

Terms and Conditions of Business

With our Customers (April 2018 edition)

Introduction

Customers are advised in their own best interests to read these Terms and Conditions of Business. Acceptance of supplies will be taken as evidence of agreement to these Conditions. These Conditions shall be binding on the Company and the Customer in respect of all the Company's sales of the Title(s) and supersede any prior terms, conditions or agreements relating to them or verbal representations, warranties or undertakings given to the Customer by the Company or on its behalf. The terms of the Industry Standard Service Agreement, which sets out the minimum criteria relating to the standard of service to be provided by wholesalers to retailers of newspapers and magazines, are incorporated into Conditions. These standards will not be excluded by any of these Conditions, nor by the terms of the Publishers' existing or future wholesale contracts. Although the text of these Conditions is necessarily legalistic, we have used plain English where possible. However, if any item is unclear our local Manager will be pleased to help you. The Customer's attention is specifically drawn to the provisions of clauses 2.3 and 5.1(d).

1 DEFINITIONS

1.1 In these Conditions, unless the context otherwise requires, the words below will have the following meanings:

the Company	Smiths News Trading Limited (registered no. 237811).
Conditions	The Terms and Conditions of Business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties.
Customer(s)	The person, firm or company in the business of retailing, being supplied Title(s) by the Company.
FSOR	Supply on a full Sale or Return basis.
Daily	In relation to newspapers, shall mean any day between Monday and Saturday (inclusive).
ISSA	The applicable industry standard service agreement as is in force from time to time, at the date of these Conditions being the Press Distribution Charter.
Material	Loose supplements, media, game cards, cover mounted gifts and other non-news products supplied by, or on behalf of, a Publisher for inclusion in, on or with a Title.
Minimum Financial Target (MFT)	To the extent applicable, the Company's published minimum order value (if any) relating to the sales / profit targets set from time to time for the supply of newspapers, magazines, periodicals, partworks and/or one-shots.
Newspapers	Daily and Sunday newspapers supplied by the Company to the Customer.
Premises	The Customer's retail premises and/or recognised vendor selling point(s) recorded as such in the Company's records.
Publisher(s)	Organisation(s) supplying Title(s) to the Company for wholesale and distribution to the Customers.
RDT	Required delivery time – the time agreed between the parties, being when the Customer would like their Titles to have been delivered at the Premises.
SDT	Scheduled delivery time - sometimes the RDT is simply not achievable by the Company (e.g. the distance may be too great). In such cases, an SDT set by the Company will apply instead, being when the Customer should expect to have their Titles delivered at the Premises.
Sub-Retailing	The sale or transfer of supplies of Titles between retailers and the term ' sub-retail ' shall be construed accordingly.
Sub-Retailing Cap	The cap (if any) on retail sales value notified to the Customer at the time of any request to sub-retail to a proposed sub-retailer, the value above which the proposed sub-retailer must contract direct with the Company and the sub-retailing arrangements must cease with immediate effect.
Title(s)	Daily and Sunday newspapers, periodicals, magazines, partworks and one-shots and (unless otherwise notified to the Company) other ancillary, associated, impulse-purchase or FMCG products distributed (or to be distributed) by the Company to the Customer, (including in each case any instalment of, or Material to be appended on included with the same or any part of them).
Tote Boxes	Re-usable plastic boxes used by the Company to deliver some, or all, of the Titles.
1.2	The headings in these Conditions are for convenience only and shall not affect their interpretation.
1.3	A reference to one gender includes a reference to the other gender and the neuter.
1.4	Words in the singular include the plural and in the plural include the singular.
1.5	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.
1.6	These Conditions shall apply to the exclusion of any other terms and conditions which the Customer has sought to or subsequently seeks to impose on the Company. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer.
1.7	Where the Titles are sold under a consumer transaction (as defined by the Consumer Protection from Unfair Trading Regulations 2008) the statutory rights of the Customer are not affected by any provision in these Conditions.
1.8	Any obligation in these Conditions on the Customer not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.

2 THE COMPANY'S OBLIGATIONS

2.1 ISSA

The Company shall use all reasonable endeavours to ensure that the Customer is supplied with the Titles in accordance with the standards of service provided by ISSA and these Conditions. To the extent that there is any conflict between the provisions of these Conditions and those contained within ISSA, then as between the parties the provisions of ISSA shall prevail.

2.2 Deliveries

The Company provides a delivered service for supplies of the Titles to the Premises. Unless otherwise agreed, the Titles shall be delivered only to the entrance of the Premises ordinarily used in the course of the Customer's business. An alternative delivery point at the Premises must be agreed in advance with the Company and any procedures and/or equipment (such as keys to lockable delivery units) must be provided to the Company in advance of supplies being made. In such an event, the Company will use reasonable endeavours to deliver the Titles to the alternative delivery point. For the avoidance of doubt:

- The Customer shall be wholly responsible for providing a safe and/or secure delivery point for the delivery of supplies, such location enjoying adequate lighting and protection from the weather and from risk of loss or theft;
- The Company reserves the right to deliver to a different delivery point at the Premises where in its view the existing delivery point is inappropriate, insecure, unsafe and/or which poses a threat to the Company's employees, agents or contractors (including sub-contractors); and
- The security and risk of the supplied Titles after they have been delivered at the delivery point is the sole responsibility of the Customer who shall remain wholly liable for full payment of any supplies of Titles regardless of whether the Titles have been lost, stolen, misplaced or damaged.

