

WH SMITH CONDITIONS OF PURCHASE

1. Interpretation

- 1.1 In these conditions:
- 'WH Smith' means WH Smith High Street Limited (registered in England and Wales under number 6560339) and / or W H Smith Travel Limited (registered in England and Wales under 6560378) as advised to the Seller.
 - 'Conditions' means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between WH Smith and the Seller.
 - 'Contract' means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services.
 - 'Delivery Address' means the address stated on the Order.
 - 'Goods' means the goods described in the Order including all packing materials.
 - 'Order' means WH Smith's purchase order to which these Conditions are annexed.
 - 'Price' means the price of the Goods and/or the charge for the Services.
 - 'Seller' means the person so described in the Order.
 - 'Services' means the services (if any) described in the Order.
 - 'Specification' includes any plans, drawings, data or other information relating to the Goods or Services.
 - 'Writing' includes telex, cable, facsimile transmission, EDI and e-mail and comparable means of communication.
- 1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of purchase

- 2.1 The Order constitutes an offer by WH Smith to purchase the Goods and/or acquire the Services subject to these Conditions.
- 2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to WH Smith or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.3 The Order will lapse unless unconditionally accepted by the Seller in Writing within 7 days of its date.
- 2.4 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of WH Smith and the Seller.

3. Specifications

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by WH Smith to the Seller or agreed in Writing by WH Smith.
- 3.2 Any Specification supplied by WH Smith to the Seller, or specifically produced by the Seller for WH Smith, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of WH Smith. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3 The Seller warrants that the Goods supplied pursuant to any Order shall comply with the relevant British and European Standards which shall be deemed to have been specified unless expressly excluded.
- 3.4 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services, including providing such information as may be required under the REACH and EU Timber Regulations.
- 3.5 The Good's barcode shall be regarded as part of its specification.
- 3.6 The Seller shall not unreasonably refuse any request by WH Smith to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide WH Smith with all facilities reasonably required for inspection and testing.
- 3.7 The Seller shall comply with the Price Marking Order 2004 (as amended) and shall mark the Goods per unit showing, as applicable, litre, metre, kilogram, square metre or cubic metre, as appropriate. The Seller shall advise WH Smith where a unit price changes.
- 3.8 If as a result of inspection or testing WH Smith is not satisfied that the Goods will comply in all respects with the Contract, and WH Smith so informs the Seller within 14 days of inspection or testing, the Seller shall at its expense take such steps as are necessary to ensure compliance.
- 3.9 The Goods shall be marked in accordance with WH Smith's Delivery Instructions as outlined in the WH Smith Supplier Manual and any applicable regulations or requirements of the carrier, and properly

packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

- 3.10 The Seller warrants that goods supplied pursuant to an Order shall fully comply with requirements specified in WH Smith's Environmental Policy or its Ethical Trading Code of Conduct and that, in the event that it does not, has brought such non-compliance to the attention of WH Smith. The Seller shall indemnify WH Smith against any costs, fines, damages and other liabilities incurred as a result of the Seller's breach of the warranties here and at 3.3, 3.4, and 3.7.

4. Price of the goods and services

- 4.1 The contract price shall be agreed in advance and will apply to all subsequent orders for the same items unless expressly agreed in writing with WH Smith and shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by WH Smith subject to receipt of a VAT invoice); and
 - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance, testing and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of WH Smith in Writing.
- 4.3 WH Smith shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

5. Terms of payment

- 5.1 The Seller shall be entitled to invoice WH Smith on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the WHSmith Vendor Buying Agreement, WH Smith shall pay the Price of the Goods and the Services within 90 days after the end of the month of receipt by WH Smith of a proper invoice or, if later, after acceptance of the Goods or Services in question by WH Smith.
- 5.3 WH Smith shall be entitled to set off against the Price any sums owed to WH Smith by the Seller or their clients.
- 5.4 Any sums which are not paid to WH Smith by the due date and which are not in dispute shall thereafter attract interest on a daily basis at a rate of 4% per annum above the base lending rate for the time being of Barclays plc
- 5.5 WH Smith shall deduct the cost of any products which are returned by WH Smith from the next payment due to the Seller. Where the return of goods puts a supplier into a debit position, and WH Smith is unable to deduct the balance from a payment due, WH Smith will require settlement of the debit note by the seller within 14 days of the debit note date.

