

Conditions of sale

These Conditions of Sale set out the terms and conditions upon which the Company will deliver and the Customer will accept supplies of the Titles. Acceptance of supplies of any Titles by the Customer constitutes acceptance of these Conditions of Sale. These Conditions of Sale supersede any prior terms, conditions or agreements relating to the supply of Titles or verbal representations, warranties, understandings or undertakings given by the Company or on its behalf to the Customer. These Conditions of Sale shall apply **unless or until** revised or replaced by the Company when it deems it appropriate.

1. Interpretation

In these Conditions of Sale, unless the context otherwise requires, the following words shall have the following meanings:

- **“Code of Practice”** shall mean the Industry Code of Practice (further to the Monopolies and Mergers Commission Report on the Supply of National Newspapers in England and Wales) effective from 1st October 1994 as amended from time to time;
- **“Company”** shall mean Menzies Distribution Limited or any holding subsidiary or associate company of the Company;
- **“Customer”** shall mean each of the retailers supplied by the Company;
- **“Effective Date”** shall mean 1 Dec 2002, or, if later, the date that the customer first receives supplies from the Company;
- **“ISSA”** shall mean the Industry Standard Service Agreement as compiled and agreed by various industry associations which was published and implemented on 1st October 1996 as amended from time to time;
- **“Material”** shall mean loose supplements, game cards, cover-mounted gifts or similar ancillary items supplied to the Company by a Publisher for including with a Title;
- **“Minimum Entry Level”** shall mean, with respect to each wholesale area, the Company’s published minimum order value for supplies of national newspapers in that wholesale area which initially shall not be greater than one half of the average weekly sales value for national newspapers from the Company to the Customers in that relevant wholesale area for six months ending 31st March 1994 but which level shall be reviewed by the Company in consultation with the Office of Fair Trading where applicable from time to time thereafter;
- **“Premises”** shall mean the Customer’s retail premises or regular vending point(s) at the address(es) recorded from time to time by the Company;
- **“Publisher”** shall mean organisation(s) supplying Titles to the Company for distribution;
- **“Titles”** shall mean newspapers, periodicals, magazines and ancillary news products supplied by the Company to the Customer;
- **“Sub-Retailing”** shall mean the practice whereby a Customer transfers newspapers to another retail outlet within a 500 metre radius from the Customer’s Premises in central urban areas and within a one kilometre radius from the Customer’s Premises in other areas, below existing retail margins in accordance with Clause 7 below.

2. The headings in these Conditions of Sale are for convenience only and shall not affect their interpretation.

3. New accounts

(A) The Company has undertaken to abide by the provisions of the Code of Practice for the supply of national newspapers and provided that applicants satisfy Clauses 3(B) (i) and 3(D) the Company will grant supplies.

(B) MINIMUM ENTRY LEVEL

- (i) Applicants shall agree to a guaranteed minimum weekly charge for national newspapers exclusive of “sale or return” which the Company shall not set greater than the Minimum Entry Level.
- (ii) The Company shall have the discretion to supply below this minimum.

(C) CARRIAGE SERVICE CHARGE

The carriage service charge applicable to the applicant will reflect economic and commercial distribution costs consistent with the Code of Practice and as published by the Company from time to time.

(D) CREDIT RISK CONTROL

Successful applicants for newspapers will be obliged to make a cleared deposit equal to three times the Company's Minimum Entry Level and an appropriate deposit will be required for all new magazine accounts, which monies will be held in a separate interest bearing account. Such deposit shall entitle the retailer to receive interest, payable annually in arrears, at the Royal Bank of Scotland Plc base rate, less an administration charge of 1.5% calculated on the sum of the deposit. The retention of the deposits will be reviewed after eleven months trading and refunded subject to the account being maintained satisfactorily in accordance with these Conditions of Sale. The holding of deposits beyond the eleven month period will be subject to review every six months. Should any Customer's account with the Company be closed or transferred, any remaining deposit shall be refunded subject only to the Customer's account being cleared in full.

