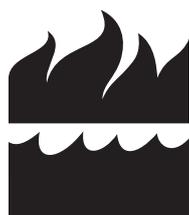




Harper Entertainment
Distribution Services



TRADING TERMS

Revised October 2008

Enquiries to:

Credit Control

Harper Entertainment Distribution Services

Yarrowa Road (PO Box 264)

MOSS VALE NSW 2577

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Harper Entertainment Distribution Services

A Division of HarperCollins *Publishers* Australia Pty Limited (ABN 36 009 913 517)

Head office: 25 Ryde Road Pymble (PO Box 321) NSW 2073

Distribution Centre: Yarrowa Road (PO Box 264) Moss Vale NSW 2577

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A News Corporation Company

1. Trading Terms

- a. These Trading Terms apply to the supply of Goods and related Services by HCP. By ordering Goods from us you agree to these Trading Terms. These Trading Terms may only be modified in writing by HCP. We reserve the right to update these Trading Terms from time to time. The parties to the Trading Terms are bound by updated Trading Terms from the time they are updated. If we update these Trading Terms, we will send you a new copy with your account statement.
- b. These Trading Terms as amended from time to time will commence when you order Goods from us, and cease when you close your account with us and discharge all sums owing to us.
- c. You must give our Credit Control Department written notice within 7 days of the sale of all or part of your business. If you do not give us written notice as required then we reserve the right to hold you responsible for all future supplies made by HCP to the full extent allowable by law.
- d. These Trading Terms supersede all prior arrangements between the parties and will apply to your existing account balance. All monies held by HCP as a result of any prior arrangement and all Goods supplied as a result of any prior arrangement will be dealt with in accordance with these Trading Terms.

2. Credit Application

You should also refer to your **Credit Application**.

- a. If you do not have a current Credit Application that was completed in relation to your company, business or partnership or if ownership of the company or business has changed hands please contact our Credit Control Department so that we can update our records and issue you with a Credit Application. Failure to contact us may result in the closure of your account and a demand for immediate payment of all outstanding amounts.
- b. HCP Credit Application contains the requirement for personal guarantees in the case of accounts trading as a company or trustee company. If you fail to update your Credit Application and / or fail to complete a personal guarantee, HCP reserves the right to enforce any debt against any directors personally as if a personal guarantee had been entered into.
- c. We may, upon review of our records, request that you provide us with an updated credit application or guarantee.

3. Pricing, payment, "cash with order" and credit terms

- a. Before you order product, we will agree on payment terms and a standard discount.
- b. Your account will be cash with order if you cannot satisfy our credit account requirements.

- c. If we agree to extend you commercial credit, payment must be made within the agreed credit terms. If you fail to pay by the last day of the calendar month in which a payment falls due, your account will be considered to be overdue. Please note that you are required to remit payment in full regardless of any pending returns.
- d. You must pay us the price of the Goods, plus any Goods and Services Tax or other applicable taxes. The price will normally be based on the ARP of the Goods minus your discount. Your discount may be reviewed by our National Sales Director and can only be amended in writing by us.
- e. HCP may act as a distributor for other publishers. In some cases a different discount may apply to their product range. HCP will advise you if there is a different discount applicable to a particular product range.

4. Credit card charges and electronic funds transfer (EFT)

If we agree that you can pay by credit card or EFT, then where permitted by law, we reserve the right to levy a fee to cover these facilities.

5. ARP

- a. HCP may change the ARP at any time without notice, unless otherwise agreed with you on any range of titles.
- b. The ARP is the recommended retail price only.
- c. Goods are sold to you for resale in Australia unless otherwise stated by HarperCollins.

6. Freight, delivery times and minimum order size

- a. We will pay freight on standard rate deliveries to you within Australia. If you request overnight freight or air freight we will add the cost to your invoice.
- b. We will do our best to dispatch deliveries to you on time but late delivery will not constitute a breach of these Trading Terms.
- c. A small order is an order that has an invoice value of less than **\$220.00** (incl GST). Where immediate delivery is requested for a small order a surcharge of **\$11.00** (incl GST) will be added to your invoice. Where you do not request immediate delivery for a small order, this order will be held for up to 30 days to allow merging with other orders. If not merged or cancelled within 30 days then the order will be dispatched with the surcharge.

7. Out of stock items

You will only be invoiced for an item when we have it in stock. Your order will be placed on backorder until we have stock available, unless you tell us that you no longer want to order that item.

8. Cancellation of orders

- a. Orders of any one title over 50 copies may only be cancelled in writing with our written acknowledgement.
- b. If we have entered special arrangements based on your order, we may require you to indemnify us for any losses that we suffer as a result of you cancelling the order.

