

## TERMS AND CONDITIONS OF TRADE

### IN THESE TERMS AND CONDITIONS:

- a) "Seller" means **SCHOLASTIC NEW ZEALAND LIMITED** and its agents, successors and assigns.
- b) "Buyer" means the person, firm, company or entity buying the Goods from the Seller.
- c) "Goods" means all Goods the subject matter of any contract for purchase between the Seller and Buyer, including where the context permits a resulting product into which the Goods are incorporated, manufactured or commingled that their identity is lost in the resulting product.
- d) A reference to any party to this Agreement includes its heirs, administrators, successors, substitutes (including persons taking by novation), and assigns;
- e) Words in the singular number include the plural and vice versa;
- f) Headings are for convenience only and have no effect on interpretation;
- g) A reference to "including" and like terms means "including but not limited to";
- h) A reference to any period of months is to calendar months;
- i) A right includes a benefit, remedy, discretion, authority or power;
- j) An obligation includes a representation, responsibility, duty, undertaking, liability, prohibition, covenant, warranty or indemnity;
- k) A failure to comply, observe or perform an obligation constitutes a breach of an obligation;
- l) A reference to a thing (including any amount) is a reference to the whole and each part of it and a reference to a group of things or persons is a reference to all of them collectively and to any one or more of them; and
- m) Words importing any gender include all genders.

**IMPORTANT NOTICE:** Please review this Terms and Conditions of Trade to inform yourself of the terms and conditions which apply. If you do not agree with them, do not trade with Scholastic New Zealand Limited, whether by using the Web site on which it appears or off line. By accessing, using or downloading material from the Scholastic New Zealand Limited Web site on which it appears, you agree to follow and be bound by these Terms and Conditions of Trade which constitute a legal contract.

#### 1.0 **STAFF TRAINING**

- 1.1. Through training and the imposition of specific responsibilities, the Buyer must ensure that its officers and employees familiarise themselves fully with these Terms and Conditions of Trade. The persons whose signatures appear on the Credit Application warrant that they are duly authorised by the Buyer to apply for credit and execute the Credit Application on behalf of the Buyer thereby binding the Buyer to these terms and conditions.

#### 2.0 **VARIATION**

- 2.1. These Terms and Conditions of Trade may change without notice, so do check them from time to time. Any agreed variations or amendments to these Terms and Conditions of Trade must be in writing signed by the Buyer and the Seller.

#### 3.0 **COMPOSITION & INCONSISTENCY**

- 3.1. These Terms and Conditions of Trade prevail over all conditions of the Buyer's purchase order, or any similar document of the Buyer, to the extent of any inconsistency. For each order of Goods a separate contract arises between the Seller and the Buyer under these Terms and Conditions of Trade. Each such contract is comprised by the provisions of the relevant Goods order process data or documents, and these Terms and Conditions of Trade. If there is an inconsistency at any time between such provisions

and a clause of these Terms and Conditions of Trade, then the Terms and Conditions of Trade prevail to the extent of that inconsistency.

#### 4.0 **ORDERS**

##### 4.1. *Supply of Orders*

- (a) Goods ordered are supplied subject to availability and credit approval.
- (b) The Seller is not liable for any loss or damage resulting from delays or a failure to supply Goods. The Seller has the right to review orders based on availability.
- (c) Back Orders: Goods which are treated as out of stock but which are expected to be available at a future date will be marked as a "back order" and supplied at the time of availability, unless the Buyer otherwise instructs the Seller in writing.
- (d) Online Order Processing: To the extent that it is feasible, online (i.e. electronic) and off line orders are to be treated by the Seller and the Buyer using the same methodology. Online orders will be treated as valid by the use of a valid order number, an order confirmation signed by the Buyer, or acceptance of the Goods by the Buyer, whichever occurs first.
- (e) Small Order Surcharge (Books): If the total net invoice value for an order is less than \$150 including GST, a small order handling charge may apply.
- (f) Backlist orders may be held and dispatched once the relevant small order threshold is exceeded.
- (g) Small Order Surcharge (Software): If the total net invoice value for an order is less than \$500 including GST, a small order handling charge may apply.
- (h) Order Cancellation: The Buyer may cancel an order only on the basis that the Seller is indemnified by the Buyer against all consequential loss. This condition does not apply if the Seller is unable to fill the order.

