

**ALLIANCE DISTRIBUTION SERVICES PTY LTD**  
**ABN 83 081 516 529 / NZ GST 85-025-902**  
**STANDARD TERMS & CONDITIONS OF SUPPLY**

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## General

ADS is the agent for the distribution of books and other goods of publishers distributed by ADS. 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 General Manager of ADS.

## 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 less than the ADS minimum order threshold stated in the ADS schedule of charges, calculated on the Recommended Retail Price (RRP) as determined in paragraph 2 (Minimum Order). Any part of any order that includes NYP, NST or OP titles is not taken into account in determining a Minimum Order. 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 or 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 administration and other costs and loss of profits.

### Damaged or defective goods

ADS will approve a credit and if required by the customer, re-invoice freight free on replacement (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 within 2 months after the date of ADS's approval. ADS will issue a credit note for any such approved returns and re-invoice for any replacements

## 4. Goods Supplied on a Sale or Return Basis

### Credit

Goods may be returned to ADS for credit only as permitted under this paragraph 4 or otherwise in accordance with these conditions.

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

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 as per the individual publisher terms of trade; and
- b) the returned goods being received at ADS or its freight agent in NZ in mint, saleable condition and without in-store pricing.

Any goods returned to ADS or its nominated Freight Agent in NZ 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. The Customer must bear the cost of returning authorised returns to ADS nominated freight agent and until otherwise advised will be in Auckland.

### 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. All requests for returns must specify the relevant invoice number, 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 (unless reissued) 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 or reissue (for example, a title which is published on 15 March 2002 becomes Backlist on 1 April 2003).

### 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 no later than 2 months after the date of 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 ADS will not be responsible for any non-delivery, damage or shortage.

### 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 New Zealand currency, unless otherwise stated.

### Discount

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

### Order of items on invoice

While ADS invoices usually list goods on the invoice in alphabetical order by title within each separate order number, the Customer may in writing request ADS to list the goods alphabetically by title.

## 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

### Change of Ownership

A 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

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 11. 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:

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- 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.

#### **9. Title and Risk**

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##### **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, payments occur 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

##### **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. Liability**

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##### **Implied terms**

To the extent that the terms implied under the *Trade Practices Act 1974* apply to goods supplied by ADS, ADS's liability for any breach of those terms is limited to either supplying the goods again or paying the cost of having them supplied again.

##### **Cap**

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.

#### **11. Dispute Resolution**

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##### **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 11 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 11

##### **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

#### **12. General**

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##### **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 or 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