

## WH SMITH AUSTRALIA CONDITIONS OF PURCHASE

These **Conditions** apply to and form part of all WH Smith Purchase Orders.

### 1. Definitions

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State or Territory where the Supplies will be provided.

**Confidential Information** means all information and data relating to the business, technology or other affairs of WH Smith, any of its Related Bodies Corporate and any of its Sellers, customers, or affiliates but does not include information which is in or becomes part of the public domain other than through breach of these Conditions or an obligation of confidence owed to WH Smith or any Related Body Corporate.

**Goods** means any goods specified in the Purchase Order and any deliverable or work product produced by the Seller for WH Smith in the course of performing Services.

**GST** has the meaning set out in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Insolvency Event** means the Seller becomes insolvent, is placed under administration or is bankrupt, is unable to pay their debts as they become due, or such other event occurs which WH Smith reasonably considers is similar to insolvency, administration or bankruptcy.

**Intellectual Property Rights** means all current and future, registered and unregistered rights in Australia and throughout the world in respect of copyright, designs, trade marks, trade secrets, know-how, confidential information, patents, and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Law** means any statute, code or other law including regulations under them and any code of practice, practice notes, guidelines, rules, or standards issued by relevant regulators or industry bodies, whether or not having the force of law.

**Liability** means any loss, liability, cost, outgoings or expense.

**Location** means the location(s) notified by WH Smith to the Seller for the delivery of the Goods and/or the performance of the Services.

**Milestones** means any dates, times and service levels specified in the Purchase Order.

**Price** means the price, fee or charge set out in the Purchase Order in relation to a Supply.

**Privacy Act** means the Privacy Act 1988 (Cth), the Australian Privacy Principles, and any Law which relates to the protection of personal information.

**Policy** means any WH Smith policy, procedure, work instruction, code or guide advised to the Seller.

**Purchase Order** means a purchase order issued by WH Smith.

**Related Bodies Corporate** has the meaning set out in section 50 of the Corporations Act 2001 (Cth).

**Seller** means the supplier specified in the Purchase Order.

**Services** means the services specified in the Purchase Order.

**Specifications** means the manufacturer's specifications, any written statement of requirements provided by WH Smith to the Seller, and any particulars included and any documents cross referenced in the Purchase Order.

**Supplies** or **Supply** means the Goods and/or Services.

**Valid Invoice** means a tax invoice which:

- a) is in accordance with the GST Law;
- b) accurately describes the Supplies and the Price;

c) relates to Supplies which are provided in full in accordance with these Conditions, including in conformance with WH Smith Requirements; and

d) quotes the Purchase Order number.

**WH Smith** means WH Smith Australia Pty Ltd ABN 70 146 430 622 of Level 4, 80 William Street, Woolloomooloo, NSW, 2011.

**WH Smith Requirements** means:

a) the Supplies are:

- i) delivered in full and in accordance with the Purchase Order;
- ii) in strict conformance with the Specifications;
- iii) consistent with any representations made by the Seller to WH Smith prior to issuing the Purchase Order;
- iv) of an acceptable, merchantable quality and are fit for the purpose for which such Supplies are normally acquired or, if applicable, made known to the Seller by WH Smith prior to issuing the Purchase Order;
- v) compliant with all applicable Laws;
- vi) not infringing upon any third party rights including Intellectual Property Rights;

b) in the case of Services, the Services will be performed:

- i) with due skill and diligence in accordance with industry best practice (or, if there is no established industry practice, reasonable practice) by appropriately trained and experienced personnel with all necessary qualifications; and
- ii) in accordance with any Milestone;

c) in the case of Goods:

- i) the Seller has the title and right to sell the Goods to WH Smith, free from all encumbrances, and WH Smith will enjoy quiet possession of the Goods;
- ii) the Goods are delivered complete, suitably packed, undamaged and in accordance with any Milestone; and
- iii) the Goods are the same as any sample provided or demonstration given by the Seller prior to the Purchase Order being issued.

