

ELSEVIER HESI® TERMS AND CONDITIONS OF SUPPLY

1. Applicability

These terms and conditions shall apply to all offers, proposals and agreements made between Elsevier and any third party or its agent ("the Client") relating to the products and/or services of Elsevier ("the Products and/or Services") and, along with the relevant Elsevier order acknowledgement, shall form the entire agreement between the parties (the "TC"). They supersede any previous supply terms and conditions. For the purposes of the TC 'Elsevier' shall mean the company within the Elsevier group that is providing the Products or Services as set out on the Elsevier order acknowledgement or invoice. Where general terms and conditions of business are proposed by the Client, these TC will prevail. Any variation to the TC and any representations about the Products and Services shall have no effect unless expressly agreed in writing and signed by an authorized signatory of Elsevier. Nothing in the TC will exclude or limit Elsevier's liability for fraudulent misrepresentation. Where Products are sold to the Client that contain third party products or software such a sale may be subject to additional license terms.

2. Offer and acceptance/ Description

Each order for the Products and Services by the Client from Elsevier shall be deemed to be an offer by the Client to purchase the Products and Services subject to the TC. No order placed by the Client shall be deemed accepted until a written acknowledgement of order is issued by Elsevier or (if earlier) Elsevier delivers the Products or issues the invoice to the Client or commences performance of the Services for the Client. All product orders are accepted subject to availability of the ordered Products. Unless otherwise expressly agreed by Elsevier in writing, Client represents and warrants that it is purchasing Products or Services from Elsevier for its own account and use and not on behalf of any other person or entity. If Client is an agent, it represents and warrants that it is purchasing the Products and Services from Elsevier for the account and use of no more than one identified institutional subscriber as principal or, if the agent is permitted to order personal subscriptions in a representative capacity, for the account and use of no more than one identified eligible individual subscriber for valid personal use. Client acknowledges that violation of this representation and warranty will cause irreparable harm to Elsevier. Upon any violation of this representation and warranty, Elsevier shall be entitled to immediate injunctive relief requiring Client to disclose all recipients of Elsevier Products and Services from Client, including all actual recipients that have not been previously properly identified by Client. Elsevier shall use commercially reasonable efforts to comply with descriptions of the Products and Services agreed by both parties in the relevant order, including such things as format, printing processes, technical design, size and kind of address file, weights and the like. All drawings, descriptive matter, specifications and advertising issued by Elsevier and any descriptions or illustrations contained in Elsevier's catalogues or brochures are issued or published for the sole purpose of giving an approximate description of the Products and Services described in them. They will not form part of the TC. Publishing errors, including, but not limited to, typographical errors, having no significant effect on the editorial content or design characteristics of the Products and Services, cannot be considered a reason for rejecting delivery or, as the case may be, modifying the agreed price.

3. Execution and modification of the order

Any modifications to the agreed product or service description, budget or schedule, as set out in the order acknowledgement, may result in an adjustment to the final price and/or delivery schedule at Elsevier's discretion. If, at the request of the Client, Elsevier renders additional Services in connection with the performance of the TC, Elsevier shall act in the name of, to the account of, and at the risk of the Client. Any dates specified by Elsevier for delivery/performance of the Products and Services are intended to be an estimate and time for delivery/performance shall not be made of the essence by notice. If no dates are so specified, delivery/performance will be within a reasonable time.

4. Prices, taxes and currencies

Unless otherwise agreed by Elsevier in writing the price/rates for the Products and Services shall be those set out in Elsevier's current price/rate list (whether print or online). All such prices/rates shall be exclusive of any handling, packing, loading, freight, transport and insurance charges unless otherwise agreed in writing, and shall also be exclusive of any taxes, import duties or other levies imposed on the sale or import of the Products or Services by local or national authorities, which shall be charged by Elsevier as appropriate. Where applicable, Client shall provide Elsevier Client's VAT registration number or other evidence of tax exemption to Elsevier at the time of placing its order. If, under the laws of the territory in which Client is selling the Products, the Client is required to withhold any tax on the amounts payable to Elsevier under the TC, then the amount of the payment will be automatically increased to fully offset such tax, so that the amount actually remitted to Elsevier, net of all taxes, equals the amount invoiced or otherwise due. The Client will promptly furnish Elsevier with the official receipt of payment of those taxes to the appropriate taxing authority. All financial transactions must be settled in the currency of the applicable Elsevier invoice. The Client will be solely responsible at its own cost for completing any foreign exchange-related procedures in the said territory that are necessary to make payments to Elsevier under the TC, including without limitation all bank charges and foreign exchange charges.