4. Principles of supply - company's undertakings

- (A) The Company will arrange for a daily delivery of the Customer's orders placed with the Company pursuant to Clause 5(A) below to the Premises within the Company's relevant distribution area. Such delivery will be made, where practicably possible, within the mutually agreed Delivery Time Window. The Company's invoices to the Customer will include charges for delivery and/or collection where the latter facility is offered by the Company, which are subject to regular review. The Company will give the Customer six weeks notice of any change to carriage service charge rates.
- (B) Notwithstanding Clause 5 (A) below, the Company reserves the right to amend the Customer's standing orders to improve availability and reduce returns' levels, provided that where the Customer's orders are increased the Customer shall be so advised where practicable in advance and any extra copies of the Titles shall be provided by the Company on a "sale or return" basis. Any Customer who is trading at or below the Minimum Entry Level will ordinarily receive newspaper supplies on a firm sales basis and as such will not ordinarily have their standing orders amended by the Company.
- (C) The Company will not be responsible for any losses that the Customer may incur as a result of delays or non-publication of any Title which it has undertaken to distribute, over which the Company has no control.
- (D) The Company undertakes to advise the Customer of any alteration to branch opening hours and to maintain a supply position during these hours.
- (E) The Company is a party to, and is committed to achieving the minimum criteria of the ISSA.
- (F) Any information or data transfer concerning the customer shall not infringe the requirements of the Data Protection Act, 1988.

5. Principles of supply - customer's undertakings

(A) STANDING ORDER

The Customer may place a standing order for the supply of Titles to its Premises and, if the Customer shall not have placed any such order, the standing order for that Customer will be deemed to be those Titles which the Company currently delivers to the Customer. Any variation to a standing order may be made by the Customer by telephone, fax, in writing, or by visiting the Company's local depot.

(B) MATERIAL

The Customer agrees:

- (i) to include for sale any Material supplied by the Company, at the rates negotiated with the Publishers;
- (ii) with the exception of Materials supplied by the Company for inclusion with Titles, not to include or remove any advertising or other material in or to any Title, without the prior written consent of the Publisher of such Title;
- (iii) where any Title (eg, newspaper) or Material (eg, supplement) is not published or for whatever reason copies of any Title or Material are not available, to deliver such Title or Material as is available to its home/business deliveries and make such Title and Material available at its Premises.

(C) AVAILABILITY AND PROMOTION OF TITLES

The Customer:

- (i) is encouraged:
 - (a) where reasonably practicable, to establish and maintain home and business deliveries which services shall not be terminated without providing the Company with a reasonable opportunity to assist the Customer in maintaining this service;

- (b) to maintain a counter-service with a range of Titles available from the recognised on sale day to the recognised off sale day from the Premises;
 - (c) where reasonably practicable, to provide a special order and customer save service for newspapers (and magazines where applicable);
 - (d) where, in accordance with sub-clause 5 (C) (vi), the Customer has indicated to the Company that its Premises will be closed, to assist the Company in maintaining a counter-service with a range of Titles, either from a shop or other vending point near the Premises on that day for a period likely to satisfy all reasonable demands,
- (ii) is encouraged to promote actively and extend the sale of Titles delivered and distributed by the Company and, among other things, the Customer is encouraged to accept promotional copies of Titles which are being supported by "sale or return" or other promotional schemes,
 - (iii) agrees, subject to Clause 4 (B) to accept box-out supplies of the Titles supplied by the Company to increase retail availability in support of news breaks or promotional activities,
 - (iv) is encouraged to maintain a comprehensive and effective poster display for the Titles:
 - (a) ensure that poster displays are updated regularly;
 - (b) display specified daily bill shows when requested to do so by the Company;
 - (c) do all it can to ensure immediate bill shows upon receipt from the Company of handwritten topical bills with supplies when late stories break;
 - (d) make use of point-of-sale publicity materials supplied;
 - (e) undertake such other news promotional activities as may be reasonably requested from time to time by the Company,
 - (v) agrees to deliver the Titles or make available the Titles for sale or collection, on the condition they are not displayed or distributed before the recognised day of sale and any failure to observe this condition will entitle the Company to withhold future supplies until the recognised day of sale,
 - (vi) agrees to advise the Company of its normal hours of trading and to notify the Company at least ten working days in advance of any proposed material change in these hours and to advise the Company of any day when any titles are published that it does not intend opening the Premises for business,
 - (vii) agrees from time to time to supply on request such reasonable sales and marketing information about the Titles which the Company may be required to provide,
 - (viii) agrees that data, held by the Company either on computer or otherwise concerning the Customer, the retail outlet and/or Titles supplied by or returned to the Company, may be transferred by electronic or other means to the Publishers or their agents or to third parties (acting as consultants or otherwise) for marketing and/or research and/or other related purposes.