2.3 Delivery Times

Any dates and/or times (including, but not limited to, any proposed RDT/SDT) specified by the Company for delivery of the Titles are an estimate only. Time for delivery shall not be made of the essence by notice or any other means. The Company will use its reasonable endeavours to meet the daily RDT agreed between the parties (in the absence of agreement, being the SDT) provided that the RDT/SDT is reasonable in light of the Customer's store opening times and the in-bound delivery to the Company of the Titles from the Publishers or their agents. Notwithstanding the foregoing, the Company shall not (subject to the provisions of ISSA) be liable to the Customer whatsoever for any direct, indirect or consequential loss (all three of which terms include, but are not limited to, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay or failure (in whole or in part) in the delivery of the Titles (even if caused by the Company's, or its employees', agents', contractors' (including sub-contractors') negligence, recklessness or wilful misconduct), nor shall any such delay or failure entitle the Customer to terminate or rescind the supplies of the Titles.

2.4 Non-Delivery

- The quantity of the consignment of any Title(s) as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide evidence proving the contrary. To the extent that the Company substantiates any consignment of Titles pre-delivery, no credits whatsoever shall be issued in favour of the Customer and the Customer's persistent or valuable unproven claims or any claims made in bad faith for non or short-delivery shall constitute an irremediable breach of these Conditions.
- Subject to these Conditions, any liability of the Company for non-delivery of the Titles shall be limited to replacing the Title(s) within a reasonable time or issuing pro-rated credits (or credit note, as the case may be) against any invoice raised for such Title(s).

2.5 Delivery Costs

The Company's invoices addressed to the Customer shall include a weekly delivery service charge for delivery or collection services provided for the period of the invoice. The delivery service charge is subject to periodic review by the Company, to be exercised at its absolute discretion. The Company will give the Customer six weeks' notice of any change to delivery service charge rates. The Company will provide the Customer, on request, with any revised Schedule of Delivery Service Charge Rates which is published from time to time.

2.6 Tote Boxes

The Company (at its absolute discretion) may provide Tote Boxes in order to facilitate the supply of various Titles to the Customer. To the extent supplied, the Tote Boxes shall at all times remain the property of the Company and shall be immediately returned to the Company upon request. Furthermore, the Customer shall ensure that all Tote Boxes and such other similar items used to facilitate deliveries shall be returned to the Company in a good and operational working condition on or before the termination of the account. Notwithstanding that an initial deposit is not required from Customers for the provision of Tote Boxes, Customers will be charged for the replacement of each Tote Box which is not returned by the Customer or which is lost or returned damaged beyond reasonable repair or use. For the avoidance of doubt, the Customer shall ensure that Tote Boxes are maintained and kept safe and secure at all times, paying particular attention to, and ensuring the security of, such Tote Boxes at the point of nightly return to the Company.

2.7 Supplements and Material Insertions

The Company shall credit the Customer with any handling payments determined from time to time by the Publisher, provided that the Customer has properly placed all Material correctly with the appropriate Title prior to its sale to the end consumer, or if the Material is not intended to be placed with the appropriate Title, has otherwise made it available to the end consumer in accordance with instructions received from time to time from the Company and/or the Publisher.

2.8 Claims for Shortages

The Company (at its absolute discretion) reserves the right to reimburse or credit (as the case may be) the Customer in respect of any claim for shortages/discrepancies of supply solely in the event that the following terms are adhered with by the Customer:

- a) **Newspapers** - any discrepancies between the Titles or numbers of Titles allegedly delivered and the Company's delivery note must be reported to the Company by the Customer within 2 hours of delivery of the Titles, or of the Customer's Premises usual opening time, whichever is the later;
- b) **Magazines and others** - any discrepancies between the Titles or numbers of Titles allegedly delivered and the Company's delivery note must be reported to the Company by the Customer prior to 15.00 hours on the day of receipt of the Company's delivery note.

2.9 Suspension of Supplies due to matters beyond the Company's Control

- a) The Company shall take all reasonable steps to ensure delivery of supplies of the Titles to the Customer in accordance with these Conditions. However, if the Company is either prevented, delayed and/or hindered from supplying any Title(s) to the Customer, or otherwise carrying out its obligations, by reason of any action or inaction by a Publisher or distributor, or any circumstances beyond the Company's reasonable control including (but not limited to) acts of God, seizure under legal process, riots, civil commotion or unrest, demonstrations, strikes or lock-outs (general or partial stoppage), any consequence of war, terrorism and kindred risks, labour disputes of any kind, industrial action of any nature whatsoever (whether any of the foregoing relate to the Company's employees, agents, contractors or others), fire, floods, storms, delays or cancellations on the rail network, traffic accidents, serious traffic congestion, any shortage of paper, ink or fuel supply (or the supply of any other essential materials or services) or compliance with any law, governmental or regulatory order, rule, regulation, undertaking or direction (each being "an event of force majeure"), the Company's ongoing obligations under these Conditions will remain in effect but will be temporarily suspended without liability to the Customer for so long as an event of force majeure shall continue. In addition, the Company reserves the right, without liability subject to ISSA, to defer the date and time of delivery of the Titles and/or to reduce the volume of the Titles ordered by the Customer or ultimately to cancel the supplies of the Title(s) ordered by or to be supplied to the Customer if it is prevented from or delayed in the carrying on of its business due to an event of force majeure.
- b) In the event of an actual or proposed permanent cessation of supplies of any Title(s) to the Company for any reason, the Company may terminate supplies of that Title to the Customer without liability by giving the Customer notice in writing, provided that such notice does not take effect prior to the date when the Publisher ceases to supply that Title to the Company.

2.10 Margin

The margins for each Title shall be as specified in the Company's daily price delivery note or customer transaction note.

3

THE CUSTOMER'S OBLIGATIONS

3.1 General Prohibition

The Customer is restricted from displaying, advertising or selling the Titles at any place other than the Premises without the prior written agreement of the Company.