#### 5.0 **FREIGHT AND DELIVERY**

##### 5.1. *Delivery Schedule*

- (a) The Seller will exercise its best endeavours to deliver orders on a timely basis but the Seller is not liable for loss or damage resulting from delays or failure to deliver Goods.
- (b) The times and dates given by the Seller for delivery are not an essential term or condition of sale and late delivery caused in any way will not constitute a breach of these Terms and Conditions of Trade.
- (c) The Buyer acknowledges that the Goods shall be delivered to the Buyer at time the Goods leave the Seller's premises notwithstanding that the Goods may be in transit or in the possession of the Seller's delivery agent.

##### 5.2. *Freight (Books)*

- (a) The Seller will arrange and pay for standard deliveries to the Buyer, unless otherwise advised or requested by the Buyer. However, if the Buyer requests expedited delivery (e.g. airfreight overnight or overnight express) the additional cost will be charged to the Buyer.
- (b) The Seller may vary or cease paying for deliveries if the Buyer is found to be in breach of these Terms and Conditions of Trade or other arrangements with the Seller.

##### 5.3. *Freight (Software)*

The Buyer agrees to pay all delivery charges.

##### 5.4. *Short or Over Supply*

A claim for a shortage or over supply must be received by the Seller within seven (7) days after delivery of the relevant Goods and must specify the relevant invoice number and the details of the adjustment. The Seller is not obliged to process a claim received after this seven (7) days period.

5.5. *Damaged or Defective Goods*

The Seller will replace (subject to availability and freight free) or, alternatively, credit the Buyer for damaged or defective Goods returned to the Seller within seven (7) days after delivery.

5.6. *Delivered Goods Refused*

The Seller has the right to recover its costs (including additional freight charges, surcharges, and lost profit) from the Buyer for orders made by the Buyer which are delivered by the Seller but for which delivery or payment is refused, avoided or hindered by the Buyer or its representatives.

6.0 **INVOICES**

6.1. *Price*

Goods will be invoiced at recommended retail prices (RRP), inclusive of goods and services tax (GST), where applicable less the Buyer's discount or, alternatively, at a net price.

6.2. *Discount*

The Seller will determine the Buyer's discount and will notify the Buyer of the discount. The Seller may cancel, vary or suspend the discount from time to time.

6.3. *Currency*

All money payable by the Buyer to the Seller is payable in New Zealand dollars, except as may be agreed otherwise in writing. Any bank charges incurred in currency exchange will be payable by the Buyer.

7.0 **CREDIT LIMIT**

7.1. The Seller will determine a credit limit for the Buyer. The Seller may vary the Buyer's credit limit, terminate a credit arrangement or refuse to supply Goods to the Buyer, without giving prior notice. The Seller is not liable for any damage or loss suffered from any variation, suspension or termination of the Buyer's credit limit.

8.0 **CHANGE IN BUSINESS STRUCTURE OR OWNERSHIP**

8.1. The Buyer must give the Seller seven (7) days' written notice regarding any:

- (a) Change in the Buyer's business structure or corporate structure;
- (b) Change in ownership of the Buyer's business; or
- (c) Sale of part or all of the Buyer's business.

9.0 **PAYMENT**

9.1. *Trading Terms*

- (a) The Seller will give written notice to the Buyer of the trading terms and in the absence of such notice being given payment in full shall be made by the 20th of the month following the date of invoice or account. The Buyer must pay in full for all Goods delivered on credit by the Seller to the Buyer.
- (b) Payment by credit card facilities of credit accounts with the Seller will incur an additional two per cent (2%) charge on the total amount payable.
- (c) The Seller may charge monthly interest of one and a half per cent (1.5%), calculated on a daily basis, for all money overdue, from the due date to the date of payment, inclusive until such time as the Buyer's account is brought within the Seller's trading terms as

herein set out.

9.2. *Stop Credit*

- (a) If the Seller does not receive payment by the due date, the Seller may without notice place the Buyer on stop credit until payment, including any applicable interest is received in full.
- (b) If on a subsequent occasion a Buyer is placed on stop credit, the Seller may without notice refuse to supply the Buyer on credit terms.