### 2. Purchase Orders

2.1 A Purchase Order creates a binding obligation on the Seller to provide the Supplies when it is received by the Seller. In the absence of a valid Purchase Order:

- a) WH Smith has no obligation to acquire the Supplies from the Seller; and
- b) the Seller must not provide the Supplies to WH Smith.

2.2 In the event of a conflict between the terms of the Purchase Order and these Conditions, these Conditions shall prevail unless the relevant clause of the Conditions is expressly stated in the Purchase Order to be amended or removed by the Purchase Order.

2.3 Unless the Purchase Order expressly states otherwise WH Smith is free to acquire the same or similar Supplies from any person.

2.4 Any terms or conditions contained or referred to in the Seller's quotation, invoice or other documentation or websites which may be contrary to or differ from these Conditions shall be void to the extent of any inconsistency. WH Smith shall not be deemed to have waived any of these Conditions (including this clause 2.4) if it fails to object to any of the Seller's terms and conditions.

### 3. Delivery

3.1 The Seller must:

- a) deliver and, if necessary, install and configure the Goods; and

- b) perform the Services, at the Location, in accordance with the Milestones and WH Smith's reasonable directions.
- 3.2 WH Smith may, at any time prior to delivery of the Goods or the commencement of the performance of the Services, and without Liability to the Seller (other than the requirement to pay the Price for any increase in the quantity of Supplies under clause 3.2(d)):
- vary the Location;
  - vary the Milestones;
  - terminate or suspend the Purchase Order; or
  - vary the quantity or composition of Supplies, set out in the Purchase Order, by advising the Seller in writing, and in the case of termination under clause 3.2(c), the Seller must refund any prepayments made in respect of Supplies which have not been or will not be provided.
- 4. Title, Risk and Quality of Supplies**
- 4.1 Unless otherwise specified in the Purchase Order, title and physical risk in Goods passes to WH Smith upon delivery.
- 4.2 WH Smith may, at its option, inspect or test the Supplies to determine if the Supplies meet WH Smith Requirements. Upon request by WH Smith, the Seller shall grant WH Smith's representatives access to the Seller's premises for the purposes of inspecting or testing the Supplies, or observing the manufacturing process.
- 4.3 Without limiting any other rights or remedies it may have at Law, if WH Smith, acting reasonably, upon inspecting, testing or using the Supplies, determines that the Supplies are not in accordance with any of WH Smith Requirements, WH Smith may at its option:
- require the Seller to, at the Seller's cost, remedy the deficiency in the Goods and redeliver the Goods to WH Smith and/or remedy the deficiency in the Services and re-perform the Services;
  - itself remedy the deficiency in the Supplies and recover the costs of doing so from the Seller; or
  - reject the Supplies and terminate the Purchase Order in whole or in part, and obtain a full refund of any amount already paid pursuant to the cancelled Purchase Order or part thereof.
- 4.4 The rights set out in clause 4.3 are cumulative. WH Smith may rely upon a provision in clause 4.3 and if the exercise of that right is not successful in overcoming the deficiency, WH Smith may rely upon another right in clause 4.3.
- 4.5 Inspection, testing and use by WH Smith without identifying a defect in the Supplies or a failure to inspect or test, does not extinguish any rights of WH Smith or limit the obligation on the Seller to perform in accordance with these Conditions.
- 4.6 If a Purchase Order is terminated under clause 4.3(c):
- WH Smith may reject the Supplies provided or to be provided under any other Purchase Order(s), where the other Supplies form part of a system or are necessary to enjoy the benefit of the Supplies to which the terminated Purchase Order relates;
  - WH Smith may terminate the other Purchase Order(s) referred to in clause 4.6(a) and the Seller must refund any prepayments made in respect of Supplies which have not been or will not be provided; and
  - provided a full refund is received from the Seller, WH Smith will return the Goods to the Seller.
- 5. Price and Payment**
- 5.1 In consideration for the provision of the Supplies, and subject to the Seller's compliance with the Purchase Order and these Conditions and WH Smith's rights under the Purchase Order and these Conditions, WH Smith shall pay the Seller the Price.
- 5.2 Unless otherwise specified in these Conditions or the Purchase Order:
- the Price shall be inclusive of all Seller costs, expenses, tariffs, outgoings and taxes (including any costs of packaging, packing, shipping, carriage, insurance and delivery) and shall not be increased unless agreed in writing by WH Smith;
  - the Seller shall not invoice WH Smith prior to delivery; and
  - WH Smith shall pay the Seller the Price within 45 days from the later of the date of a Valid Invoice or the date of receipt of a Valid Invoice from the Seller. In the absence of a Valid Invoice, WH Smith has no obligation to pay the Seller.
- 5.3 Payment of the Price by WH Smith to the Seller is without prejudice to any rights or remedies WH Smith may otherwise have at Law.
- 5.4 If at any time WH Smith either disputes the amount of an invoice, or, advises the Seller that the Goods or Services to which a disputed amount relates do not comply with these Conditions (**Disputed Amount**), then WH Smith does not have to pay the Disputed Amount until the dispute has been resolved. WH Smith is however obliged to pay any undisputed amounts. The Seller may not, wholly or partially, suspend, cancel, or withdraw the provision of the Goods or the performance of Services pursuant to a Purchase Order merely on the basis that an invoice is being disputed.
- 6. GST**
- 6.1 Unless otherwise expressly stated in the Purchase Order, all consideration to be provided under the Purchase Order and these Conditions is inclusive of GST.
- 6.2 Where consideration is stated to be exclusive of GST, the Seller is entitled to recover GST at the prevailing rate provided the Seller is registered for GST and provides WH Smith with a Valid Invoice.
- 6.3 Where WH Smith is expressly required to pay for or reimburse an expense or outgoing of the Seller, the amount to be paid by WH Smith is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing to which the Seller is entitled plus any GST payable by the Seller in respect of the supply to WH Smith.
- 6.4 Where at any time an adjustment event arises in respect of any supply made by the Seller, the Seller must provide WH Smith with an adjustment note in respect of the adjustment event as soon as practicable after the occurrence of the adjustment event.
- 7. Software**
- 7.1 This clause 7 shall apply only to software supplied by the Seller.
- 7.2 The definition of Goods shall include the physical media on which software which is the subject of the relevant Purchase Order is provided.
- 7.3 The Seller grants WH Smith, or will procure the grant to WH Smith, and its Related Bodies Corporate, of a worldwide, perpetual, non-exclusive, non-transferable licence to