3.2 Unsold Copies and Payment Vouchers Returned for Credit

- a) Customers shall have their recalled unsold newspapers and magazines available for collection at the usual point of delivery on the days and times specified by the Company. Where Material has been included as part of the Title (such as cover mounted promotional items or supplements) the Customer shall use its best endeavours to ensure that the Material is returned with the appropriate Title. The wilful failure to return such Material may (at the Company's discretion) constitute an irremediable breach of these Conditions and/or the Company may demand that future supplies of the Titles be pre-paid in advance of their proposed delivery to the Customer.
- b) If the Customer does not make recalled unsold Titles available for collection or, does not return them, or any appropriate payment vouchers, by the days and times specified, the Company shall only accept the return of such Titles which are subject to FSOR and/or the appropriate payment vouchers for credit if the same are received prior to the Company's recorded credit cut-off date. The validity of any credit offered by the Company for returned Titles and/or payment vouchers shall not be questioned by any person. The Company reserves the right to reject for credit any payment vouchers it reasonably believes are false, submitted late or submitted fraudulently.
- c) Unsold copies of Titles returned by the Customer or made available for collection that cannot be credited to the Customer for whatever reason shall be destroyed, without notice and liability to the Customer.
- d) If supplies of Titles to the Customer are terminated in accordance with clause 4.1(a)(ii) to (ix), it is the Customer's responsibility to return any unsold Titles (which are subject to FSOR) to the Company within any time periods stipulated by the Company in order to claim credit. For the avoidance of doubt, if such Titles are not properly returned or made available for collection within such time limits they shall nonetheless be destroyed, without notice and liability to the Customer, and no credit shall be given.
- e) If a payment voucher is returned for processing for credit and it comes to the attention of the Company that it has not been taken in lieu of payment for the proper Title, notwithstanding that this may constitute fraud and may result in action being taken to recoup such claims and/or criminal/civil prosecution against the Customer, the Company also reserves the right to either (i) terminate supplies of the Titles (in whole or in part); (ii) terminate on-going acceptance of such vouchers or (iii) demand that future supplies of the Titles be pre-paid for in advance of their proposed delivery.
- f) Any Titles returned with promotional vouchers or other Material removed or defaced will be ineligible for credit.

3.3 Unsold Credit Queries

- a) Newspapers - Any discrepancies between unsold copies of Titles returned and the daily credit note produced by the Company will be reported by the Customer prior to 15.00 hours on the day the daily credit note is received for newspapers published on Monday to Friday (inclusive), and by 12.00 hours on the following Tuesday for Saturday and Sunday newspaper returns.
- b) Magazines - Any discrepancies between unsold copies of Titles returned and the daily credit note produced by the Company will be reported by the Customer prior to 12.00 hours on the Friday in the week during which the daily credit note is received. Where a credit note is received on a Saturday the deadline for reporting is 12.00 hours on the following Monday.

3.4 Inclusion of Extraneous Material with Titles

With the exception of Material supplied by the Company for specific inclusion in, with or on, Titles, the Customer shall not insert, attach or place any advertising or other material whatsoever in, on or with any Titles without the prior written consent of the Company and/or the Publisher of such Title. Breach of this clause shall constitute an irremediable breach of these Conditions.

3.5 Supplements and Material

- a) Where a Title and/or Material to be included in, on or with a Title is not published, or for whatever reason copies of any Title and/or Material are not available, the Customer must deliver whatever Material or Title that is available to their HND customers and must otherwise make such Title/Material available as best they can for sale at the Premises.
- b) The Company will credit the Customer with any handling payments determined by the Publisher for the proper distribution of Material and approved third party advertising material in, on or with the Titles.

3.6 Contact Details

The Customer will promptly notify the Company of any changes to its contact address(es) and/or telephone number(s) and upon closing an account shall leave a forwarding address.

3.7 Proof of Identity

The Customer will, as a condition to and, prior to commencement of supplies (whether by opening of a new account or transfer of business), provide the Company with such forms of identity as it shall reasonably require from time to time.

3.8 Discrimination

The Customer shall not discriminate against any Title other than in good faith and on good commercial grounds or otherwise in order to comply with legal requirements notified to the Customer by the Company.

3.9 Sales Promotion

- a) The Customer agrees to actively promote sales of the Titles and to participate in sales promotions organised by Publishers and/or the Company.
- b) The Customer agrees to display and distribute Titles from the recognised day of sale until the recognised off sale date, or until otherwise notified by the Company.
- c) In respect of newspapers and/or magazines, the Publishers may from time to time indicate a maximum selling price over their respective Title for the benefit of the end-consumer and/or in order to ensure good value for their products. Where so notified, the Customer shall not sell (or cause to sell) any of the Title(s) above the Publisher's maximum selling price. To the extent that the Customer chooses to sell above the Publisher's maximum selling price, it shall immediately notify the Company who may pass this information on to the Publisher.
- d) The Customer will endeavour to increase display space for particular Titles when requested to do so by the Company and will display promotional/point of sale material where it is practicable to do so.
- e) The Customer will take all reasonable steps to adopt poster displays in accordance with any reasonable request from the Company. The Customer must ensure that the positioning of such advertising material complies with planning and building regulations and local authority by-laws and any other applicable statutory provisions or regulations in force.
- f) The Customer shall be responsible for the provision of adequate, reasonable and appropriate fixtures and fittings (maintained at all times in good order) for the proper display of newspapers and/or magazines. If the Customer fails to provide such fixtures and fittings or fails to maintain them in good order, the Company reserves the right, without liability, to suspend supplies pending satisfactory remedy of this breach (to be determined at the Company's absolute discretion). Should this breach remain unremedied within thirty (30) days of notice given by the Company, the Company shall be permitted to terminate supplies (in whole or in part) without liability or giving further notice to the Customer.
- g) The Customer agrees not to advertise (or allow others to advertise) any goods, material or advertisement on its newspaper and magazines' fixtures and fittings which in the Company's opinion is misleading, immoral, dishonest, deceitful, defamatory, offensive, political, religious or unlawful and to ensure any goods, material or advertisement whatsoever is current and not historic.