5. Payment

Unless otherwise agreed in writing, payments shall be effected within thirty (30) days of the invoice date in the currency invoiced. Time for payment shall be of the essence. Elsevier may set and vary credit limits for any Client account and shall be entitled to refuse to supply any Client who has exceeded its current credit limit. Legal and beneficial title in any tangible Products supplied by Elsevier to the Client shall remain with Elsevier until Elsevier has received in full (in cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to Elsevier from the Client on any account. Elsevier shall be entitled to recover payment for the copies of the Product notwithstanding that ownership of any of the copies of the Product has not passed from Elsevier. For the avoidance of doubt no intellectual property rights in any Elsevier Products shall transfer to the Client. Products shall be at the Client's risk as from delivery. The Client shall make all payments due under the TC without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Elsevier to the Client. From the due date of the invoice to the date of payment in full, interest at the rate of 1% may be charged to the Client on a monthly basis for any sums outstanding, together with any collection fees incurred by Elsevier. If the Client wishes to dispute any invoice (or part), the Client shall, as soon as reasonably practicable, but no later than the due date of such invoice, send full details of such dispute to Elsevier in writing. The Client shall remain liable for any undisputed part of such invoice. Elsevier shall be entitled, at any time, to demand payment in advance and may suspend performance of its obligations arising from the TC until such advance payment has been received. Where the Client is indebted to Elsevier for any other Product or Service under any other order, Elsevier reserves the right to withhold supply of the Products or Services under the current order until any outstanding monies are fully paid. Elsevier shall be entitled to apply any monies received by the Client, to clear any of the Client's outstanding debts to Elsevier.

6. Distribution

The Client shall not engage in piracy, reproduction, or plagiarism of the Products or any other products of Elsevier or its affiliates, nor shall it directly or indirectly facilitate any other party to engage in those activities. The Client shall promptly notify Elsevier if it becomes aware of any piracy, reproduction, or plagiarism of the Products by any third party. Additionally, Client shall not abridge, modify, translate, or create any derivative work and/or service (including resulting from the use of artificial intelligence tools), based on the Products nor shall Client use the Products in combination with an artificial intelligence tool (including to train an algorithm, test, process, analyze, generate output and/or develop any form of artificial intelligence tool). The Client is solely responsible for collecting from its customers amounts due in respect of its sales of the Products, exercising full credit control and solely bearing all of its own losses resulting from any uncollected amounts. Delays or failures in obtaining such payments will not affect the Client's obligation to make payments to Elsevier under clause 5.

7. Intellectual property

Copyright and other intellectual property rights to all Elsevier proposals, publications and other Products and or Services shall remain with Elsevier unless agreed otherwise in writing. The rights granted by Elsevier are restricted to use solely by the Client and may not be assigned, transferred or sublicensed without the prior written permission of Elsevier. The rights granted by Elsevier are non-exclusive and for the purpose expressly agreed upon. Any other use shall require the prior written permission of Elsevier. The Client shall not acquire any intellectual property rights in the Products. No part of the Elsevier proposals, publications or Products may be stored in any automated data file and/or reproduced, whether electronically, mechanically, by photocopying, recording or in any other manner or form, without the specific prior written permission of Elsevier.