reproduce and use the software, including the making of a reasonable number of back-up copies.

7.4 The Seller represents, warrants and undertakes that:

- a) the software will be compatible with and will not adversely affect the operation of any software or equipment owned or operated by WH Smith;
- b) the Seller has, using the most up-to-date software available, tested for (and deleted) all commonly known viruses in the software and for all viruses known by the Seller at the date of this Purchase Order;
- c) the software does not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or harmful components;
- d) the software will be the most up-to-date version of the software that is available at the time it is provided to WH Smith, and the Seller will provide WH Smith with all subsequent updates and upgrades to the software at no additional cost.

**8. Documentation**

8.1 The Seller must provide such documentation as is reasonably necessary for WH Smith to use and enjoy the benefit of the Supplies.

**9. Personnel and Subcontractors**

9.1 The Seller shall be and shall remain liable for any and all Liabilities howsoever arising out of or in connection with the acts or omissions of the Seller's employees, agents or subcontractors. The Seller must not subcontract its obligations under the Purchase Order without the prior written approval of WH Smith.

9.2 WH Smith may on reasonable grounds require that one or more of the Seller's employees, agents or subcontractors be removed and replaced to the reasonable satisfaction of WH Smith.

**10. WH Smith Requirements**

10.1 The Seller represents, warrants and covenants to WH Smith that:

- a) the Supplies will meet WH Smith Requirements at all times;
- b) the Seller has all necessary permits, licences, certificates and accreditation necessary to deliver and supply the Goods and perform the Services in accordance with a Purchase Order and these Conditions;
- c) the Seller will comply with any lawful or reasonable instructions of WH Smith; and
- d) the Seller will comply with WH Smith's Policies, including Policies relating to procurement, work health and safety, information security, and sustainability.