3.10 Data Protection and Information

- a) The Company shall only use the Customer's personal information in accordance with the Company's Privacy Policy which can be found at www.smithsnews.co.uk/privacy-policy. Please take the time to read the Privacy Policy, as it includes important terms which apply to these Conditions.
- b) Save as may be varied by the Privacy Policy, the Company will in any case use the personal information the Customer provides to the Company in order to:
 - i) Provide the services to the Customer;
 - ii) conduct a credit reference search and record;
 - iii) process payment for the services;
 - iv) inform the Customer about similar products or services that the Company provides from time to time; and
 - v) provide any of sales data, EPOS data or marketing information concerning the retail outlet(s) to a relevant Publisher(s) and/or third party industry stakeholder(s) provided that the Customer's legitimate interests or fundamental rights and freedoms are not so overridden.

3.11 Availability of Titles

- a) **Newspapers**

Unless otherwise agreed between the parties, the Customer is expected to trade on every day on which Daily or Sunday newspaper titles are published, including public holidays. Where the Customer is unable to trade or intends to substantially reduce its trading hours, the Customer must, in the absence of an emergency, give the Company not less than seven (7) days' prior notice. The Customer must notify the Company of its normal opening hours of trading and will notify the Company 14 days in advance of any proposed change to these opening hours.
- b) **Magazines and others**

Magazines and other Titles are supplied on the condition that they are not displayed or distributed to the public before the recognised day of sale. Supplies may be withheld and/or suspended (in whole or in part) until the day of sale if the Customer does not comply with this condition and persistent breach(es) of this clause shall constitute an irremediable breach of these Conditions.

3.12 Delivery Services (Retail)

The Customer is encouraged to provide home and business delivery services and to provide a special order and shop collection service for newspapers and magazines. The Customer shall not cease to provide these delivery services without providing the Company with a reasonable opportunity to assist the Customer in maintaining such services.

3.13 Payment of Accounts

- a) **Period and Dates**

The Company's supply and accounting week runs from Sunday to Saturday (inclusive) in any week. Invoices must be paid by direct debit except in exceptional circumstances for existing Customers and existing accounts only, where payment by cheque or bank giro credit (as agreed with the Company) may be accepted forms of payment. For the avoidance of doubt, Customers may not pay invoices in cash.
- b) **Direct Debit**
 - i) New Customers and existing Customers opening a new retail outlet or upon the transfer of a business must pay for their supplies by direct debit. No other payment options shall be permitted.
 - ii) The bank accounts of all Customers paying by direct debit will be debited on the second Wednesday following supply.
- c) **Cheques**

In exceptional circumstances and only as agreed in advance and in writing with the Company, payments may be made by cheque. Customer cheques are to be made payable to "Smiths News" and must be received no later than the Friday following the week's supply.
- d) **Refused Cheques/Direct Debits**
 - i) An administration charge (which shall be notified by the Company from time to time) shall be levied each and every time a Customer's payment by cheque or direct debit is refused.
 - ii) Cheques refused by the Company's bank will not be re-presented and direct debits remaining unpaid will not be carried forward to the following week. The Company will advise the Customer of the value of the refused payment and (unless otherwise agreed) the Customer must pay the full amount of the refused payment (together with the compensation charge(s)) within a timescale specified by the Company by banker's draft or credit or debit card.
 - iii) When payments by cheque or direct debit are refused on more than one occasion the Company reserves the right to insist on payment by bankers draft or credit or debit card only and/or to demand that future supplies of the Titles be pre-paid in advance of their proposed delivery to the Customer.
- e) **Bank Giro Credit**
 - i) In exceptional circumstances and only as agreed with the Company, payments may be made by Bank Giro Credit.
 - ii) Customers paying by Bank Giro Credit must ensure that payments are made to the bank before 15.30 hours on the Friday following the week of supply. Customers must provide proof of such payments to the location notified to the Customer by the Company no later than 16:00 hours on the Friday following the week of supply.
 - iii) A charge will be made by the Company for the Bank Giro Credit book and an additional administration charge (notified from time to time) will be made if the payment is made other than at a National Westminster Bank. The invoice to the Customer will include these charges.
- f) **Late/Under Payment**
 - i) The Customer accepts that queries or errors relating to invoices are not to be used as a reason for delaying payment.
 - ii) If the Customer fails to pay any amount due and payable by it to the Company whether pursuant to an invoice or under any judgment

in connection with these Conditions, or arising from or as a result of any loan(s) made by the Company to the Customer (such as for the purchase of display equipment, security boxes or EPOS systems) or otherwise, (without prejudice to any other right or remedy the Company may have) the following shall apply (in the Company's absolute discretion):

- (1) a surcharge of 1.25% of the total invoice value will be added to each of the Customer's next invoice(s) for payment until the debt is cleared in full. For the avoidance of doubt, this charge shall be payable for each and every failure to pay, whether any failure to pay is as a result of any disputed or undisputed amount whatsoever; and/or
- (2) the Company may require that the Customer either pre-pays for supplies or otherwise procures suitable security for payment of the account and all other monies outstanding, in a form that is satisfactory to the Company; and/or
- (3) the Company may, without liability, suspend supplies of the Titles (in whole or in part) until payment of the account and all other monies outstanding is otherwise received in full. The Customer will be notified of this in advance.

g) **Deductions**

The Customer shall make all payments due to the Company in pounds sterling in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the value of the outstanding credits is greater than 25% of the invoice value or the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer. The Company will rectify any undisputed errors and credit will be given to the Customer on the next invoice.

h) **Third Party Invoicing**

Where the Company has agreed to procure services with a third party provider including, but not limited to, returns processing and/or invoicing, the respective charges/credits shall be incorporated within the invoices.

