



September 2009

Terms of Trade

Resellers (New Zealand)

Elsevier Australia
(a division of Reed International Books Australia Pty Ltd)
ABN 70 001 002 357

These terms of trade ("Terms") and any documents referred to in them constitute the entire agreement for the Company's supply of the Products to the Customer and replace and supersede all prior representations, understandings, arrangements and agreements (including any previous terms of trade) to the full extent permitted by law, and are effective as at 1 September 2009.

1. Definitions

In these Terms:

"Cash Account" means an account which is established on the Company's operation system which may be used by the Customer to order Products for which the Customer is required to pay before delivery;

"Charge Forward" means an extended credit facility which the Company offers a Customer for Textbooks ordered within a timeframe specified by the Company prior to the commencement of the semester;

"Company" means Elsevier Australia (a division of Reed International Books Australia Pty Ltd, ABN 70 001 002 357);

"Conference Account" means an account which is established by agreement between the Company and the Customer to be used for Products sent to the Customer for sale at a conference or seminar where those Products have immediate sale or return facilities. Only the Company representatives may place orders on this account;

"Customer" means the person, business or company that is the purchaser and reseller of the Products;

"Professional Product" means any product not designed for use as an educational text book;

"Products" means the Textbooks, Professional Products and other books, products and services supplied to the Customer by the Company and described in each invoice to the Customer from the Company;

"Promotional Account" means an account which is established by agreement between the Company and the Customer to be used for Products sent to the Customer that are new publications which fall within an agreed price ceiling and agreed disciplines and are for product promotions. Only the Company representatives may place orders on this account;

"Retail Outlet" is an established retail store which is staffed and open to the public during normal trading hours and that agrees to carry a range of Products;

"Sales Contract" means any sales contract entered into by the Customer and the Company in respect of the Products supplied to the Customer in which these Terms are deemed to be incorporated;

"Textbook" means a standard work which may be prescribed for a particular branch of study ;

"Trade Titles" means those titles specified in the Schedule of Imprints attached at *Annexure 1*.

2. Orders Policy

- 2.1 All orders for Products placed by the Customer must be made in accordance with the Company's order policy as amended by the Company from time to time.
- 2.2 The Company may reject any order placed by the Customer on any basis including, without limitation, if there is an insufficient supply of Products to fulfil such order.
- 2.3 The Company will not be bound by any trading terms attaching to the Customer's order and, unless those terms are expressly agreed to by an authorised representative of the Company, the Customer agrees that those terms are excluded.

3. Pricing, Payment and Taxes

- 3.1 All prices for the Products and the Company pricing policies are subject to change at any time by the Company without notice.
- 3.2 Subject to clause 3.1, it is policy, at the effective date of these Terms, that prices will be reviewed each April and that other Products will have their prices reviewed periodically in line with overseas pricing and exchange rate fluctuation.
- 3.3 The price for the Products will be the Company's quoted price as at the date of shipment to the Customer, and unless otherwise agreed by the Company's authorised representative, all prices quoted for Products are inclusive of all taxes (including goods and services tax), but exclusive of handling, delivery, agents' charges and any other fee or charge.
- 3.4 Subject to clause 3.10, all payments for Products must be made within 30 days of date of the date statement issued to the Customer by the Company ("statement date"), except:
 - (a) where different payment terms have been approved under clause 6 (Charge Forward);
 - (b) for Promotional Account invoices which must be paid within 60 days of statement date; and
 - (c) for Conference Account invoices which must be paid within 60 days of statement date.

If the Customer fails to make payment of an amount by the due date for payment, all amounts owing by the Customer to the Company on any account will immediately become due and payable.