6. Delivery

- 6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, carriage paid, in either case during WH Smith's usual business hours.
- 6.2 Where the date of delivery of the Goods or of the performance of the Services is to be specified after the placing of the Order, the Seller shall give WH Smith reasonable notice of the specified date. Where no date of delivery is specified, delivery shall be made within 10 working days of receipt of an Order.
- 6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4 Documentation quoting the number of the Order as specified in the WH Smith Supplier Manual must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 WH Smith shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until WH Smith has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.7 The Seller shall supply WH Smith in good time with any instructions or other information required to enable WH Smith to accept delivery of the Goods and performance of the Services.
- 6.8 WH Smith shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by WH Smith.
- 6.9 If the goods are not delivered or are rejected by WH Smith on delivery or the Services are not performed on the due date then, without

- prejudice to any other remedy, WH Smith shall be entitled to deduct liquidated damages from the Price or (if WH Smith has paid the Price) to claim from the Seller. Liquidated damages shall be calculated as set out in the document entitled WH Smith Supplier Manual, which shall be incorporated into these terms and conditions.
- 6.10 The goods shall be delivered in accordance with the conditions as specified in the WHSmith Supplier Manual. Failure to do so will result in recovery of WH Smiths costs as set out in the document entitled WH Smith Supplier Manual, which shall be incorporated into this agreement.

7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to WH Smith upon delivery to WH Smith in accordance with the Contract.
- 7.2 The title of the Goods shall pass to WH Smith upon delivery.

8. Confidentiality

- 8.1 The Seller undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of WH Smith or of any member of the WH Smith group which may have or may in future come to its knowledge and the Seller shall use its best endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

9. Warranties and liability

- 9.1 The Seller warrants to WH Smith that the Goods:
- 9.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
- 9.1.2 will be free from defects in design, material and workmanship;
- 9.1.3 will correspond with any relevant Specification or sample; and
- 9.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods including, without limitation, the Consumer Protection Act 1987, the General Product Safety Regulations 2005, the Consumer Protection from Unfair Trading Regulations 2008 and the Price Marking Order 2004, and any subsequent enactment of these.
- 9.2 The Seller warrants to WH Smith that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for WH Smith to expect in all the circumstances.
- 9.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then WH Smith shall be entitled:
- 9.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
- 9.3.2 at WH Smith's sole option, and whether or not WH Smith has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 9.4 The Seller shall indemnify WH Smith in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by WH Smith as a result of or in connection with:
- 9.4.1 breach of any warranty given by the Seller in relation to the use of Goods or the Services;
- 9.4.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by WH Smith;
- 9.4.3 any liability under the Consumer Protection Act 1987, the Consumer Protection from Unfair Trading Regulations 2008 or the General Product Safety Regulations 2005 in respect of the Goods;
- 9.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;
- 9.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services;
- 9.4.6.1 dealing with any complaints received from customers of the Purchaser as a result of failure of the Goods to conform with specifications or legislation, including administration costs and the value of any compensation or good will gesture made by WH Smith in its reasonable discretion to such customer, and;
- 9.4.7 all costs of carrying out any product recall/removal from sale for whatever reason.
- 9.5 The Seller shall insure against liability under condition 9.4 to the minimum sum of £1,000,000.00 (one million pounds) in respect of any one incident and shall produce to WH Smith documentary evidence that the insurance is properly maintained.
- 9.6 Neither the Seller nor WH Smith shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in

relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

- 9.6.1 Act of God, explosion, flood, tempest, fire or accident;
- 9.6.2 war or threat of war, sabotage, insurrection, terrorism, civil disturbance or requisition;
- 9.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.6.4 import or export regulations or embargoes; and
- 9.6.5 strikes, lock-outs or other industrial actions or trade disputes (excluding employees of the Seller).
- 9.7 If the Seller is prevented from performance of its obligations for a continuous period in excess of three months, WH Smith may terminate the Contract forthwith on service of written notice upon the Seller, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

10. Termination

- 10.1 WH Smith shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event WH Smith's sole liability shall be to pay to the Seller the Price for the goods or Services in respect of which WH Smith has exercised its right of cancellation, less the net proceeds of resale to a third party received by the Seller and less the Seller's net saving of cost arising from cancellation.
- 10.2 WH Smith shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
- 10.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 10.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- 10.2.3 the Seller ceases, or threatens to cease, to carry on business; or
- 10.2.4 WH Smith reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

11. General

- 11.1 WH Smith is a member of the group of companies whose holding company is WH Smith PLC, and accordingly WH Smith may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of WH Smith.
- 11.2 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under the Contract.
- 11.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.4 No waiver by WH Smith of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision in question shall not be affected thereby.
- 11.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 11.6 WH Smith and the Seller, their employees and agents at all time shall keep confidential and secret and shall not disclose to any person other than a person authorised by WH Smith or the Seller (as applicable) all information and other matters acquired by them in connection with the Contract.
- 11.7 The Seller shall not offer to any employee of WH Smith or its agents or representatives as a variation to the conditions of the Contract or as an agreement collateral to it, any advantage other than a cash discount against the Contract price in default of which WH Smith shall be entitled to terminate the Contract and to recover from the Seller the amount of any loss resulting from such termination.
- 11.8 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

The Contract shall be governed by the laws of England, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.