i) **Miscellaneous**

- i) Time for payment shall be of the essence.
- ii) No payment shall be deemed to have been received until the Company has received cleared funds.
- iii) All payments payable to the Company as a result of supplies of the Titles shall become due immediately on termination pursuant to clause 4 despite any other provision or purported agreement.
- iv) Notwithstanding clause 3.13f)ii), the Company may in the alternative, and at its discretion, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

3.14 New Accounts

- a) In exceptional circumstances the Company reserves the right to set a 'Minimum Financial Target' - typically for situations where the delivery service charge and profit from anticipated sales is likely to be insufficient to meet even the marginal cost of supplying that Customer's retail outlet. In that case, a trial period will be set and, in such exceptional cases, the Customer will be provided with additional sales and marketing support to achieve the MFT within that trial period.
- b) During the trial period, the Customer will continue to be offered standard trade terms and FSOR (where given by the Publishers) to encourage sales.
- c) Failure to achieve any MFT on a consistent basis during, on or after the trial period (usually 3 or 6 months) will lead to a further review, during which alternatives (such as Sub-Retailing) will be explored with the Customer. In that case, the Company will make every effort to find a suitable alternative means of supply. Should no satisfactory alternative or reasonable means of increasing sales be identified, the Company reserves the right to withdraw supplies and (at its discretion) terminate the Customer's account, without liability if the Customer is unable to guarantee meeting the MFT. Before taking such action however, under normal circumstances the Company will look to inform all relevant Publishers of any decision proposing to remove those supplies and will explore opportunities that the Publishers may be able to offer in support of the desire to establish and maintain a diverse and viable supply of the Titles.

3.15 Transfer of Account and Account Management

- a) The Customer may not assign, sub-contract or transfer its account to a third party unless the Customer complies with the following requirements:
 - i) The Customer must give the Company 14 days' written notice of any proposed change of ownership or trading name by completing the standard transfer form(s). Forms are available on request from the Company.
 - ii) The Company's trading week runs from Sunday to Saturday (inclusive). In the event of completion of a transfer to a third party part way through the trading week the outgoing Customer is responsible for payment of the full amount of any final invoice presented and any apportionment shall be a matter between the outgoing and new Customers. In preparing the final invoice, we recommend (but do not warrant) that any Titles properly returned for credit by the outgoing Customer arriving at the Company too late to be included in the final week's invoice (together with any outstanding voucher claims) should be treated as stock and charged by the outgoing Customer to the new Customer.
 - iii) The delivery service charge applicable to the new owner will reflect the economic and commercial rate, as defined within the Company's published Schedule of Delivery Charge Rates.
 - iv) Upon transfer of account the new Customer shall be required to pay to the Company:
 - (1) a cleared deposit based on an aggregate of three (3) weeks' MFT (per Premises), subject to a satisfactory credit rating - the deposit to be held by the Company in a separate interest-bearing account pursuant to clause 3.17a); and
 - (2) an administration charge (which shall be notified by the Company from time to time) in respect of the Company's reasonable costs in processing the Customer's transfer of account / sale of business application.
 - v) All outstanding sums of the trading account(s) must be paid prior to completion of any proposed transfer / sale of business, including the Company's estimate of the final week's supplies. The Company has the discretion to accept a solicitor's letter guaranteeing payment from the proceeds of the sale in an alternative.
 - vi) The Company will charge interest at 4% above the National Westminster Bank Plc base lending rate on any amount outstanding from the 14th day following the transfer / sale of business or closure of an account.
 - vii) The Customer's risk and liability to the Company for the Titles will continue until the transfer / sale of business to the new Customer has been approved by the Company and implemented.
- b) Save where otherwise provided (including in clause 4.1b), Customers wishing to transfer all or part of their supply of Title(s) to another wholesale supplier will be required to give the Company a minimum of 12 weeks' written notice, such notice to expire only on a Saturday in any week.
- c) Customers receiving supplies of Title(s) on a regular basis from another wholesale supplier are required to inform the Company from time to time of the Title(s) being supplied and from whom so that the Company can amend its copy allocations and offer an efficient distribution of Titles to its other customers accordingly.
- d) The Company may from time to time make loans available to Customers in order to assist in the provision of display equipment, security boxes or EPOS systems. Any loans advanced to the Customer shall be made only on the Company's terms of the 'Shop Development Services - Terms and Conditions for the Supply of Shop Fittings, Security Boxes and Associated Products' a copy of which is available on request. In the event of the account being assigned or transferred to a third party, any outstanding balance of the loan (together with any accrued interest) shall be added to the final account for payment.

3.16 Standing Order Adjustments

Newspapers

- a) The Customer accepts that standing order adjustments may be made where supplies of newspapers are provided FSOR.
- b) The Customer agrees to accept extra copies of Titles, on FSOR, supplied by the Company in support of news breaks, points of particular interest or promotional activity.
- c) The Company will adjust Customer's orders responsibly in order to improve the level of newspaper availability or to meet each Publisher determined unsold targets. Any extra copies provided by the Company will be FSOR.

Magazines

Customer orders will be adjusted responsibly by the Company in order to improve the level of availability and efficiency to meet each publisher's unsold targets. Any extra copies provided by the Company will be FSOR.

3.17 Deposits and Security

- a) A deposit shall be required from all Customers based on an aggregate of three (3) weeks' MFT (per Premises). To the extent that an existing Customer opens a new account, the Company may waive (whether temporarily or not) the requirement for a deposit in respect of the new account, subject always to satisfaction of the Customer's credit worthiness. Any deposit held by the Company shall be placed in a separate interest bearing account and shall receive interest on the deposit held, payable 48 weeks in arrears, at the National Westminster Bank Plc base

lending rate, less an administration charge of 1.5% calculated on the total amount of the deposit. The holding of the deposit will be reviewed after 48 weeks trading and will be refunded (less any administration charge) to the Customer who initially deposited it with the Company (subject to on-going satisfactory credit worthiness) provided always that the account has been maintained satisfactorily in accordance with these Conditions. The holding of deposits beyond the 48 week period will be reviewed every 24 weeks at the Company's absolute discretion.

