



TRADING TERMS

November 2023

Enquiries to: Commercial Services TDLC

Erskine Park

Phone 02 9839 0282

The Distribution and Logistics Company Pty Limited (ABN 64 000 033 581)

Head office and Distribution Centre: 3A, 23-107 Erskine Park Road, Erskine Park NSW 2759

www.TDLC.com.au

1. Trading Terms

- a. These Trading Terms apply to the supply of Goods and related Services by TDLC. By ordering Goods from us you agree to these Trading Terms. These Trading Terms may only be modified in writing by TDLC. 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. If TDLC modifies the Trading Terms in writing and you do not agree to the modified Trading Terms, you have the right to terminate your relationship with TDLC by providing TDLC at least 14 days' written notice.
- c. 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.
- d. 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 TDLC to the full extent allowable by law.
- e. These Trading Terms supersede all prior arrangements between the parties and will apply to your existing account balance. All monies held by TDLC 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.
- f. These Trading Terms do not exclude or limit the consumer guarantees or any other statutory rights that you may have under applicable laws that cannot be excluded or limited (including the Australian Consumer Law).

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. TDLC 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, TDLC 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.
- 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.
- e. TDLC may act as a distributor for other publishers. In some cases, a different discount may apply to their 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. Sales must be within designated channel

- a. TDLC may, in its reasonable discretion, designate your account as either "Wholesale" or "Retail", as defined by clause 5(b).
- b. "Wholesale" means you may only resupply the Goods to retailers. "Retail" means you may only resupply the Goods to an individual consumer for their personal, domestic or household use.
- c. TDLC agrees to supply you with Goods on the condition that you will only resupply those Goods in accordance with clause 5(b).
- d. Where requested by TDLC, you agree to provide any information or documentation reasonably required to demonstrate channel compliance.
- e. If TDLC, acting reasonably, forms the view that you have acquired, or intend to acquire, Goods for the purpose of resupplying on contravention of clause 5(b), TDLC will be entitled to refuse to accept future orders from you for the supply of Goods.

6. RRP

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

7. Freight, delivery times and minimum order size

- a. We will pay freight on standard rate deliveries to you within Australia.
- 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 \$100.00 (Plus GST). Where immediate delivery is requested for a small order a surcharge of \$25.00 (plus GST) will be added to your invoice.

8. 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.

9. Cancellation of orders

Orders once received can only be cancelled with prior written approval by TDLC.

10. Return of Goods to TDLC

- a. We accept pre-approved returns, or return of faulty or damaged goods only. Please email TDLC customer service if you receive damaged or faulty stock within 7 days of receipt. To facilitate a return and obtain an RA number, please email TDLC customer service and include the following information – your account number, the ISBN, quantity, product title, and reason for return.
- b. Freight for returns (excluding faulty or damaged goods) will be payable by the customer at \$18.18 per carton plus GST. Each carton is not to exceed 12kg.
- c. Please note, any unauthorised returns may not be credited, and ownership of the stock will revert back to the publisher or sent for destruction.

10.1 Sale or return Goods

- a. Sale or return: Goods are only sold on a “sale or return” basis when expressly stated by TDLC.
- b. Indent: titles which are not normally carried as a regular stock item are indent titles and are supplied firm sale.
- c. If the item was sold to you on a “sale or return” basis, you must obtain a Returns Authorisation Number (“RA Number”) for returns. The RA Number will be issued by TDLC Customer Service.
- d. Sale or return Goods must:
 - i. Be authorised in the period no earlier than 3 months after the date of the most recent invoice for that specific ISBN and no later than 12 months after the date of that same invoice;
 - 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 12 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.

