



NEW ZEALAND TRADING TERMS

Revised June 2023

Orders and enquiries contact
Commercial Services
email **nzorders@harpercollins.co.nz**
Phone 0800 766 569

Harper Entertainment Distribution Services

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

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

www.harpercollins.com.au

A News Corporation Company

1. Trading Terms

- a. These Trading Terms apply to the supply of Goods and related Services by HEDS and incorporate the HEDS Customer Charges. By ordering Goods from us you agree to these Trading Terms. These Trading Terms may only be modified in writing by HEDS. We reserve the right to update these Trading Terms or the HEDS Customer Charges 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 provide you with 30 days' notice of the changes, post them on our web site at www.harpercollins.co.nz and send you a link to the Trading Terms with your account statement.
- b. If HEDS 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 HEDS by providing HEDS 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 HEDS 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 HEDS 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 Consumer Guarantees Act 1993).

2. HEDS Credit Application

You should also refer to your HEDS Credit Application.

- a. If you do not have a current HEDS Credit Application that was issued by HEDS and 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 HEDS 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. HEDS 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 HEDS Credit Application and / or fail to complete a personal guarantee, HEDS 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 HEDS 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.
- e. The price will normally be based on the NZ RRP of the Goods minus your discount. Your discount may be reviewed by our Sales Director and can only be amended in writing by us.
- f. HEDS may act as a distributor for other publishers. In some cases a different discount may apply to their product range. HEDS will advise you if there is a different discount applicable to a particular product range.

4. Merchant fees, services fees, other surcharges

- a. Payment by credit or debit card will be subject to a merchant fee to recover the charges imposed by the card company.
- b. HEDS will charge you a separate customer service fee to recover the cost of taking certain orders, payments and queries.
- c. All merchant fees and customer service fees (as well as small order surcharge detailed in these Trading Terms) are set out in HEDS Customer Charges, as updated from time to time in accordance with clause 1a.

5. Sales must be within designated channel

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

6. NZ RRP

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

7. Freight, delivery times and minimum order size

- a. We will pay freight on standard rate deliveries to you within New Zealand.
- 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, as long as the delivery occurs within a reasonable time.
- c. A small order is an order that has an invoice value of less than \$230.00 (incl GST). Where immediate delivery is requested for a small order a surcharge will be added to your invoice. This surcharge is set out in the HEDS Customer Charges. 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.

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

- 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.

10. Return of Goods to HEDS

Please review the following information carefully as returns that are not authorised or are overweight (see below) will be sent back to you with a handling charge applied for the cost incurred by HEDS, including freight. HEDS will not accept books returned by you to HEDS that were not purchased from HEDS.

10.1 Sale or return Goods

- a. Sale or return: Goods are only sold on a "sale or return" basis when expressly stated by HEDS.
- 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.
- 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 sticker, promotional sticker and sticker residue removed;
 - iv. Be in mint condition;
 - v. Be packaged properly in secure boxes consistent with safe handling practices as required by law;
 - vi. Be returned at your cost to the location(s) in New Zealand as advised by us from time to time; and
 - vii. 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. We will not accept returns from stores that are closing or after change of ownership.

- f. Nothing in this subsection limits or excludes liability as set out in clause 19 (Consumer Guarantees Act 1993).

11. Incorrect shipments or damaged goods – "no fault returns"

- a. If you receive incorrect or damaged shipments, you must, without exception, provide HEDS 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 HEDS Customer Service. 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.
- b. Any claim for non-delivery or request for a proof-of-delivery or "POD" of Goods must be made in writing to HEDS within 90 days of the date the Goods are dispatched by HEDS. Failure to notify HEDS as required may result in delay, difficulty assessing or the rejection of your claim.

12. Risk

To the maximum extent permissible by law, 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 HEDS until the first of the following happens:
 - i. You pay the purchase price of those Goods and any overdue amounts invoiced by HEDS.
 - 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 HEDS.
- c. You must pay the proceeds of the sale of Goods into a separate account and hold this account on trust for HEDS to the extent of any debt owing to us.
- d. HEDS may allocate payments received from you at HEDS's absolute discretion.
- e. To the full extent allowable by law, HEDS 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 HEDS can match each individual title to the respective invoice. If this cannot be done, HEDS has an absolute discretion to identify the individual titles in which legal title remains with HEDS.