- b) Nothing shall prevent or, restrict the Company's ability to demand of the Customer (or any particular account) a deposit equal to an aggregate of up to three (3) weeks' MFT (per Premises) if it is not satisfied at any time with the Customer's credit worthiness.
- c) Where required by the Company, the Customer shall procure suitable security for payment of the account (including, but not limited to, a personal guarantee or escrow arrangement) in a form that is satisfactory to the Company.

3.18 Sub-Retailing

- a) The Company draws a distinction between 'active' Sub-Retailing and 'passive' Sub-Retailing. For the purposes of this clause 3.18, 'active' Sub-Retailing shall involve the Customer either canvassing, soliciting or approaching (or knowingly causing to be canvassed, solicited or approached) other retail outlets (known as a sub-retailer) for the sale of the Title(s) where the sub-retailer sells the Title(s) in their own name or right. 'Active' Sub-Retailing shall also include circumstances where a Customer seeks to transfer and/or relocate Title(s) from the Premises to another of its retail outlets, whether under a different trading name or not. 'Passive' Sub-Retailing on the other hand involves the Customer merely passively responding (i.e. absent any encouragement or active conduct of the Customer) to a request for supply of the Title(s) to a sub-retailer.
- b) **Active Sub-Retailing**

The Customer shall be permitted to actively sub-retail the Titles provided that (as a condition of supply): (i) the Customer and the sub-retailer shall not be permitted to sell, transfer or relocate the Titles to other locations outside the Company's area of operation as defined by the Publishers and/or the Company; and (ii) the circumstances in clause 3.18d) are not otherwise breached. Accordingly, the Company shall not refuse to supply a Customer on the grounds that the Customer intends to actively sell, transfer or relocate any Title(s) to a sub-retailer if the circumstances in clause 3.18d) are satisfied (and not otherwise breached) and the intended Sub-Retailing is within the allocated territory specified by the Company at the time of the Customer's notification of intended Sub-Retailing.
- c) **Passive Sub-Retailing**

The Customer shall be permitted to passively sub-retail the Titles provided that (as a condition of supply) (i) the circumstances in clause 3.18d) are not breached and (ii) (in the case of Newspapers only) the Customer and the sub-retailer shall not be permitted to sell, transfer or relocate the Titles to other locations outside the Company's area of operation as defined by the Publishers and/or the Company. Accordingly, the Company shall not refuse to supply a Customer on the grounds that the Customer intends to passively sell, transfer or relocate any Title(s) to a sub-retailer if the circumstances in clause 3.18d) are satisfied (and not otherwise breached) and the intended Sub-Retailing is (in the case of Newspapers only) within the allocated territory specified by the Company at the time of the Customer's notification of intended Sub-Retailing. For the avoidance of doubt, in the case of Titles other than Newspapers, there shall be no such territorial restrictions on passive Sub-Retailing.
- d) The following conditions or circumstances will apply to Sub-Retailing of the Titles where permitted under this clause 3.18 or otherwise. If any of these conditions are breached or not satisfied (as the case may be) this shall constitute an irremediable breach of these Conditions:
 - i) Sub-Retailing arrangements must be notified in advance and in writing by the Customer to the Company. Standard forms for notification are available on request from the Company.
 - ii) The Customer is solely responsible for the payment to the Company for all Titles sold or transferred to the sub-retailer and for the sub-retailer's compliance with these Conditions.
 - iii) The Customer shall not permit a sub-retailer to sell or transfer the Titles to another retailer or sub-retailer.
 - iv) To help ensure the continued efficiency of operations and to maintain overall service standards, the Customer may supply sub-retailers with the Titles only up to the Sub-Retailing Cap. Such products are to be firm sale. Where the sale, transfer or relocation of supply to a sub-retailer is in excess of the Sub-Retailing Cap, the Customer and/or the sub-retailer must immediately notify the Company. Upon receipt of this notification, all relevant parties shall promptly each make themselves available for discussions (in good faith) for a direct wholesale supply.
- e) The Company reserves the right to review and/or discontinue sub-retailing arrangements pursuant to this clause 3.18 if in its view, exercised in good faith, the arrangements have (or are likely to have) an adverse impact on the service and/or efficiency standards (e.g. KPIs) required by the Company's relevant contractual arrangements with the Publishers.