**11. Liability and Indemnity**

11.1 To the maximum extent permitted by law, WH Smith shall not be liable to the Seller whether in contract, indemnity, tort (including negligence), breach of statutory duty (to the extent that liability can be excluded) or otherwise for any Liability arising from or connected with the procurement of the Supplies which is: indirect, special, punitive or consequential loss or damage; a loss of opportunity or goodwill; a loss of revenue or profit; a loss of anticipated savings or business; loss arising from business interruption; and any costs or expenses suffered or incurred by the Seller in connection with the foregoing.

11.2 The Seller shall indemnify WH Smith for all Liabilities (including legal fees and disbursements on a solicitor –

client basis) suffered or incurred by WH Smith in connection with, arising from or as a result of the following:

- a) the Goods supplied or the Services performed by the Seller;
- b) any negligence, wilful default, unlawful or wrongful act or omission of the Seller, its employees, subcontractors or agents;
- c) any death or injury to a person, and any loss or damage to WH Smith's real or personal property or that of a third party, caused by the Seller's act or omission;
- d) any breach of the Purchase Order or these Conditions by the Seller, its employees, subcontractors or agents;
- e) any Liability arising from or in connection with any third party claim relating to the Supplies (including any claim that the Supplies infringe any of the Intellectual Property Rights or other rights of a third party) or the acts or omissions of the Seller, its employees, subcontractors or agents;
- f) any Goods withdrawal or recall (whether the Goods are withdrawn from show or recalled voluntarily, or as a result of governmental direction) including but not limited to the cost of withdrawal or recall, the cost of the return of the Goods to the Seller, the cost of the destruction of the Goods and any legal costs on a solicitor and own client basis; and
- g) WH Smith breaching any contracts or arrangements it has entered into with any third party due to the Seller's failure to deliver any Goods or perform any Services in accordance with the Purchase Order and these Conditions.

**12. Insurance**

12.1 The Seller must obtain and keep in force for seven years from the date of the Purchase Order:

- a) public liability insurance for a minimum of \$10 million per occurrence;
- b) product liability insurance for personal injury or property damage caused by the Goods for a minimum of \$10 million per occurrence;
- c) workers compensation insurance in accordance with statutory requirements and limits; and
- d) any other insurances required by law or that a prudent Seller in the same industry as the Seller would obtain.

12.2 If requested by WH Smith at any time, the Seller must provide WH Smith with a certificate of currency for each insurance policy required under clause 12.1.

**13. Termination**

13.1 Without prejudice to any other right or remedy that WH Smith may have, WH Smith may terminate any or all Purchase Orders that it has issued to the Seller in whole or in part by written notice to the Seller without any Liability on the part of WH Smith if:

- a) the Seller breaches any Condition (including any WH Smith Requirements) and such breach is incapable of remedy or is capable of remedy but the Seller fails to remedy the breach within 10 days; or
- b) the Seller becomes subject to an Insolvency Event.

13.2 WH Smith may immediately upon giving notice terminate the Purchase Order for convenience.

13.3 Where the Purchase Order is terminated under clause 13.2, WH Smith shall only be liable to pay for any Supplies delivered as at the date of the termination notice, except in relation to Goods which have been designed or manufactured specifically for WH Smith under the Purchase Order, in which case WH Smith shall be liable for reasonable costs incurred by the Seller associated with procuring parts or materials and work performed in relation to the manufacturing of the Goods as at the date of the termination notice, after all efforts are made by the Seller to mitigate such costs and losses, and providing that the amount does not exceed the Price.