15. Delivery up or re-possession of Goods

- a. You must allow HEDS, acting reasonably, to enter any of your premises or other place where you hold the Goods and allow HEDS to inspect the Goods. Except in an emergency, HEDS must give you reasonable notice that it wants to inspect the Goods.
- b. If you do not pay HEDS the purchase price of the Goods

on the due date, HEDS may require you in writing to deliver the Goods back to HEDS. You must comply at your own cost.

- c. You must allow HEDS, acting reasonably, 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 HEDS representative has inspected the Goods.
- e. To the maximum extent permissible by the law, you indemnify HEDS against any liability, loss, damage or expense (including legal costs on a full indemnity basis) that HEDS 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 Properties Securities Act

You grant a security interest in the Goods to HEDS and you waive the right to receive a verification statement under section 148 of the Personal Properties Securities Act 1999.

17. Assignment

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

18. Non payment and interest on overdue amounts

- a. HEDS 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. Consumer Guarantees Act 1993

- a. You agree and acknowledge that all supplies of Goods and Services from HEDS are/will be acquired for your business purposes and the provisions of the Consumer Guarantees Act 1993 will not apply as between you and HEDS to the maximum extent permitted by law; and
- b. If the Goods are not acquired by you for business purposes, HEDS reserves the right to replace any Goods which fail to comply with any guarantee contained in the Consumer Guarantees Act 1993.
- c. Where you supply Goods to any other person in the

course of trading, you must not give or make any undertaking, assertion or representation in relation to the Goods without our prior written approval.

- d. You agree to indemnify HEDS against any liability or cost incurred by HEDS under the Consumer Guarantees Act 1993 as a result of any breach by you of the obligations contained in these Trading Terms.

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

Neither party can be held responsible for the failure to perform any of its obligations under these Trading Terms if the cause of the failure is due to events beyond its 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 1b, 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: cl 3 (payment); cl 4 (fees and surcharges); cl 9b (cancellation of orders- indemnity); cls 13 -16 (retention of title, identification of goods, re-possessing stock- indemnity, PPSA); cl 18 (non-payment and interest on overdue amounts); and cls 21-29 (general).
- c. In addition to clause 21b, your obligation to any overdue amounts invoiced by HEDS in relation to the Trading Terms survive termination of the Trading Terms.

22. No Waiver

If HEDS 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 Zealand.

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. HEDS Credit Application is as defined in clause 2 of these terms;
- c. Goods means any goods that we offer to supply to you, including but not limited to books and related product;
- d. HEDS means Harper Entertainment Distribution Services, a division of HarperCollins Publishers Australia Pty Limited (ABN 36 009 913 517);
- e. HEDS Customer Charges means the schedule to these Trading Terms, also available at www.harpercollins.co.nz and as updated from time to time in accordance with clause 1a;
- f. NZ RRP means the New Zealand Recommended Retail Price of the Goods;
- g. Services means any of the services we perform for you in connection with the supply of the Goods;
- h. us or we or our means HEDS; and
- i. you or your means the person, company, or other legal entity that orders Goods from HEDS.

27. Interpreting these Trading Terms

In these Trading Terms, unless the context requires otherwise:

- a. Currency is in New Zealand dollars;
- b. 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;
- c. A reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- d. 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;
- e. A reference to a law includes a law which amends or has amended or replaced the relevant part of that law;
- f. The parties intend that a person construes this agreement so that it is valid and enforceable at law; and
- g. 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 HEDS 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. Our Privacy Policy located at www.harpercollins.co.nz/privacy-policy/ applies to the collection and of use of your Personal information and is incorporated in these Trading Terms.

29. Confidentiality

Except as required by law, these Trading Terms and HEDS and you agree to treat these Trading Terms as confidential.



SCHEDULE TO HEDS NEW ZEALAND TRADING TERMS

Customer Charges – New Zealand

June 2023

Merchant fees

Card type	Card fee
Mastercard debit	1.18%
Visa debit	1.18%
Mastercard credit	1.48%
Visa credit	1.48%

Customer service fees

Orders placed by phone for more than 10 different ISBNs Or any order emailed with a photo or photocopy attachment. <i>No fee for orders placed online, by email text or excel</i>	\$10.00 per order
If you request a paper invoice or packing slip in the carton	\$1.00 per printed invoice or packing slip

Other surcharges

Small order surcharge Invoice value less than \$230 (incl GST)	\$14.50 per order
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Charges include [GST](#)

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