3. paragraph 2 above does not apply in relation to a Title Guarantee or if it is not fair or reasonable for ADS to rely on it.

12. Dispute Resolution

Dealing with disputes

The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.

If a party requires resolution of a dispute it must do so in accordance with the provisions of this paragraph 12 and the parties acknowledge that compliance with these provisions is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except in the case of applications for urgent interlocutory relief or a breach by the other party of this paragraph 12.

Resolution by management

If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party.

If the dispute is not resolved within 1 month of submission of the dispute to them, or such other time as they agree, the provisions of the following paragraph will apply.

Conciliation

Differences or disputes must be submitted to conciliation in accordance with and subject to The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.

A party may not commence proceedings in respect of the dispute unless the dispute is not settled by conciliation within one month after submission to conciliation, or such other time as the parties agree.

13. Personal Property Securities Act

Confidentiality

The Customer and ADS 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 will not authorise the disclosure of any information of the kind described in section 275(1) of the PPS Act.

Notices

ADS 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.

Enforcement of Security Interests

All of the enforcement provisions of Chapter 4 of the PPS Act apply to all of the Security Interests created under these Terms and Conditions of Supply, except as excluded below.

The following provisions of the PPS Act will not apply to the enforcement of the Security Interest(s) created under these Terms and Conditions of Supply:

- a) section 95 (notice of removal of accession), to the extent that it requires ADS to give a notice to the Customer;
- b) section 121(4) (enforcement of liquid assets – notice to grantor);
- c) section 130 (notice of disposal), to the extent that it requires ADS to give a notice to the Customer;
- d) paragraph 132(3)(d) (contents of statement of account after disposal);
- e) subsection 132(4) (statement of account if no disposal);
- f) section 135 (notice of retention);
- g) section 142 (redemption of collateral); and
- h) section 143 (reinstatement of security agreement).

14. General

Waiver

A failure by ADS 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.

Force majeure

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

Severance

If any provision of these terms 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 provisions is not affected.

Variation

ADS may from time to time by notice to Customers vary these conditions. A variation takes effect despite any accidental failure to give notice to any Customer.

Governing law and jurisdiction

These conditions are governed by and must be construed in accordance with the laws of New South Wales, Australia

Each party:

- a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
- b) waives any right to object to proceedings being brought in those courts for any reason.

Signed on Behalf of:

Full business trading name

ABN

Full company name

ACN:

Authorised Signatory

Date

Name and Title