(D) RETURNS

The Customer will return unsolds of all Titles supplied by the Company on a "sale or return" basis, by the dates and to the place indicated on the invoice (as referred to in Clause 8 (A) below) using the appropriately dated version of the Company's return/recall documentation.

(E) CLAIMS

The Customer must make all claims with respect to shortages or damaged Titles within two hours of opening or receipt in respect of newspapers and within 8 hours of receipt of the delivery note in respect of periodicals and magazines.

6. Discrimination

The Customer will not discriminate against any one Title on anything other than commercial grounds.

7. Sub-retailing

(A) A Customer may sell or transfer NEWSPAPERS to another retail outlet (known as a 'sub-retailer') below existing retail margins upon the following conditions which are to be strictly adhered to:

- (i) Sub-Retailing arrangements can only be applied over limited distances of a neighbourhood within the following distances of the Customer's premises:

Central urban areas	-	within a 500m radius
Other areas	-	within a one kilometre radius

The geographical delineation between central urban areas and other areas is available on request for each local depot. The Company will have the discretion to extend these distances and will give sympathetic consideration to applications beyond the distances stipulated from customers which would meet the distinct social and community needs throughout the Company's distribution areas.

- (ii) Sub-Retailing arrangements must be notified to the Company 7 days in advance by way of the industry-standard documentation detailing the name, address, postcode and type of outlet of the sub-retailer.
 - (iii) The Customer and the sub-retailer will not be permitted to sell or transfer newspapers to locations outside the Company's area of operations or the area defined by the newspaper's Publisher.
 - (iv) The Customer shall not permit the sub-retailer to sell or transfer newspapers to another Customer or sub-retail outlet.
 - (v) It is recognised that Customers shall have the freedom to supply sub-retailers with firm sale supplies only up to the Minimum Entry Level value. Where the sale or transfer to a sub-retailer involving supplies with a weekly value in excess of the Minimum Entry Level is reached such sub-retailer shall be required to apply for a direct wholesale supply.
 - (vi) Payment for all supplies and compliance with the Company's terms and conditions of business and operational requirements shall be the sole responsibility of the Customer.
 - (vii) Sub-Retailing will normally be restricted to Customers who have traded with the Company for eighteen months. The Company reserves the right to waive this condition.
- (B) Sub-Retailing on any other basis or any other arrangements of a similar effect is strictly prohibited.