9.3. *Unauthorized Deduction of Credit Claims*

The Buyer has no right to deduct the Buyer's returns claims that are not subject to an issued credit note. Such a deduction will be in breach of these Terms and Conditions of Trade and the Seller may refuse further supply until such time that the Buyer pays in full all outstanding money.

9.4. *Disputed Amounts*

- (a) The Buyer must notify the Seller of any disputed invoice within fourteen (14) days of the relevant statement for the Goods. If there is an amount in dispute, the Buyer must still pay all undisputed amounts when they fall due for payment.
- (b) Any costs incurred by the Seller in demanding, collecting and enforcing judgments for money due and payable (including without limitation, the fees of mercantile agents or lawyers appointed by the Seller) must be paid in full by the Buyer.
- (c) If the Buyer does not pay a statement in full or fails to pay the sum specified in the Buyer's remittance advice, then the Buyer is obliged to take all necessary action at its expense to reconcile payments due to the Seller.

9.5. *Discounts*

Any discount offered by the Seller is contingent upon receipt of all monies owing on the Credit Account on or before the Payment Date. If the Buyer fails to make payment by the Payment Date the discount in question will immediately be debited to the Buyer's Credit Account.

9.6. *Application of Payments*

The Seller may at its discretion apply any payments it receives from the Buyer in and towards the satisfaction of any indebtedness of the Buyer to the Seller and it shall not be bound by any conditions or qualifications that the Buyer may make in relation to such payments.

10.0 **DEFAULT**

10.1. In addition to any other provision hereof, the Buyer shall be in Default if any of the following events shall occur:

- (a) If the Buyer fails to pay any amount due by the Payment Date.
- (b) If the Buyer fails to meet any obligation to the Seller.
- (c) If the Buyer becomes insolvent.
- (d) If a Receiver, Liquidator or Official Manager is appointed in respect of the Buyer.
- (e) If a compromise arrangement with the Buyer's creditors is made or likely to be made.
- (f) If the Buyer ceases or threatens to cease carrying on business.
- (g) If the ownership or effective control of the Buyer is transferred, or the nature of the Buyer's business is materially altered.
- (h) If the Buyer does or permits any act or thing likely to prejudice or put at risk the Goods or the Seller's rights or interest (including its security interest) in the Goods.

10.2. For the purposes of clause 10.1 hereof, a reference to the Buyer shall include the Guarantor(s).

10.3. If an event of Default shall occur (notwithstanding that the Seller may have waived some previous default by the Buyer) then:

- (a) All sums owing by the Buyer to the Seller shall become immediately due and payable.
  - (b) The Seller may, without prior notice, enter the premises of the Buyer or any other premises that the Buyer is authorised to enter and retake possession of the Goods and sell them without being liable in any way to the Buyer. Furthermore, the Buyer shall indemnify the Seller for all costs (including legal costs), claims by third parties or whatsoever in retaking possession and selling the Goods.
  - (c) The Seller may appoint a Receiver pursuant to the Receiverships Act 1993 in respect of the Goods (including their proceeds) supplied to the Buyer and any such Receiver may take possession of the Goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
  - (d) The Seller may by notice in writing suspend or terminate the Credit Account.
- 10.4. Notwithstanding the foregoing, the Seller shall be entitled at any time in its sole discretion and without notice to the Buyer to suspend or terminate any credit account with the Buyer and the Buyer shall forthwith deliver the Goods to the Seller at its place of business or at such other place as shall be agreed upon.

#### **11.0 RETENTION OF TITLE**

- 11.1. All Goods shall remain the property of the Seller as legal and equitable owner pending cleared payment in full of all moneys due and owing in respect of the Goods owed by the Buyer to the Seller. The Buyer acknowledges that the Buyer is in possession of the Goods as bailee for the Seller pending payment in full of all moneys due to the Seller. Unless the Seller directs otherwise, the Buyer may dispose of any Goods to third parties by way of bona fide sale at full market value in its normal course of trading.
- 11.2. The Seller may at any time enter the premises of the Buyer or any other premises that the Buyer is authorised to enter and retake possession of the Goods for the purpose of inspecting, maintaining, testing the Goods or perfecting the Seller's security interest in the Goods.