4 TERMINATION

4.1 Termination

- a) Notwithstanding the provisions of clause 2.9 or otherwise, and without prejudice to the Company's other rights, the Company may terminate supplies to a Customer or terminate any Customer account (in whole or in part) of one or all Titles with immediate effect, without liability, in the following circumstances:
 - i) upon the termination for any reason of the Company's arrangements with the Publisher in respect of such Titles;
 - ii) upon the Customer's irremediable breach of any of these Conditions or, (where such a breach is capable of remedy) on failure to remedy any breach within three (3) days of being given written notice of such breach by the Company of any of these Conditions;
 - iii) where the Customer has made false claims in respect of non-receipt or shortage of supplies or returns (including, but not limited to, in respect of payment vouchers) or in respect of other documents where in the Company's reasonable opinion the claim has been made other than through genuine error on the Customer's part;
 - iv) where the Customer (being a company) becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; suspends or threatens to suspend or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; has passed a resolution for its winding up; has a petition presented to any Court for its winding-up or for an administration order or (being an individual, partnership or firm) enters into a composition or arrangement with his creditors; has a bankruptcy order made against him, has been made the subject of an application for an interim order under section 253 Insolvency Act 1986 or has an interim receiver appointed under section 286 Insolvency Act 1986, or anything analogous to any of the foregoing occurs to the Customer under the law of any jurisdiction;
 - v) where the Customer fails to pay his account in full on the due day on two (2) or more consecutive occasions or on any four (4) or more occasions in any period of six (6) months, or such other number of occasions as the Company (in its sole discretion) deems unreasonable;
 - vi) where the Company obtains judgment in a court or tribunal of competent jurisdiction against the Customer in respect of a debt or unpaid invoice;
 - vii) where the Customer has in the Company's reasonable opinion ceased or threatened to cease to trade or carry on business;
 - viii) where an encumbrancer takes possession of, or if any distraint, execution or other process is levied or enforced on any of the property or assets of the Customer;
 - ix) where the Customer (being an individual) dies, becomes of unsound mind or is otherwise unable to perform his obligations under these Conditions for a continuous period of three (3) months or for an aggregate period of six (6) months in any rolling 12 month period; or
 - x) where the behaviour of the Customer is not consistent with accepted business trading relations or where he does any act which brings the reputation or goodwill of the Company into disrepute or otherwise adversely affects trading connections with or the business of the Company.
- b) Unless otherwise agreed, in the first year of opening the Customer's account, the Customer shall give not less than 26 weeks' notice in writing, and thereafter, the Customer shall at all other times give the Company not less than 12 weeks' notice in writing, before either closing an account (or any of its Premises) or substantially reducing supplies to be delivered at any of its Premises by more than 25% (assessed through the Premises' retail sales value of the Titles supplied, averaged over the last six months trading).

4.2 Receivership, Administration and Liquidation

- a) In the event that a court makes an order for the Customer to be wound up or the Customer's business goes into receivership or administration:
 - i) the Company reserves the right to charge interest on the Customer's outstanding balance from time to time of its debts with the Company from the date of liquidation, receivership or administration (as the case may be) at 8% above the National Westminster Bank Plc base lending rate from time to time; and
 - ii) to the extent that the supplies have been made by the Company prior to the receivership or administration on, or subject to, any special terms and conditions other than those contained in this document, the Customer irrevocably and unconditionally shall be deemed to have immediately and automatically reverted to the Conditions in this document in respect of future supplies of Title(s) made on or after the receivership or administration (as the case may be).
- b) If a court makes an order for the Customer to be wound up or a receiver or administrator is appointed before the outstanding balance of its debt with the Company is paid, the Company reserves the right to repossess any Titles and associated Material in the Customer's possession up to the

value of the outstanding account pursuant to clause 6.5 and in such event the repossession of those goods will be deemed to have discharged each contract(s) between the parties for the current and any future supply of the Titles on the terms hereunder, allowing for the Company to issue valid VAT credit notes (at its absolute discretion).

4.3 Consequences of Termination

- a) On termination pursuant to clause 4.1, all rights and obligations under these Conditions will automatically terminate with the exception of:
 - i) such rights of action as shall have accrued prior to the date of termination (including, but not limited to, any and all claims for any breach of any term, condition or undertaking contained in these Conditions); and
 - ii) all obligations under these Conditions which are expressed to (or are by implication intended to) survive its termination and continue thereafter including (but not limited to) conditions 4.3, 5 and 6.
- b) On termination pursuant to clause 4.1, the Customer shall:
 - i) promptly return to the Company (or make available for collection) all Titles which remain unsold (which are subject to FSOR), together with all Material associated with the Titles; and
 - ii) pay an administration charge (which shall be notified by the Company from time to time) in respect of the Company's reasonable fee in processing the Customer's closure of account / closure of Premises; and
 - iii) pay the final outstanding invoice presented by the Company to the Customer.
- c) For the avoidance of doubt, the Customer's deposit (if any) held by the Company together with any credits for properly returned Titles which are subject to FSOR shall each be capable of set off and deduction against (i) any invoice presented by the Company to the Customer and/or (ii) any other monies outstanding from the Customer to the Company (or any member of its Group, from time to time, whether under these Conditions or any contract or otherwise), and to the extent there is any excess, it shall be paid over to the Customer.

5

LIABILITY

5.1 Liability

- a) The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - i) any breach of these Conditions and each contract between the parties for the supply of Titles on the terms hereunder;
 - ii) any representation, statement or tortious act or omission including negligence, recklessness or wilful misconduct arising under or in connection with these Conditions; and
 - iii) physical damage to property caused directly or indirectly by any act or omission or by the negligence, recklessness or wilful misconduct of the Company or its employees, agents and sub-contractors.
- b) Except where the Customer is dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977) all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from these Conditions.
- c) Nothing in these Terms and Conditions excludes or limits the liability of the Company:
 - i) for death or personal injury caused by the Company's negligence; or
 - ii) under section 2(3), Consumer Protection Act 1987; or
 - iii) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - iv) for fraud or fraudulent misrepresentation.
- d) Subject to clauses 5.1b) and 5.1c) and to the provisions of ISSA:
 - i) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the supply of the Titles shall be limited to the aggregate amount paid by the Customer for the supply of the Titles to the Company in the last 12 months; and
 - ii) the Company shall not be liable to the Customer for:
 - (1) loss of profit, use, opportunity, business and/or anticipated savings;
 - (2) depletion of goodwill or reputation and/or similar losses;
 - (3) losses resulting from delay or suspension in the supply of the Titles, in whole or in part (howsoever arising);
 - (4) any liability to third parties incurred by, or contributed to by, the Customer or any of its employees, agents or contractors;
 - (5) any liability arising as a result of any statement or representation made by any employee, agent or sub-contractor of the Company unless such statement or representation is confirmed in writing on the Company's headed notepaper and approved by the Company; or
 - (6) any liability arising out of or as a result of an event of force majeure,in each case whether direct, indirect or consequential, or any claims for consequential compensation, whatsoever and howsoever caused (whether by negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply, non-supply or late supply of the Titles by the Company and/or arising pursuant to these Conditions.
- e) The Customer is responsible for providing an adequate level of public liability insurance cover to its customers and other persons (including, but not limited to, the Company's employees, agents and sub-contractors) at its Premises pursuant to the Occupier's Liability Act 1984.
- f) Where following security investigations, the Customer acknowledges responsibility for making false claims in respect of non-receipt, shortage of supplies, returns of Titles or payment vouchers, the Customer will recompense the Company for both the cost of the false claims and the cost of the security investigation.
- g) If the Customer subsequently accepts responsibility for continuing to make false claims the cost will be the full amount of the security investigation along with the cost of the false claims, these will be calculated to have been ongoing from the previous occurrence.
- h) If any part of this clause 5.1 is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties' express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect.