- 3.5 Failure to comply with the payment terms specified in clause 3.4 may result in the Customer being placed on "stop supply" status, without notice, and the Company may:
 - (a) refer the Customer's name to a debt collection agency for collection of any overdue payment or to a solicitor for recovery of such a payment; and/or
 - (b) withdraw all credit facilities, close all accounts and transfer any debt recovery costs to the Customer.
- 3.6 Payments can be made electronically, direct into the Company's account and the remittance advice sent to the Company the same day, or by cheque. Remittance details must be forwarded in the format set out in the invoice issued by the Company. All cheques must be capable of being honoured in the first instance. A maximum of \$2,000 can be paid by credit card at any one time before merchant fees will apply. Credit card payments above \$2,000 will incur merchant fees. Payments by Diners Club cards are not accepted.
- 3.7 The Customer is liable to pay interest on any overdue amount at the rate of 2% above the prevailing base lending rate of the National Australia Bank Limited. Interest accrues daily from the date payment becomes overdue until the Company has received payment of the overdue amount, together with any interest accrued. In addition, dishonoured cheques will attract a handling and administration fee.
- 3.8 The Customer must pay the Company, on demand, any tax (other than income tax) payable under these Terms or any payment, receipt or other transaction contemplated by these Terms or incurred as a result of any matter or thing done under or in connection with these Terms, including any goods and services or value-added tax, customs duty, sales tax, excise duty, stamp duty, other duty, governmental charge, fee, levy or impost, together with any fine, penalty or interest payable because of a default by the Customer.

- 3.9 Any claims for Products returned in accordance with clause 5 cannot be offset against any payments owing to the Company by the Customer until such time as the Customer has received a credit note for the returned Products from the Company.
- 3.10 Customers whose purchase amount to less than \$5,000 per year must make payment at time of order by cheque or credit card, and operate their purchases through a Cash Account.
- 3.11 Any amounts paid to the Company by the Customer under this clause 3 must result in the full amount owing to the Company for the purchase of the Products being paid, following payment of any relevant tax or other amounts (for example handling, delivery or agents' charges or debt collection costs).
- 3.12 The supplier and recipient of the supply agree that section 8(4) of the GST Act will not apply to any supplies made between these parties, and therefore, the supplies made between these parties will be treated as subject to GST in New Zealand.

4. Discounts

- 4.1 Subject to clauses 4.2, 4.4 and 4.5, the Customer will be provided with an academic/professional discount of 25% off the recommended retail price ("RRP") exclusive of GST.
- 4.2 In addition to the academic/professional discount provided under clause 4.1, the Customer may be entitled to receive one or more of the discounts specified in Schedule 1 if the Company, in its sole, absolute and unfettered discretion, is satisfied that the Customer meets the applicable conditions specified for Textbooks in Schedule 1 and for Professional Products in Schedule 2.
- 4.3 The Customer's entitlement to one or more of the additional discounts specified in clause 4.2:
- (a) will be subject to annual review by the Company; and
 - (b) may be withdrawn by the Company at any time if the Company, acting in its sole, absolute and unfettered discretion, determines that the Customer no longer meets the conditions of eligibility for that discount.
- 4.4 (a) Trade Titles attract a trade discount of 40% off the RRP exclusive of GST for such titles.
- (b) Promotional Accounts attract a special academic/professional discount of 35% off the RRP exclusive of GST.
- 4.5 The Company may, at its discretion, make special discount arrangements with the Customer or with other customers as required.