#### **12.0 RISK AND INSURANCE**

- 12.1. The risk of any loss or damage to or deterioration of the Goods due to any cause whatsoever including damage or loss in transit shall be borne by the Buyer as from the time when the Goods leave the Seller's premises provided that if the Goods remain on the Seller's premises or with any carrier due to the failure of the Buyer to accept the Goods or at the Buyer's request then all such risk shall be borne by the Buyer as from the date of the Buyer's failure or request as the case may be.
- 12.2. The Buyer shall be obliged to insure and maintain the Goods from the time of risk passing to the Buyer and, pending payment in full, such insurance shall be held in the name of the Seller and the Buyer for their respective interests. The Buyer may request that the Goods be insured in transit by the Seller and in such case the premium for such insurances shall be added to the invoiced price.

#### **13.0 WARRANTIES**

- 13.1. Goods are subject to the manufacturers' warranties only. The Seller will pass on the benefit of those warranties to the Buyer, without being directly liable to the Buyer under any warranty.
- 13.2. Where goods are subject to a return to base warranty, the Buyer is responsible for returning them to the Seller or the manufacturer (as

provided by the warranty) and the Buyer may be responsible for additional costs including (but not limited to) freight.

- 13.3. Any warranty may be voided by damage to or misuse of the system, problems caused by the use or misuse of software, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the addition of incompatible hardware.

## 14.0 RETURNS POLICY

### 14.1. *General*

- (a) Goods may be returned for credit only. Trade sales are supplied on a sale or return basis providing that stock has been held for at least 3 months and is returned within 9 months of delivery in mint condition.
- (b) New release books returned for credit, damaged or defective Goods returned for credit, and Goods returned for any other reason for credit, must comply with the provisions specified below in this clause. Returns which do not comply will not be processed for credit.
- (c) The Seller may from time to time vary these Terms and Conditions of Trade regarding returns by written notice to the Buyer. If the Seller does not vary these Terms and Conditions of Trade, the returns policy specified in this clause will apply.
- (d) The Seller may vary or revoke a particular privilege if, in the opinion of Seller, the Buyer is abusing the privilege for financial or other benefit.
- (e) The cost of return freight is to be paid by the Buyer. Returns not conforming to the provision below will be returned to the Buyer, freight forward. Credit Notes will be offset against future orders. Refund cheques are not issued.
- (f) Missing Returns: If a credit note for returns is not received within one month, please advise our Order Processing Department of the details.

### 14.2. *Mint Condition Criteria*

Damaged Goods and Goods which fail to meet the mint condition criteria specified below in this clause, will not be processed for credit, and will be returned to the Buyer (except as otherwise agreed in writing by the Seller).

- 14.3. To be in mint condition, a book to be returned for credit must have:

- (a) No stickers are to remain on the book either inside and/or outside;
- (b) No sticker damage is to be evident on the book either inside and/or outside;
- (c) No foodstuffs on the book;
- (d) No dirty marks that damage the appearance of the book;
- (e) No rips, tears, creases to any part of the book including teeth marks;
- (f) No hand written prices on books;
- (g) No author signatures;
- (h) No bent corners to the book;
- (i) No bent spines; · no yellowed or faded paper;
- (j) No writing on or within the book; and
- (k) No portions of the book missing.

### 14.4. *Firm Sale (Software)*

Software Goods will be treated as a firm sale and cannot be returned for credit without the Seller's prior consent in writing.

### 14.5. *Goods Damaged on Arrival*

Goods will be credited if they are inspected and noted by the Buyer as being damaged on arrival as well as accepted as such by an authorised

representative of the Seller within seven (7) days of receipt. All damaged Goods to be returned must be accompanied by a Seller's returns authorisation form.

**14.6. Compulsory Packaging Instructions for Authorised Returns**

- (a) The Buyer must appropriately package the Goods to avoid damage in storage or transit.
- (b) When a carton is prepared and packed with returns it must bear the Seller's returns authorisation label. No copies, duplications or mock ups of labels will be accepted under any circumstances.
- (c) No carton when packed is to exceed sixteen (16) kilograms in weight.
- (d) Like titles, where applicable, must be packed into the same carton.
- (e) The use of carton fill material is acceptable and encouraged to help avoid damage to Goods in transit.
- (f) If there are multiple cartons in an authorised return, the cartons must be clearly marked identifying the carton numbers (e.g. 1 of 1, 2 of 3, 3 of 3).

