

Pearson Education South Asia Pte Ltd – Terms and Conditions of Sale

- 1. INTERPRETATION**
- 1.1 Definitions:**
- Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in Singapore are open for business.
- Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with Clause 14.2.
- Contract:** the contract between the Customer and Pearson for the sale and purchase of the Products in accordance with these Conditions.
- Delivery Date:** the date specified in the Order, or, if none is specified, within 14 days of the date of the Order.
- Delivery Location:** the address for delivery of Products as set out in the Order.
- Force Majeure Event:** has the meaning given in clause 11.
- Products:** the Pearson goods and services purchased and set out in the Order.
- Mandatory Policies:** Pearson's code of conduct as available on <https://www.pearson.com/corporate/business-partner-code-of-conduct.html>
- Order:** the Customer's order for the Products, as set out in the Customer's purchase order form.
- Specification:** the specification for the Products, including any related plans and drawings that are set out in the Catalogue agreed in writing by the Customer and Pearson.
- Pearson:** Pearson Education South Asia Pte Ltd or its affiliates and subsidiaries.
- 1.2 Interpretation:**
- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) A reference to **writing** or **written** includes emails.
- 2. BASIS OF CONTRACT**
- 2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2** The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3** The Order shall only be deemed to be accepted when Pearson issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4** The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5** Any samples, drawings or advertising produced by Pearson and any illustrations contained in Pearson's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6** A quotation for the Products given by Pearson shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 3. THE PRODUCTS**
- 3.1** Pearson shall ensure that the Products shall:
- (a) correspond with their description in Pearson's catalogue or website and the applicable Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act (Chapter 393) and Supply of Goods Act (Chapter 396), as amended) and fit for any purpose held out by Pearson or made known to Pearson by the Customer expressly or by implication, and in this respect the Customer relies on Pearson's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery (subject to the Customer storing the goods in suitable conditions); and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Products.
- 3.2** Pearson shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3** The Customer may inspect and test the Products at any time before delivery. Pearson shall remain fully responsible for the Products despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect Pearson's obligations under the Contract.
- 3.4** If following such inspection or testing the Customer considers that the Products do not conform or are unlikely to comply with Pearson's undertakings at Clause 3.1, the Customer shall inform Pearson and Pearson shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5** The Customer may conduct further inspections and tests after Pearson has carried out its remedial actions.
- 4. DELIVERY**
- 4.1** Pearson shall ensure that:
- (a) the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Products, and ; and
- (c) if Pearson requires the Customer to return any packaging material to Pearson, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to Pearson at the cost of Pearson.
- 4.2** Pearson shall deliver the Products:
- (a) on the Delivery Date;
- (b) at the Delivery Location; and
- (c) during the Customer's normal business hours, or as instructed by the Customer.
- 4.3** Delivery of the Products shall be completed on the completion of unloading the Products at the Delivery Location.
- 4.4** Pearson shall not be entitled to charge additional carriage costs if it delivers the Products in instalments without the Customer's prior written consent. Where it is agreed that the Products are to be delivered by instalments, they may be invoiced and paid for separately.
- 4.5** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Pearson shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide Pearson with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.6** If Pearson fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality

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in the cheapest market available, less the price of the Products. Pearson shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Pearson with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

5. RETURNS

5.1 The Customer shall be entitled to return the Products to Pearson subject to the provisions of this Clause 5:

5.2 Except for any orders or supply which is clearly agreed as being firm sales with no right of return, the Distributor shall be entitled to return any stock of Products (except as set out below) which are in saleable condition, subject to:

- (a) The Distributor paying any freight and insurance costs to Pearson's nominated delivery location;
- (b) No more than [12] months having lapsed from the time of Delivery;
- (c) A signed and completed returns form (endorsed by Pearson) is enclosed with the returned Products.

5.3 Pearson shall endeavour to process and credit any returns within 30 days of receipt of the returns Products, but shall not be liable for any delay in such processing. Titles which are sold on a "no returns" basis include any titles imported from the United Kingdom or the United States, custom publications, or any titles where Pearson has released a new edition no less than 3 months prior to the Order date.

6. TITLE AND RISK

Title and risk in the Products shall pass to the Customer on completion of delivery.

7. PRICE AND PAYMENT

7.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in Pearson's published price list in force as at the date the Contract came into existence.

7.2 The price of the Products:

- (a) excludes amounts in respect of value added tax (GST), which the Customer shall additionally be liable to pay to Pearson at the prevailing rate, subject to the receipt of a valid GST invoice; and
- (b) includes the costs of packaging, insurance and carriage of the Products.

7.3 No extra charges shall be effective unless agreed in writing with the Customer.

7.4 Pearson may invoice the Customer for the price of the Products plus GST at the prevailing rate (if applicable) on or at any time after the completion of delivery. Pearson shall ensure that the invoice includes the date of the Order, the invoice number, the Customer's order number, Pearson's GST registration number, and any supporting documents that the Customer may reasonably require.

7.5 The Customer shall pay correctly rendered invoices within 60 days of receipt of the invoice, unless the Customer has pre-approved credit terms with Pearson, in which case all payments should be in accordance. Payment shall be made to the bank account nominated in writing by Pearson.

7.6 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4.0% per annum above HSBC Bank Singapore's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

7.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of Pearson to the Customer against any liability of the Customer to Pearson.

8. INDEMNITY AND LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude Pearson's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by the Sale of Goods or Supply of Goods Acts;
- (d) defective products; or
- (e) any matter in respect of which it would be unlawful for Pearson to exclude or restrict liability.

8.2 Subject to clause 10.1:

- (a) Pearson shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Pearson's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Products.

8.3 Pearson shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Products, to the extent that the claim is attributable to the acts or omissions of Pearson, its employees, agents or subcontractors;
- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Products, to the extent that the defects in the Products are solely attributable to the acts or omissions of Pearson, its employees, agents or subcontractors.

8.4 This Clause 8 shall survive termination of the Contract.

9. CONFIDENTIALITY

9.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

9.2 This Clause 8 shall survive termination of the Contract.

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- 10. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**
- 10.1 The parties agree they shall at all times during the term of this Contract:
- (a) comply with all applicable laws, statutes, regulations from time to time in force; and
 - (b) comply with the Mandatory Policies.
- 10.2 Pearson may immediately terminate the Contract for any breach of Clause 11.
- 11. TERMINATION**
- 11.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving Pearson written notice, whereupon Pearson shall discontinue all work on the Contract. The Customer shall pay Pearson fair and reasonable compensation for any work in progress on the Products at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to Pearson if:
- (a) Pearson commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - (b) Pearson takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) Pearson takes any step or action in connection with Pearson being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) Pearson suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) Pearson's financial position deteriorates to such an extent that in the Customer's opinion Pearson's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 11.4 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 12. FORCE MAJEURE**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for 14, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.
- 13. GENERAL**
- 13.1 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.2 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by an authorised person on behalf of Pearson.
- 13.3 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.5 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.5(a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the third Business Days after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.
 - (d) The parties specifically agree the Electronic Transactions Act 2010 shall apply to any documentation required under this Contract, and the parties shall be entitled to rely on digitally authenticated signatures.
- 13.6 **Third party rights.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 13.7 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Singapore.
- 13.8 **Jurisdiction.** Each party irrevocably agrees that the courts of Singapore shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.