5. Returns Policy

- 5.1 Subject to the following, the Customer will be entitled to return Products supplied to it by the Company under these Terms:
- (a) the Company reserves the right to refuse returns that do not arrive in mint resaleable condition;
 - (b) returns will be limited to: (i) in the case of Textbooks, 10% of moving annual total Textbook sales (excluding old editions, damaged and mis-bound products and publisher error and Textbooks sold as part of a promotion); (ii) in the case of Professional Products, 25% of moving annual total Professional Products sales (excluding Professional Products sold as part of a promotion); and (iii) in the case of Promotional Accounts, 100% of moving annual total sales made as part of the promotion;
 - (c) returns may be accepted within 18 months of the relevant invoice date, except for Products provided under a Conference Account in which case any unsold Products must be immediately returned following the end of the conference or seminar in respect of which those Products were provided; and
 - (d) known out-of-print titles are supplied on a "firm sale" basis.
- 5.2 A returns claim must be made in accordance with the following procedure:
- (a) prior written official returns authorisation must be sought and obtained from the Company before any returns will be accepted by the Company, including "no fault" of the Customer returns and Conference Account returns;
 - (b) returns sent to the Company without an official returns authorisation will be sent back to the Customer at the Customer's cost;
 - (c) all Products returned must be in a mint resaleable condition and all non-publisher price stickers must be removed. All Products must be packaged for return with adequate protection to prevent damage during transit;
 - (d) return authorisations are valid only for 30 days from date of issue. Returns not received within this time will be refused, but the Customer may re-request an official returns authorisation for the return of the Products;
 - (e) relevant invoice numbers must be supplied with each returns claim. Returns will not be accepted without relevant invoice numbers;
 - (f) return freight is at the Customer's expense and proof of delivery to the Company is the Customer's responsibility, except for "no fault" returns where the Company will supply a freight consignment note;
 - (g) Products that are shrink-wrapped must be returned in their original unbroken wrapping;
 - (h) to the full extent permitted by law, claims to return Products which have been damaged in transit to the Customer must be made within 7 days of delivery to the Customer. Mis-bound products may be returned at any time, in accordance with clause 5.2(a);
 - (i) claims for short shipment (in the case of the Customer not receiving the ordered quantity) must be notified to the Company within 7 days of delivery; and
 - (j) for Products which are in the possession of the Customer and are declared out-of-print (including old editions) will be accepted for credit or exchange within one hundred and twenty (120) days of notification of out-of-print status by Elsevier, but in any case, the credit or exchange must not be sought before the Australian publication date of the new edition and must be replaced by an order for at least the equivalent unit numbers of the new edition, before a claim will be accepted. Old editions eligible for claim must have been purchased within 18 months of making a claim.
 - (k) The Company will process all authorised returns within 30 days of receipt into the Company's warehouse.

6. Charge Forward

- 6.1 Customers requiring a Charge Forward must seek the prior written approval of the Company (or its authorised representative) before placing any Charge Forward orders for each semester. Customers will then be sent a letter of offer for Charge Forward which must be approved by the Customer and returned before Charge Forward is put in place. Approval criteria includes quantity requirements and the Customer's current account status. The granting of Charge Forward is entirely at the discretion of the Company.

7. Semester Ordering and Air Freight Charges

- 7.1 For a period starting from 8 weeks prior to the beginning of each semester and for one month after the commencement of each semester, orders for textbooks that are out of stock at the Company and are required urgently will attract an air freight charge of \$8.50 (inclusive of GST) per book. This surcharge is subject to change at the discretion of the company. The Company will advise Customers and advertise the dates for which the air-freight charge will apply at least one month prior to the start of this period.
- 7.2 Any air freight orders cancelled by the Customer will incur the air freight charge of \$8.50 (inclusive of GST) per book if the Company has already placed the order to air freight the stock into the Company's warehouse.
- 7.3 The Company endeavours to hold sufficient and adequate stock of all titles. For products that are out of stock and required urgently, an air freight charge of \$8.50 (inclusive of GST) per book will apply. Prior to the application of this charge the Customer will be contacted by a customer service representative of the Company to advise of the estimated time of arrival of stock into the warehouse by sea with the decision as to time period required and acceptance or not of the air freight charge to be determined by the Customer.

8. Delivery, Inspection and Acceptance

- 8.1 Delivery times advised to the Customer are estimates only and the Company will not be liable for any loss, damage or delay suffered or incurred by the Customer or its customers arising from late delivery or non-delivery of the Products.
- 8.2 The Company may make part deliveries of any order, and each part delivery will constitute a separate supply of the Products upon these Terms.
- 8.3 The Customer must inspect all Products upon delivery to the Customer's premises and must, within 7 days of delivery, give notice to the Company of any matter or thing by which the Customer alleges that the Products do not accord with the Customer's order. Failing such notice and to the full extent permitted by law, the Products will be deemed to have been accepted by the Customer.
- 8.4 Damaged and mis-bound books will be automatically replaced in accordance with clause 5.2 and a new invoice issued.
- 8.5 Delivery of Products will only be to the Customer's main delivery address. Delivery to an alternative address is not allowed without the prior permission of the Company.