9. Return of Goods to HCP

Please review the following information carefully as returns that are not authorised or that are overweight (see below) will be sent back to you, and a handling surcharge of **\$15.00** (incl GST) will be added to your account. HCP cannot accept responsibility for books returned by you that were not purchased from HCP.

9.1 Sale or return Goods

- a. **Sale or return:** Goods are only sold on a “sale or return” basis when expressly stated by HCP. This may include new titles, and for selected accounts only. A title is new from its date of publication until 12 months after that date.
- b. **Backlist:** titles that are more than 12 months from their publication date are backlist titles and are supplied firm sale.
- c. **Indent:** titles that are sourced against an order but which are not normally carried as a regular stock item are indent titles and are supplied firm sale.
- d. If the item was sold to you on a “sale or return” basis, you must obtain a **Returns Authorisation Number (“RA Number”)** for each batch of returns. The RA Number will be issued by your Territory Manager.

Sale or return Goods must:

- i. Be authorised in the period no earlier than 3 months after the publication date and no later than 12 months after the publication date;
 - ii. Be accompanied by the relevant paperwork detailing the returned titles and including an RA Number;
 - iii. Have any price tags removed;
 - iv. Be in mint condition; and
 - v. Be packaged properly in secure boxes consistent with safe handling practices as required by law.
 - vi. For safety reasons, please ensure that no box, when properly sealed, exceeds **16 kilograms** in weight.
- e. In addition, Goods sold on a right of return basis assume that we have an ongoing trading relationship with you. If, for whatever reason, that relationship is terminated, we reserve the right to decline any further returns from you.

9.2 Incorrect shipments or damaged goods – “no fault returns”

If you receive incorrect or damaged shipments, you must, **without exception**, notify our Customer Service Department within 7 days of delivery to you. On no account should you send items back to us unless you have an RA Number supplied by our Customer Services Department. The RA Number together with the appropriate paperwork must accompany the Goods. Failure to notify us as required may result in the rejection of your claim.

10. Freight on authorised returns

If you choose to send authorised returns via our carriers then HCP will collect the cartons of Goods to be returned. The cost of collection and delivery will be **\$11.00** (incl. GST) per carton. The use of any other carrier will be at your expense. You will be responsible for loss or damage to the Goods by your own carrier. Proof of return to HCP’s carrier will be your responsibility.

11. Risk

You become responsible for the care of the Goods when they are delivered to you, or your employees, servants or agents. If the Goods are lost or damaged after you have become responsible for them, you are still required to pay for them.

12. Retention of title

- a. Title in the Goods remains with HCP until the first of the following happens:
 - i. You pay the purchase price of those Goods and any overdue amounts invoiced by HCP.
 - ii. You transfer title to a third party to whom the Goods are sold in the ordinary course of business.
- b. In selling the Goods, you are not acting as the agent for HCP.
- c. You must pay the proceeds of the sale of Goods into a separate account and hold this account on trust for HCP to the extent of any debt owing to us.
- d. HCP may allocate payments received from you at HCP’s absolute discretion.
- e. To the full extent allowable by law, HCP reserves the right to re-possess any Goods in your possession in satisfaction of any amount owed to us.

13. Goods supplied at different times must not be mixed

Individual titles supplied under different order numbers and at different times must be stored in a way that HCP can match each individual title to the respective invoice. If this cannot be done, HCP has an absolute discretion to identify the individual titles in which legal title remains with HCP.

14. Delivery up or re-possession of Goods

- a. You must allow HCP to enter any of your premises or other place where you hold the Goods and allow HCP to inspect the Goods. Except in an emergency, HCP must give you reasonable notice that it wants to inspect the Goods.
- b. If you do not pay HCP the purchase price of the Goods on the due date, HCP may require you in writing to deliver the Goods back to HCP. You must comply at your own cost.
- c. You must allow HCP to enter your premises or any other place where the Goods are stored if you do not return the Goods within 48 hours of a request, or if you breach a term of this document, or if an Adverse Event happens to you.
- d. If an Adverse Event happens you must inform us immediately and cease sales of our Goods until a HCP representative has inspected the Goods.
- e. You indemnify HCP against any liability, loss, damage or expense (including legal costs on a full indemnity basis) that HCP incurs or suffers in connection with gaining access to any premises or in inspecting or re-possessing stock. Such costs are payable upon you receiving a request from us.

15. Assignment

- a. You may not assign or transfer your rights under these Trading Terms without our written consent.
- b. HCP may assign its rights under these Trading Terms to any purchaser of all or part of HCP's business, any company related to HCP, or any third party who agrees to undertake recovery of or an assignment of monies owing to HCP.