8. Consideration - payment of accounts

- (A) The Company will record details of all supplies on its invoice/recall documents which will be supplied weekly to the Customer. Such documents shall state, among other things, the prices (as determined by the Company from time to time) to be charged for the Titles packed at the Company's warehouse; any carriage service charge; the date by which unsolds have to have been returned; and the place to where they have to be returned. Any agreed payment made to the Company by a Publisher for merging or including any Material as set out in Clause 5 (B) (i) shall be credited on the Customer's invoice provided the Customer has inserted the Material correctly.
- (B) All invoices will be dated on Saturdays and issued two days later on the Monday. Invoices may be paid by cheque, money orders, postal orders or direct debit except that (a) for new Customers commencing supplies after the date hereof or existing Customers opening a new outlet after the date hereof or any party becoming a Customer following a Transfer under Condition 13 below payment must be by direct debit (unless otherwise agreed by the Company in writing) and (b) once any other existing Customer at the date hereof pays by direct debit that Customer cannot revert to payment by any other means except by agreement with the Company. Cheques, money orders and postal orders are to be made payable to Menzies Distribution Limited and crossed account payee only. Where payment is made by cheque, money orders or postal orders, such amounts must be received by the Company by not later than 3pm on the date 6 days from the date of invoice. Where payment is made by direct debit, such amounts must be received by the Company in cleared funds by not later than 11 days from the date of invoice (ie Wednesday of the second week following the date of invoice). The time of payment of each invoice shall be of the essence notwithstanding that ownership of the Titles may not have passed. No payment of invoices may be made by way of cash payment.
- (C) **REFUSED CHEQUES/DIRECT DEBITS**
- (i) A charge of £15 will be made when a Customer's payment by cheque or direct debit is refused.
 - (ii) Cheques refused by the bank will not be re-presented and direct debits not paid will not be carried forward to the following week. The Company will advise the Customer of the value of the refused payment and the Customer must replace the refused payment by banker's draft within a timescale agreed between the Customer and the Company.
 - (iii) When payments by cheque or direct debit are refused on more than two occasions, payment of accounts will automatically be transferred to banker's draft.
- (D) Any invoice that is not paid by the relevant date will be liable to a surcharge of 1p per £1 for every four week period after the relevant date. Supply may be stopped for non payment by the relevant date.
- (E) No deduction should be made from the total amount on the invoice, unless the total outstanding credit exceeds 25% of the total amount due. Any error will be rectified and credit will be given on the next earliest invoice practicable.
- (F) Credit will be given to the Customer in respect of unsolds of Titles supplied on a "sale or return" basis, providing they are either securely packed and labelled and made available for the Company's returns collections (details of which will be given to the Customer by the Company's local depot Manager) or returned

at the Customer's expense to the Company's local depot not later than the returns cut off times as detailed in the invoice/recall documents referred to in Clause 8 (A) above. Any claim for credit expected but not included in the following two weekly invoices from the Company shall be forfeited if not reported by the Customer within seven days after receipt of such second weekly invoice. Upon reasonable request, Customers may also receive a refund in respect of telephone costs incurred when claiming shortages. No other telephone costs will be refunded.

9. Ownership/risk

Risk in the Titles and Material shall pass to the Customer once such Titles and Material have been delivered to the Premises, or such other pre-designated and agreed delivery point. In the absence of alternative arrangements, delivery on the doorstep or pavement immediately outside the Premises shall constitute delivery to an agreed delivery point. Ownership of the Titles and Material shall remain with the Company until the amount due under the invoice for them (and all other monies due to the Company) have been paid in full or as the Company otherwise agrees in writing. If at any time before such payment the Customer fails to pay any invoice timeously or the Customer should be wound up or a receiver, administrative receiver, administrator, liquidator or trustee in bankruptcy be appointed over the whole or part of the Customer's property or an execution or distress levied against the Customer, the Company shall be entitled to enter and repossess or trace the goods or the proceeds of sale in the hands of the Customer or of any liquidator, receiver, administrative receiver, administrator or trustee in bankruptcy.

10. Liability

Whereas the Company will endeavour to ensure supplies to the Customer in accordance with these Conditions of Sale it will in no circumstances be liable for any loss suffered by the Customer as a result of any failure or partial failure to so supply.

11. Termination of supplies

- (A) The Customer agrees to give six weeks' notice in writing to the Company before the closing of their account or substantially reducing supplies.
- (B) In the event of an actual or proposed permanent cessation of supplies of a Title to the Company, and irrespective of the circumstances giving rise thereto, the Company may terminate supplies to the Customer of that Title without liability by giving the Customer such notice in writing as is reasonable in the circumstances, provided that such notice does not take effect prior to the date when the Publisher ceases to supply the Company.
- (C) Notwithstanding the provisions of Clause 12 or Clause 11 (B) and without prejudice to the Company's other rights and remedies, a Customer's supplies of any or all Titles may be terminated forthwith without liability to the Company in the following circumstances:
 - (i) on the termination of the Company's agreement with the Publisher of such Titles;
 - (ii) upon the Customer's breach of any of these Conditions of Sale or where such a breach is capable of remedy upon the Customer's failure to remedy such breach within seven days of being given written notice of such breach by the Company;
 - (iii) the Customer has made false claims or actions in respect of receipt, non-receipt, shortage of supplies or returns or in respect of other documents or matters where in the Company's reasonable opinion that the claim or action has been made other than through genuine error or where the Customer has colluded with any party in any act of dishonesty;
 - (iv) the Customer has a receiver, administrative receiver, administrator, trustee in bankruptcy or similar official appointed over all or any of its assets, or is wound up or is in the process of being wound up or, becomes bankrupt, or is dissolved;
 - (v) the Customer fails to pay his account regularly in full on the due day.
- (D) The Company may upon six weeks prior written notice at any time terminate supplies of any or all Titles to the Customer.