9. Retention of Title

- 9.1 Risk of loss or damage to the Products passes to the Customer on delivery. Until payment for the Products is made in full to the Company:
 - (a) the Products remain the property of the Company and are held by the Customer as bailee for the Company; and
 - (b) the Customer must ensure that the Products are clearly identifiable at all times as belonging to the Company.
- 9.2 The Customer acknowledges that until payment in full for the Products has been received by the Company, the Customer must hold such part of the payments made to it by its customers for the sale of those unpaid Products, in trust for the Company, such part being equal in dollar terms to the amount owing by the Customer to the Company at the time of receipt of such proceeds, in respect of those Products.
- 9.3 If the Customer has not paid for the Products in accordance with these Terms, the Company may at any time terminate any Sales Contract and, without notice to the Customer and to the full extent permitted by law, may enter upon any premises at which the Products are, or may be stored, and retake possession of the Products without prejudice to any other right or remedy it may have at law.

10. Liability

- 10.1 To the full extent permitted by law, the Company will not be liable to the Customer or any other person under any circumstances for any loss of use, profit, revenue, interest or goodwill, or for any indirect, incidental or consequential damages suffered or incurred by the Customer or any other person, whether such liability arises directly or indirectly as a result of or in connection with these Terms (including the supply of the Products under these Terms).
- 10.2 To the full extent permitted by law, the Company will not be liable for any damage to, or defects in, the Products that have been caused by the improper storage, warehousing or transport, or by any neglect, abuse or improper use of the Company's Products by the Customer.
- 10.3 To the full extent permitted by law, all implied warranties and conditions are excluded. To the extent that the law implies warranties or conditions in relation to Products provided under these Terms that cannot be excluded, the Company's liability and the Customer's sole remedy for breach of any such warranty or condition shall be limited to, to the full extent permitted by law, at the Company's option:
 - (a) the replacement of the Product or the supply of an equivalent Product; or
 - (b) the payment of the cost of replacing the Product or of acquiring an equivalent Product.

11. Credit Assessment

- 11.1 If any Products are supplied to the Customer on credit, to the extent required by the Company, the Customer authorises the Company to disclose to a credit reporting agency certain information referred to in clause 11.3 about the Customer when assessing the Customer's application for credit and managing the Customer's account with the Company.
- 11.2 Subject to the Company's obligations under the Privacy Act 1988 (Cth) and other applicable laws, the Company may give the information referred to in clause 11.3 to a credit reporting agency to obtain a credit report about the Customer or to allow the credit reporting agency to create or maintain a credit information file about the Customer. The Customer agrees that the Company may disclose a credit report about it to any credit provider or debt collecting agency for the purposes of assessing the Customer's credit-worthiness or to collect any overdue payments.
- 11.3 The Company may disclose the following information about the Customer in accordance with clauses 11.1 and 11.2:
 - (a) Customer's name and address;
 - (b) credit limits on the Customer's accounts and the amount of any payments which are overdue for at least 60 days;
 - (c) where an overdue payment has been previously reported, advice that the payment is no longer overdue;
 - (d) cheques or credit card payments which have been dishonoured;
 - (e) information that, in the opinion of the Company, the Customer has committed a serious credit infringement; and
 - (f) information that the Company has ceased to supply the Products to the Customer.
- 11.4 The Customer agrees that the Company may obtain information about the Customer from any business which provides information about the commercial credit-worthiness of persons for the purposes of assessing the Customer's application to purchase the Products on credit and collecting any overdue amounts.
- 11.5 The Company may refuse to supply the Products to the Customer on credit on the basis of the Company's credit assessment of the Customer.