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

- a. If you receive incorrect or damaged shipments, you must, without exception, provide TDLC Customer Service Department written notice 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 TDLC Customer Service. The RA Number together with the appropriate paperwork must accompany the Goods. Failure to notify us as required may result in delay, difficulty assessing or the rejection of your claim.
- b. Any claim for non-delivery or request for a proof-of-delivery or “POD” of Goods must be made in writing to TDLC within 30 days of the date the Goods are dispatched by TDLC. Failure to notify TDLC as required may result in delay, difficulty assessing or the rejection of your claim.

11. Freight on authorised returns

If you choose to send authorised returns via our carriers then TDLC will collect the cartons of Goods to be returned. The cost of collection and delivery will be \$18.18 (plus 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 TDLC's carrier will be your responsibility.

12. 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.

13. Retention of title

- a. Title in the Goods remains with the Publisher until the first of the following happens:
 - i. You pay the purchase price of those Goods and any overdue amounts invoiced by TDLC.
 - 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 TDLC, or the Publisher.
- c. You must pay the proceeds of the sale of Goods into a separate account and hold this account on trust for TDLC to the extent of any debt owing to us.

- d. TDLC may allocate payments received from you at TDLC's absolute discretion.
- e. To the full extent allowable by law, TDLC reserves the right to re-possess any Goods in your possession in satisfaction of any amount owed to us.

14. 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 TDLC can match each individual title to the respective invoice. If this cannot be done, TDLC has an absolute discretion to identify the individual titles in which legal title remains with the Publisher.

15. Delivery up or re-possession of Goods

- a. You must allow TDLC to enter any of your premises or other place where you hold the Goods and allow TDLC to inspect the Goods. Except in an emergency, TDLC must give you reasonable notice that it wants to inspect the Goods.
- b. If you do not pay TDLC the purchase price of the Goods on the due date, TDLC may require you in writing to deliver the Goods back to TDLC. You must comply at your own cost.
- c. You must allow TDLC 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 representative has inspected the Goods.
- e. You indemnify TDLC and the Publisher against any liability, loss, damage or expense (including legal costs on a full indemnity basis) that TDLC or the publisher 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.

16. Personal Property Securities Act

You agree and undertake to do anything TDLC requires (such as obtaining consents and signing and producing documents) in connection with the registration of this document or any other document on any register established pursuant to the Personal Property Securities Act 2009 ("PPSA"). In the event you neglect or fail to deliver such document(s), you hereby appoint TDLC to be your lawful attorney for the purpose of executing and registering such document(s). You agree and acknowledge that:

- a. These Trading Terms constitute a security agreement for the purposes of section 20 of the PPSA and that a security interest exists in all goods (and their proceeds) previously supplied by TDLC to you (if any) and in all future goods (and their proceeds);
- b. Where you are paid in respect of the goods so delivered, you must, as TDLC's fiduciary, keep any such proceeds in a separate account and account to TDLC in respect of those proceeds;

- c. You contract out of and waive your rights under the following provisions of Chapter 4 of the PPSA:

- i. to receive a notice of intention of removal of accession (section 95);
- ii. to receive a notice that TDLC decides to enforce its security interest in accordance with land law (section 118);
- iii. to receive notice on enforcement of security interests in liquid assets (section 120);
- iv. to receive a notice of enforcement action against liquid assets (section 121(4));
- v. to receive a notice to seize collateral (section 123);
- vi. to receive notice on enforcement of security interests in liquid assets (section 125);
- vii. to receive a notice of disposal of goods by TDLC purchasing the goods (section 129); viii. to receive a notice to dispose of goods (section 130);
- viii. to receive a statement of account following disposal of goods (section 132(2));
- ix. to receive a statement of account if no disposal of goods for each 6 month period (section 132(4));
- x. to receive notice for TDLC to retain goods (section 134(2));
- xi. to receive notice of any proposal of TDLC to retain goods (section 135(2));
- xii. to object to any proposal of TDLC to either retain or dispose of goods (section 137(2));
- xiii. to redeem the goods (section 142);
- xiv. to reinstate the security agreement (section 143); and
- xv. to receive a notice of any verification statement

(see section 157(1) and section 157(3).