16. Non payment and interest on overdue amounts

- a. HCP reserves the right to review or discontinue your commercial credit at any time.
- b. If any payment is overdue, we may take some or all of the following actions: we may cease to supply you with Goods; alter your credit terms; alter your discount; charge you interest at the rate of 5 percent per annum (or such other rate as allowed by law) on any overdue amount calculated on a monthly basis; take possession of the Goods; enforce any personal guarantees or require that new personal guarantees be entered into; report you as a bad debtor to the appropriate registry or credit reporting agency; pursue any appropriate legal remedy against you.
- c. We may recover the costs (including any legal costs) we incur in taking any of these actions or exercising any right under these Trading Terms.

17. Warranties

- a. We make no express or implied warranties in relation to the Goods or Services supplied by HCP. To the extent of any warranty or liability imposed on

HCP by operation of law, HCP liability arising from the provision of Goods or Services to you is limited to our choice of:

- i. The replacement of the Goods or the supply of equivalent goods; or
- ii. The repair of the Goods; or
- iii. Payment of the cost of having the Goods replaced;

And / or

- iv. The supplying of the Services again, or
 - v. The payment of the cost of having the Services supplied again.
- b. Under no circumstances will we be held responsible for any consequential or special loss that you suffer as a consequence of you entering into trade with us, even if you inform us that you may suffer such loss.

18. Force Majeure – events which are outside the control of HCP

HCP cannot be held responsible for the failure to perform any of our obligations under these Trading Terms if the cause of the failure is due to events beyond our reasonable control – including, but not limited to any act of God, public enemy, riot, delays by common carrier, fire, flood, natural disaster, boycott, labour dispute, failure by suppliers or Government legislation.

19. No Waiver

If HCP does not require strict or timely compliance with any part of these Trading Terms, this will not prevent us from exercising any part of these Trading Terms in future.

20. Entire agreement

These Trading Terms, along with any other document or agreement which is expressly mentioned or contemplated in these Trading Terms contains the entire understanding between the parties relating to its subject matter and supersedes all prior arrangements between the parties whether written or oral.

21. Severability

Any portion of these Trading Terms which is invalid or unenforceable shall be severed without prejudice to the balance of these Trading Terms. The remaining part of these Trading Terms shall be interpreted so as to give the closest possible result to these Trading Terms before such part was severed.

22. Governing Law

These Trading Terms shall be governed by the laws of New South Wales and subject to the non exclusive jurisdiction of the courts of New South Wales.

23. Definitions used in these Trading Terms

- a. **Adverse Event** means anything that reasonably indicates that there is a significant risk that you are or will become unable to pay debts as they fall due.
- b. **Credit Application** means HarperCollins Publishers Credit Application;
- c. **Goods** means any goods that we offer to supply to you, including but not limited to books and related product;
- d. **HCP** means HarperCollins Publishers Australia Pty Limited (ABN 36 009 913 517);
- e. **ARP** means the Australian Recommended Retail price of the Goods;
- f. **Services** means any of the services we perform for you in connection with the supply of the Goods;
- g. **us** or **we** or **our** means HCP; and
- h. **you** or **your** means the person, company, or other legal entity that orders Goods from HCP.

24. Interpreting these Trading Terms

In these Trading Terms, unless the context requires otherwise:

- a. A reference to a person includes a natural person, a company, a partnership, an association, a corporation, a body corporate, a joint venture or a governmental agency;
- b. A reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- c. A reference to a party to this agreement includes a reference to that party's successors and permitted assigns and includes a party who novates this agreement;
- d. A reference to a law includes a law which amends or has amended or replaced the relevant part of that law;
- e. The parties intend that a person construes this agreement so that it is valid and enforceable at law; and
- f. A reference to a notice to be given under this agreement is a written notice.

25. Privacy Statement

- a. We collect your personal information to process your Credit Application. This involves conducting the appropriate checks with credit reporting agencies, trade references nominated by you or selected by us, and guarantors of your obligations. For existing trade accounts we may also conduct appropriate checks on an ongoing basis and report bad debtors to the appropriate agency.
- b. We may also use your personal information to assist in providing the Goods and Services you have requested, and to improve our Goods and Services. We or any of our Australian related companies may be in touch to let you know about goods, services or promotions which may be of interest to you. We may also share your information with other people or organisations who assist us in providing our goods and services.
- c. This company is a part of a global media and entertainment company. We would like to share your information with these overseas related companies so that they can provide assistance in refining our Goods and Services, or contact you with special offers. If you would prefer us not to, please write to our Privacy Officer at 25 Ryde Road Pymble NSW 2073, facsimile (02) 9952 5577, e-mail: privacy@harpercollins.com.au. You can access your personal information, subject to any exceptions provided by the *Privacy Act*, by contacting our Privacy Officer.