**15.0 PRIVACY**

15.1. The Buyer and the Guarantors (if any) jointly or severally authorise any person or company to provide the seller with such information as they require in response to their inquiries. Further, the Seller is authorised to provide to any third party details of this agreement and any subsequent dealings that the Buyer may have with the seller as a result of credit facilities being granted by the seller to the Buyer. The Buyer and the Guarantors consent to the seller providing to any third party (for the purpose of mailing special offers of goods and services to the Buyer) any information provided by the Buyer.

**16.0 FORCE MAJEURE**

16.1. Despite any provision in these Terms and Conditions of Trade to the contrary, no default, delay, inability or failure to perform on the part of the Seller will constitute a breach of these Terms and Conditions of Trade if such default, delay, inability or failure is due to a cause, fact, circumstance, matter, or thing beyond the reasonable control of the Seller. The Seller will be relieved of the relevant obligation to perform under these Terms and Conditions of Trade to the extent and for the period that it is so unable to perform.

**17.0 SURVIVAL**

17.1. All obligations, undertakings, liabilities, warranties and indemnities which expressly or by their nature survive the termination, completion or expiry of these Terms and Conditions of Trade, continue in full force and do not merge despite that termination, completion or expiry.

**18.0 JOINT AND SEVERAL**

18.1. If the Buyer comprises more than one person then the Buyer's rights are for the benefit of those persons jointly and severally and the Buyer's obligations and liability is to be joint and several.

**19.0 DISPLAY EQUIPMENT**

19.1. Any display equipment to be loaned by the Seller to assist the Buyer with the presentation of Goods shall be supplied, assembled and stocked as agreed from time to time with the Seller.

19.2. The Buyer acknowledges that any display equipment loaned by the Seller

19.3. is and will remain the property of the Seller at all times and the Buyer shall not grant to or allow to be taken by any third party any security

interest over such display equipment.

- 19.4. The Seller reserves the right at any time to change or remove display equipment without notice and the Buyer hereby grants authority to the Seller or its agents to enter the Buyer's premises in order to do so.

**20.0 COSTS**

- 20.1. The Buyer will upon demand pay all the Seller's expenses and legal costs (on a solicitor/agent/client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by these Terms and Conditions or obtaining an order under section 167 of the PPSA or the collection of overdue moneys or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any other contract with the Buyer.

**21.0 WAIVER**

- 21.1. These Terms and Conditions remain in force notwithstanding any neglect, forbearance or delay in enforcement. The Seller shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of its Directors and such waiver shall apply only to the particular transaction to which it refers.

**22.0 SEVERABILITY**

- 22.1. If any clause or provision of these Terms and Conditions shall be held illegal or unenforceable by any judgment of any Court or Tribunal having competent jurisdiction, such Judgment shall not affect the remaining provisions hereof which shall remain in full force and effect as if such clause or provision held to be illegal or unenforceable had not been included herein.

**23.0 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- 23.1. The Buyer grants the Seller a security interest in favour of the Seller over the Goods and all the Buyer's present and after acquired property supplied by the Seller and secures payment by the Buyer of all amounts from time to time owing by the Buyer to the Seller in respect of this agreement and any other agreements between the Buyer and Seller, including any future advances.
- 23.2. The Buyer will provide such information and do such acts and execute such further documents as in the opinion of the Seller may be necessary or desirable to enable the Seller to perfect under the PPSA the security interest created by these Terms and Conditions as a first priority interest or with such other priority as the Seller may agree in writing.
- 23.3. The Buyer irrevocably appoints the Seller to be the Buyer's attorney to do anything which the Buyer agrees to do under these Terms and Conditions and anything which the attorney thinks desirable to protect the Seller's interest under these Terms and Conditions and the Buyer ratifies anything done by an attorney under this clause.
- 23.4. The Buyer agrees sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129, 131 to 133 of the PPSA shall not apply to these Terms and Conditions or the security created hereunder.
- 23.5. The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms and Conditions.
- 23.6. The Buyer must not change their name without first notifying the Seller of the new name not less than 7 days before the change takes effect.
- 23.7. The Buyer must not allow or permit the creation of a lien over any of the Goods.

24.0 **JURISDICTION**

24.1. In the event that Goods are supplied to a Buyer or to a location outside New Zealand, then the Seller and Buyer acknowledge that in the event of a dispute the laws of New Zealand will apply.