- d. Where TDLC has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- e. Until ownership of the goods passes, you must not give TDLC a written demand or allow any other person to give TDLC a written demand requiring TDLC to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- f. You acknowledge that you have received value as at the date of first delivery of the goods and have not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to TDLC under these Trading Terms.
- g. You irrevocably grant to TDLC or the Publisher the right to enter upon your property or premises, without notice, and without being in any way liable to you or to any third party, if TDLC has cause to exercise any of TDLC rights under section 123 and/or 128 of the PPSA, and you

agree to indemnify TDLC from any claims made by any third party as a result of TDLC exercising such right.

17. Assignment

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

18. Non-payment and interest on overdue amounts

- a. TDLC 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.

19. Warranties

- a. For the purpose of this clause 19:
 - i. "Statutory Guarantees" means the guarantees that apply to Goods and Services purchased by Consumers (as defined in the Competition and Consumer Act 2010 (Cth) (CCA)), as set out in Part 3-2 Division 1 of the ACL; and
 - ii. "Australian Consumer Law" or "ACL" means the law set out in Schedule 2 to the CCA.
- b. Except for the Statutory Guarantees and any express warranties set out in these Trading Terms, TDLC disclaims and excludes all other warranties and representations in relation to the Goods or Services provided by it under these Trading Terms.
- c. To the maximum extent permitted by section 64A of the ACL, if the Goods or Services provided by TDLC under these Trading Terms are not of a kind ordinarily acquired for personal, domestic or household use or consumption, TDLC limits its liability, at its discretion:
 - i. in the case of Goods, to:
 - A. the replacement of the Goods or the supply of equivalent Goods;
 - B. the repair of the Goods;

C. the payment of the cost of replacing the Goods or of acquiring

D. equivalent Goods; or

E. the payment of the cost of having the goods repaired; or

ii. in the case of Services, to:

A. the supplying of the services again; or

B. the payment of the cost of having the services supplied again.

- d. Unless required by the ACL, 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.

20. Force Majeure – events which are outside the control of TDLC 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.

21. Survival of rights

- a. If the Trading Terms are terminated including in accordance with clause 1(b), each party will be released from its obligations to further perform its obligations under the Trading Terms, except those expressed to survive termination.
- b. The rights and obligations of each party under each of the following clauses will continue independently from the other obligations of the parties and survive termination of the Trading Terms.
 - i. cl 3 (payment)
 - ii. cl 4 (credit card charges and electronic funds transfer)
 - iii. cl 9 (cancellation of orders- indemnity)
 - iv. cls 13 -16 (retention of title, identification of goods, re-possessing stock- indemnity, PPSA)
 - v. cl 18 (non-payment and interest on overdue amounts)
 - vi. cls 21-29 (general)
- c. In addition to clause 21(b), your obligation to any overdue amounts invoiced by TDLC in relation to the Trading Terms survive termination of the Trading Terms.

22. No Waiver

If TDLC 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.

23. 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.

24. 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.

25. 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.

26. 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 TDLC Application;
- c. Goods means any goods that we offer to supply to you, including but not limited to books and related product;
- d. TDLC means TDLC, a division of The Distribution and Logistics Company Pty Limited (ABN);
- e. RRP means the 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 TDLC; and
- h. you or your means the person, company, or other legal entity that orders Goods from TDLC.

27. 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.

28. 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.

29. Confidentiality

- a. Except as required by law, these Trading Terms and subject to the PPSA, TDLC and you agree to treat these Trading Terms as confidential.
- b. TDLC and you acknowledge and agree that subclauses 28.a., 28.c. and this sub-clause 28.b. constitute a confidentiality agreement pursuant to Section 275(6) of the PPSA.
- c. Neither TDLC or you will disclose, send or make available any of the information referred to in Section 275(1) of the PPSA to any person except as required by law, these Trading Terms and subject to the PPSA.