12. Intellectual Property

- 12.1 The Customer acknowledges that all trade marks, copyright and other intellectual property rights embodied in or relating to the Products and any related documentation are the property of the Company, or its suppliers.
- 12.2 The Customer must not, during or after the expiry or termination of any relevant Sales Contract, without the prior written consent of the Company or its suppliers, register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by the Company or its suppliers in connection with the Products.

13. Confidentiality

- 13.1 The Customer acknowledges that the Company may from time to time disclose to the Customer certain confidential information and documentation of the Company relating to the Products, their marketing, use and maintenance ("Confidential Information").
- 13.2 Subject to clause 13.5, the Customer must:
 - (a) only use the Confidential Information solely for the purposes contemplated under any relevant Sales Contract; and
 - (b) not, during the continuation of such Sales Contract or thereafter, disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required for such purposes.
- 13.3 If disclosure of Confidential Information to third parties is necessary, the Customer will obtain from such third parties binding agreements to maintain the confidentiality of the Confidential Information disclosed at least to the same extent as the Customer is bound to protect the Company's Confidential Information under this clause 13.

13.4 Upon the expiry or termination of any relevant Sales Contract, the Customer must cease to use and must return or destroy (as the Company may instruct) the Company's Confidential Information in its possession or control.

13.5 The provisions of this clause 13 do not extend to any information which is:

- (a) at the time of disclosure, rightfully known to or in the possession or control of the Customer and which is not subject to an obligation of confidentiality;
- (b) public knowledge (otherwise than as a result of a breach of this clause 13 or any other obligation of confidentiality);
- (c) approved to be disclosed by the Company; or
- (d) required to be disclosed by a government authority, a Court or by relevant laws.

14 Force Majeure

14.1 If the Company's performance of its obligations under these Terms or any relevant Sales Contract is prevented, restricted or affected by force majeure (including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Company), the Company will be excused from its obligations and will be relieved of any liability under these Terms for any breach or non-performance of any of its obligations.

14.2 Any period of time during which performance of any obligation is prevented, restricted or affected by force majeure will be added to the time provided in these Terms for performance of that obligation and to the time required for the performance of any act dependent on it.

15. General

15.1 The Company may amend these Terms at any time by giving the Customer 30 days' notice by mail or e-mail and by posting a notice on the Company's public website. By continuing to place orders for Products, the Customer will be deemed to have accepted the revised Terms.

15.2 Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected.

15.3 The Customer may not assign or attempt to assign any of its rights and obligations under these Terms.

15.4 Any provision of these Terms (including, without limitation, clauses, 10, 12 and 13) or of any relevant Sales Contract which is capable of having effect after their expiry or termination will survive and remain in full force and effect.

15.5 These Terms are governed by, and are to be construed in accordance with, the laws of the State of New South Wales.

15.6 All references to currency are references to the lawful currency of Australia.

Version: September 2009

Schedule 1

Conditions for Additional Discounts for Retail Outlets for Textbooks	Discount Eligible (% off the RRP)
<p>Shopfront:</p> <p>If The Customer is an appropriate Retail Outlet which is open all year round within normal trading hours (except for public holidays in the relevant State where the Customer is located), and is consistently staffed by knowledgeable sales people.</p>	Up to 4%
<p>Range:</p> <p>If, within the disciplines and markets served by the Customer, the Customer carries both prescribed texts and a wide range of Professional Products.</p>	Up to 4%
<p>Co-Promotion:</p> <p>If a promotional partnership between the Company and the Customer is in place. Such promotional partnership includes promoting the Company products via direct mail, in-store promotions and other merchandising efforts, website promotions and conference attendance on the Company's behalf.</p>	Up to 2%

Schedule 2

Conditions for Additional Discounts for Professional Products	Discount Eligible (% off the RRP)
<p>Pre-promotion and stocking of new products:</p> <p>Appropriate pre-promotion of new release Professional Products which includes ordering and stocking of new release Professional Products in store.</p>	Up to 6%
<p>Ongoing promotions and stocking of backlist products:</p> <p>Appropriate ongoing promotion of already published Professional Products which includes ordering and stocking backlist Professional Products in store.</p>	Up to 4%