12. Force majeure

- (A) The Company may partially or totally suspend, with or without notice, any supply of any Title during any period in which the supply of such Title to the Company may be either prevented or delayed or hindered through any circumstances beyond its control including, but without prejudice to the generality of the foregoing, any strikes, lock-outs, labour disputes of any kind, industrial action of any nature whatsoever (whether any of the foregoing relate to the Company's employees or others) fire, floods, storms, acts of God, railway delays or cancellations, motor accident or serious traffic congestion, or any shortage or destruction of paper or petrol or diesel supply (or supply of any other necessary material or service) or if any Title is not published, and that the Customer will have no claim against the Company and the Company will not be liable to the Customer for any loss or damage howsoever arising or sustained as a result therefrom.
- (B) If a strike, lock-out, labour dispute or industrial action by the employees of the Company occurs or any part of the Company's business is in any way affected, the Company may, with or without notice, withhold, reduce or suspend the supply of Titles to such extent as the Company shall, in its absolute discretion, think fit with a view to securing a return to normal business.

13. Assignment - transfer of account

- (A) Save in circumstances of Sub-Retailing, the Customer may not effect any assignment, transfer or subletting of all or any part of the supply of the Titles that it receives from the Company (a "Transfer") without the prior written approval of the Company and payment of all outstanding invoices. Such approval must have been requested at least 14 days before a proposed Transfer. Subject to a satisfactory credit rating, the new owner if they are an existing newsagent, may not be required to pay a deposit. In all other instances a deposit will be required and such deposit will be not more in value than two weeks full news sheet supplies of the transferring business. Any such deposit will be held as per the conditions laid out in Clause 3 (D) Credit Risk Control. Any person who becomes a Customer as a result of acceptance of supplies of Titles following a Transfer (whether or not approval to the Transfer had been obtained) shall become fully responsible to the Company for any outstanding invoices in respect of the supply of Titles to the Customer in receipt of supplies immediately prior to the Transfer.

This Clause is cross-referenced to our "Change of Ownership Form" which will effectively advise any prospective purchaser of a newsagent's business that they and/or their legal representative should ensure that all outstanding accounts are settled prior to a transfer/purchase taking place otherwise the incoming proprietor/tenant/lessee will become responsible for the outgoing agent's outstanding accounts to the Company. The wording on the "Change of Ownership Form" is:

"You acknowledge that you have read the Conditions of Sale upon which you will accept supplies of Titles (as defined in the said Conditions of Sale). Your attention is drawn in particular to Clause 8 (B) which sets out the way in which payment is to be made and also Clause 13 whereby you will be responsible for any outstanding debts as at the date you start accepting supplies of Titles and therefore you are strongly advised to ensure that all outstanding debts due to Menzies Distribution Limited from the person from whom you are acquiring the agency are settled before the change of agency."

This does not apply where the Customer obtains a news supply under the terms of the Code of Practice by satisfying Clauses 3 (B) (i) and 3 (C).

- (B) The Company must be given written notice of any change in the name and postal address of the Premises' proprietor, not less than fourteen days prior to any such change.

14. Agency/partnership

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

15. Third party rights

A person who is not a party to these Conditions of Sale shall have no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term herein.

16. Invalidity

The invalidity or unenforceability for any reason of any of these Conditions of Sale shall not prejudice or effect the validity of the remainder.

17. Waiver

If the Company waives any serious breach of these Conditions of Sale such waiver should not be considered as a precedent in respect of subsequent breaches of the same or any other provision contained herein.

18. Notices

Any notice required or permitted to be given by either party to the other under these Conditions of Sale shall be in writing addressed to the other party, in the case of the Company at its supplying local depot or in the case of the Customer at the address for its Premises or such other address previously notified in writing to the party giving the notice.

1 December 2002