5.2 Indemnity

The Customer agrees to fully indemnify the Company against all losses, liabilities, costs, damages, claims, fines and expenses (including legal expenses) which the Company suffers, or may suffer, as a result of or arising out of any breach or negligent performance or failure in performance by the Customer or its agents or employees of any representation, statement, warranty, condition or other provision of these Conditions or of any damage or injury to the Company, its employees, visitors, agents, contractors, property or equipment caused by the actions or defaults of the Customer or its staff or agents whilst on, or at, the Premises or at the Company's premises.

6

RISK AND TITLE

6.1 Risk

The Titles delivered to the Customer are at the risk of the Customer from the time of delivery.

6.2 Ownership

Notwithstanding delivery and passing of risk, ownership of the Titles delivered to the Customer shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it, together with all other sums which are or which become due to the Company (or any member of its Group) from the Customer on any other account whatsoever, in respect of:

- a) the Titles delivered; and
- b) any other goods or services that the Company has supplied to the Customer.

6.3 Retention of Title

Until such time as ownership of the Titles has passed to the Customer, the Customer shall:

- a) hold the Titles delivered on a fiduciary basis as the Company's bailee;
- b) store the Titles delivered (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Titles delivered; and

- d) maintain the Titles delivered in satisfactory condition and keep them insured on the Company's behalf for their full resale price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 Right to Sell On

Notwithstanding clause 6.3, the Customer may offer for sale and sell the Titles delivered before ownership has passed to it solely on the following conditions:

- a) any sale shall be effected in the ordinary course of the Customer's business on arm's length terms;
- b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
- c) the Customer shall account to the Company for all proceeds of sale or otherwise relating to the Titles, whether tangible or intangible, (including insurance proceeds) and shall keep such proceeds separate from any monies or property of the Customer and third parties, and in the case of tangible process properly stored, protected and insured.

6.5 Repossession

The Customer's right to possession of the Titles delivered shall terminate immediately if:

- a) the Customer (being an individual, partnership or firm) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or such action is obtained against him, or the Customer is unable to pay his debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases (or threatens to cease) to trade; or
- c) the Customer fails to observe or perform any of his obligations under these Conditions or any other contract between the Company and the Customer; or
- d) the trading arrangement(s) between the Company and the Customer ceases, is suspended or is otherwise terminated (in whole or in part) for whatever reason (whether pursuant to clauses 3.13f)ii)(3) or 4.1 or otherwise); or
- e) the Customer encumbers or in any way charges any of the Titles (or proposes to do any of the same).

6.6 Right to Payment

The Company shall be entitled to recover full payment for the Titles delivered notwithstanding that ownership of any of the Titles has not passed from the Company.

6.7 Licence to Enter Premises

The Customer grants the Company, its agents and employees an irrevocable and unconditional licence at any time to enter the Premises (and any other location) where the Titles delivered are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them and all associated Material.

6.8 Order of Invoicing

Where the Company is unable to determine whether any Titles delivered are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

6.9 Continuing Rights

On termination of the account or of the supplies, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 6 shall remain in effect.

7 GENERAL

7.1 Agency/Partnership

Nothing in these Conditions shall be taken as constituting the Customer as an agent or partner of the Company.

7.2 Remedies

Each right or remedy of the Company under these Conditions is without prejudice to any other right or remedy of the Company whether under these Conditions or not.

7.3 Invalidity

If any of the clauses, or part of a clause, of these Conditions shall be held by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, unreasonable or in breach of ISSA it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability, unreasonableness or breach be deemed severable and the remaining provisions of the clauses or part of a clause of these Conditions (and the remainder of such provisions) shall continue in full force and effect.

7.4 Waiver

- a) No failure by the Company to exercise nor any delay in the Company exercising any right or remedy under these Conditions in respect of a breach by the Customer of these Conditions shall operate or be construed as a waiver of such rights or remedy or of any other right or remedy.
- b) Any waiver by the Company of any breach of, or any default under, any provision of these Conditions by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

7.5 Variation

Subject to clause 4.2a)ii) the Company reserves the right to vary, alter or add to the terms of these Conditions. The Company will give the Customer not less than six (6) weeks' notice of any change to these Conditions but any variation, alteration or addition shall be without prejudice to each party's accrued rights and liabilities prior to that variation, alteration or addition.

7.6 Notices

Any notice given by either party to the other under these Conditions shall be in writing addressed to the other party. In the case of the Company, the notice must be addressed to the supplying Smiths News house and, in the case of the Customer, at the Premises, or such other address previously notified in writing to the party giving the notice. Notices must be delivered either by hand or by first class post. The notice will be deemed to have been received at the time of delivery if delivered by hand and on the second day after posting (not including Saturdays, Sundays or public holidays) in the case of a posted letter.

7.7 Confidentiality

The Customer warrants that any information about the business of the Company, which may be provided to it or comes into its possession by any means, will not be passed to any other party either orally in writing or electronically, without the express permission of the Company.

7.8 Governing Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with, English law and the Customer and the Company agree that, subject to the provisions of ISSA, the courts of England shall have exclusive jurisdiction in relation to any dispute or matter arising in connection with these Conditions.