

Norwich Books and Music – Trade Terms

The customer's attention is drawn in particular to the provisions of clause 9.

1. **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.5.

Contract: the contract between Hymns Ancient and Modern Limited and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or organisation who purchases the Goods from Hymns Ancient and Modern Limited.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Hymns Ancient and Modern Limited: Hymns Ancient and Modern Limited trading as Norwich Books and Music (Registered Charity number 270060; Registered in England with company number 1220696), whose registered office is 13a Hellesdon Park Road, Norwich NR6 5DR; the supplier.

Order: the Customer's request for the Goods, as set out the Customer's purchase order or the Customer's written acceptance of Hymns Ancient and Modern Limited's quotation, as the case may be.

2. **Basis of contract**

- 2.1 These Conditions, as amended from time to time by Hymns Ancient and Modern Limited, apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Hymns Ancient and Modern Limited issues a written acceptance of the Order or arranges

delivery of Goods, at which point the Contract shall come into existence.

- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Hymns Ancient and Modern Limited which is not set out in the Contract.

- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Hymns Ancient and Modern Limited and any descriptions or illustrations contained in Hymns Ancient and Modern Limited's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

3. **Goods**

The Goods are described in Hymns Ancient and Modern Limited's catalogue and/or its website at www.norwichbooksandmusic.co.uk/trade-information. Hymns Ancient and Modern Limited reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. **Delivery and Returns**

- 4.1 Hymns Ancient and Modern Limited shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Hymns Ancient and Modern Limited shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**"). Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Hymns Ancient and Modern Limited shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Hymns Ancient and Modern Limited with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If Hymns Ancient and Modern Limited fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in

obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Hymns Ancient and Modern Limited shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Hymns Ancient and Modern Limited with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 Once Hymns Ancient and Modern Limited (or its agent) has attempted delivery twice, and if the Customer fails to accept delivery of the Goods, Hymns Ancient and Modern Limited may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, delivery and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.6 Hymns Ancient and Modern Limited may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.7 Goods will only be accepted for return by the Customer by authorisation of Hymns Ancient and Modern's Norwich office, in its absolute discretion, and subject to confirmation of the original invoice number and date. Return of Goods will not be accepted less than six months or more than one year after the date of the original invoice. In normal circumstances, credit will only be given for resaleable returns. Hymns Ancient and Modern Limited reserves the right to impose a handling charge to a maximum of 50% of the value of the returned Goods in the event of these conditions not being met. Returns of dated Goods and annuals are not accepted.

5. Quality

5.1 Hymns Ancient and Modern Limited warrants that on delivery the Goods shall conform in all material respects with their description; be free from material defects in design, material and workmanship; and be free from damage sustained in transit.

5.2 Subject to clause 5.3, if the Customer gives notice in writing to Hymns Ancient and Modern Limited within 7 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1 then Hymns Ancient and Modern Limited shall be given a reasonable opportunity of examining such Goods and the Customer (if asked to do so by Hymns Ancient and Modern Limited) shall return such Goods to Hymns Ancient and Modern Limited's place of business at the Customer's cost. Hymns Ancient and Modern

Limited shall replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Hymns Ancient and Modern Limited shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 if the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2; the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Hymns Ancient and Modern Limited shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by Hymns Ancient and Modern.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Hymns Ancient and Modern Limited has received payment in full (in cash or cleared funds) for the Goods and any other goods or services that Hymns Ancient and Modern Limited has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall hold the Goods on a fiduciary basis as Hymns Ancient and Modern Limited's bailee; store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Hymns Ancient and Modern Limited's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; notify Hymns Ancient and Modern Limited immediately if it becomes subject to any of the events listed in clause 8.1; and give Hymns Ancient and Modern Limited such information relating to the Goods as Hymns Ancient and Modern Limited may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, or Hymns Ancient and Modern

Limited reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Hymns Ancient and Modern Limited may have, Hymns Ancient and Modern Limited may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Hymns Ancient and Modern Limited's published price list in force as at the date of delivery.
- 7.2 Hymns Ancient and Modern Limited may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to: any factor beyond Hymns Ancient and Modern Limited's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or any delay caused by any instructions of the Customer or failure of the Customer to give Hymns Ancient and Modern Limited adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from Hymns Ancient and Modern Limited, pay to Hymns Ancient and Modern Limited such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 Hymns Ancient and Modern Limited may in its absolute discretion require payment in full in advance or alternatively invoice the Customer for the Goods on or at any time after the completion of delivery. Hymns Ancient and Modern Limited may in its absolute discretion extend credit facilities to established trade customers.
- 7.6 Unless otherwise agreed in writing, the Customer shall pay any invoice in full and in cleared funds within 30 days of the date of the invoice unless otherwise agreed in advance in writing. Payment shall be made to the bank account nominated in

writing by Hymns Ancient and Modern Limited. Time of payment is of the essence.

- 7.7 If the Customer fails to make any payment due to Hymns Ancient and Modern Limited under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Hymns Ancient and Modern Limited in order to justify withholding payment of any such amount in whole or in part. Hymns Ancient and Modern Limited may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Hymns Ancient and Modern Limited to the Customer.

8. Customer's insolvency or incapacity

- 8.1 If the Customer suffers insolvency or incapacity, or Hymns Ancient and Modern Ltd reasonably believes that the Customer is about to become subject to insolvency or incapacity or any procedure which raises concerns about the solvency or capacity of the Customer and notifies the Customer accordingly, then, without limiting any other right or remedy available to Hymns Ancient and Modern Limited, Hymns Ancient and Modern Limited may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Hymns Ancient and Modern Limited without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude Hymns Ancient and Modern Limited's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; defective products under the Consumer Protection

Act 1987; or any matter in respect of which it would be unlawful for Hymns Ancient and Modern Limited to exclude or restrict liability.

9.2 Subject to clause 9.1:

9.2.1 Hymns Ancient and Modern Limited shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 Hymns Ancient and Modern Limited's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. General

11.1 **Assignment and subcontracting.** Hymns Ancient and Modern Limited may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Hymns Ancient and Modern Limited.

11.2 **Severance.** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable,

that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.3 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.4 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.5 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Hymns Ancient and Modern Limited.

11.6 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Hymns Ancient and Modern Limited, May 2013