#### **14. Intellectual Property Rights and Software**

14.1 Unless otherwise specified in the Purchase Order:

- a) the Seller retains all title and proprietary interests to all its pre-existing Intellectual Property Rights;
- b) all new Intellectual Property Rights that are created or come into existence in the course of manufacturing the Goods or performing the Services vest in WH Smith; and
- c) where the Seller retains ownership over its Intellectual Property Rights, the Seller grants WH Smith and its Related Bodies Corporate a worldwide, non-exclusive, irrevocable and royalty free licence to reproduce, modify, exploit, and adapt the Intellectual Property Rights included in the Supplies (other than software) for the business purposes of WH Smith or its Related Bodies Corporate for the purpose of obtaining the full benefit of the Supplies, and without further reference to the Seller.

#### **15. Confidentiality and Privacy**

15.1 The Seller agrees:

- a) to use the Confidential Information solely for the proper performance of its responsibilities under the Purchase Order;
- b) to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the Confidential Information; and
- c) not to copy or remove from WH Smith's premises any Confidential Information without WH Smith's consent.

15.2 The Seller must not disclose any of the Confidential Information to any person except:

- a) its employees, agents or subcontractors who require the Confidential Information for the purposes of complying with the Seller's obligations under the Purchase Order;
- b) with the prior written consent of WH Smith; or
- c) to the extent the Seller is required to do so by Law.

15.3 The Seller must:

- a) ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 15.2; and
- b) immediately notify WH Smith of any suspected or actual unauthorised, access, use, copying or disclosure of the Confidential Information.

15.4 Upon WH Smith's request, the Seller must immediately deliver to WH Smith all documents or other materials containing or referring to the Confidential Information which are in the Seller's possession, power or control, or in the possession, power or control of persons who have received Confidential Information from the Seller under clause 15.2(a) or 15.2(b).

15.5 The Seller must not make any statement, press release or other announcement relating to any of its transactions with WH Smith without WH Smith's prior written consent.

15.6 The Seller must comply with the Privacy Act and any relevant Policy in relation to any Personal Information disclosed to or collected by the Seller and not do or omit to do anything which causes WH Smith to breach its obligations under the Privacy Act.

#### **16. Entire Agreement and Variation**

16.1 The Purchase Order and these Conditions contain the entire agreement between the parties in relation to their subject matter and no variation shall be effective unless in writing and signed by both parties or expressly set out in the Purchase Order issued by WH Smith.

#### **17. Assignment and Novation**

17.1 The Seller must not assign, novate or otherwise deal with any of its rights or obligations under the Purchase Order or these Conditions without the prior written consent of WH Smith.

17.2 WH Smith may novate, assign or otherwise deal with any of its rights or obligations under the Purchase Order or these Conditions without obtaining the Seller's consent. The Seller will execute all documents and do all things reasonably required by WH Smith to give effect to any assignment or novation contemplated by this clause 17.2.

#### **18. Complaint Process**

18.1 WH Smith may refer any complaint received about the Goods directly to the Seller. The Seller must action the complaint with a response to the customer or complainant within 2 Business Days (except if, in the reasonable opinion of WH Smith, a response is required within 24 hours, in which case WH Smith will notify the Seller in writing of the shorter response time) and, on request, provide WH Smith with copies of relevant correspondence.

18.2 The Seller must forward to WH Smith any report made pursuant to an investigation into the complaint by a government body or any researcher or research organisation with respect to the Goods as soon as reasonably practicable after the Seller becomes aware of any such report. The Seller must comply with any reasonable directions given by WH Smith in relation to the complaint.

#### **19. Survival and Severance**

19.1 The following provisions of these Conditions survive the performance or termination of the Purchase Order: clauses 10, 11, and 14 to 21.

19.2 If any provision of these Conditions is or becomes illegal, invalid or unenforceable in whole or in part, such provision or part shall to that extent be deemed not to form part of this agreement and shall not affect the legality, validity or enforceability of the remainder of this agreement.

#### **20. Waiver**

20.1 Any failure or delay by WH Smith to exercise or enforce any right shall not be considered to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

#### **21. Governing Law and Jurisdiction**

21.1 All Purchase Orders and these Conditions shall be governed by and construed in accordance with the laws of NSW.

21.2 The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of NSW and courts which have jurisdiction to hear appeals from any of those courts.