8. Liability and claims

TO THE MAXIMUM EXTENT PERMITTED BY RELEVANT LAWS (i) Elsevier shall not be liable for any of the following losses which may arise by reason of any breach of this TC or any implied warranty, condition or other term, any representation or any duty of any kind imposed on Elsevier by operation of law: (a) any loss of anticipated profits or expected future business; (b) damage to reputation or goodwill; (c) any damages, costs or expenses payable by Elsevier to any third party; (d) loss of any order or contract; or (e) any loss that was not foreseeable by the Client and Elsevier at the time this TC was entered into; or (f) any loss not caused by any breach on the part of Elsevier; AND (ii) NEITHER PARTY SHALL BE RESPONSIBLE FOR DEATH OR PERSONAL INJURY EXCEPT THAT RESULTING FROM ITS OWN NEGLIGENCE OR WILFUL INTENT OR THE NEGLIGENCE OF ITS EMPLOYEES OR OTHERS FOR WHOM THE PARTY IS LEGALLY RESPONSIBLE. NOTHING IN THE TC SHALL BE CONSTRUED AS CREATING AN OBLIGATION TO INDEMNIFY THE OTHER PARTY AGAINST THE OTHER PARTY'S OWN NEGLIGENCE. ELSEVIER'S LIABILITY FOR ANY OTHER LOSS IMPUTABLE TO IT SHALL IN ANY EVENT BE LIMITED TO THE INVOICE VALUE OF THE PART OF THE TC TO WHICH THE LIABILITY ARISES. TO THE MAXIMUM EXTENT PERMITTED BY RELEVANT LAWS ELSEVIER EXPRESSLY EXCLUDES ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY OF AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTHING IN THIS CONTRACT SHALL LIMIT THE CLIENT'S EXISTING LEGAL OR STATUTORY RIGHTS WHERE IT IS ACTING AS A CONSUMER. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this TC or the interpretation or enforcement thereof. The Client has entered into this TC in the knowledge that the liability of Elsevier is to be limited in accordance with these terms and conditions and the charges have been agreed accordingly. The Client acknowledges that a higher price would be payable for the Products or Services but for such limitations.

9. Force majeure

If by reason of labor dispute, strikes, inability to obtain labor or materials, fire or other action of the elements, accidents, power or telecommunications failure, customs delays, governmental restrictions or appropriation or other causes beyond the control of a party, such party is unable to perform in whole or in part its obligations set forth in this TC, then such party shall be relieved of those obligations to the extent it is thereby unable to perform, and such inability to perform shall not make such party liable to any other party. The party subject to an event of force majeure shall use good faith efforts to comply as closely as possible with the provisions of this TC and to avoid the effects of such event to the extent possible.

11. Audit

Client shall allow Publisher's authorized representative at any reasonable time to have access to Client's premises (or to arrange for Publisher's authorized representatives to have access to other relevant premises) for the purpose of inspecting Client's facilities, books and records to verify Client's compliance with the TC.

12. Compliance with laws

Client shall at all times during the term strictly comply with all applicable laws, ordinances, codes, regulations, standards and judicial and administrative orders (jointly "Applicable Laws" or "Laws") relevant to its duties, obligations and performance under this Agreement, including, without limitation, Applicable Laws related to bribery, including, without limitation any such Laws that are enforced internationally (such as the United States Foreign Corrupt Practice Act and the UK Bribery Act) and those enforced in the country where business is being conducted and/or the Client's place of business or residency. Client and its officers, directors, employees and agents shall engage only in legitimate business and ethical practices in commercial operations and in relation to its dealings with any employee or official of a government agency or any other government owned, operated or controlled entity (including, without limitation, state run universities, hospitals and libraries), or political parties or candidates (jointly "Government Official"). Neither the Client nor any of its officers, directors, employees or agents shall pay, offer, give, promise or authorize the payment, directly or indirectly, of any monies or anything of value to any commercial contact or Government Official for the purpose or intent to induce such person to use his/her authority to help the Client, Elsevier, and/or any affiliate of Elsevier for personal gain or for that of Elsevier or Elsevier's affiliates (any such act, a "Prohibited Payment"). A Prohibited Payment does not include a payment of reasonable and bona fide expenditures, such as travel or lodging expenses, which are directly related to the promotion, demonstration or explanation of Products or Services or the execution or performance of a contract provided that such payments are permissible under the Applicable Laws. The Client further agrees that he/she will not accept any payment or other benefit in money or in kind from any person as an inducement or reward for any act or forbearance or in connection with any matter or business transacted by or on behalf of Elsevier.

13. Cancellations & Returns

If the Client cancels an order either fully or partially, a cancellation fee may be charged. All cancellations must be made in writing. This fee will be calculated to cover any external or internal costs which have been incurred or committed up to and including the date of cancellation. No new external costs will be incurred or committed/contracted from the date of receipt of written notice of cancellation by Elsevier. Orders for advertisements must be cancelled in writing prior to the relevant ad space closing date, but in the event that any cancellations are made after such date, Elsevier shall be entitled to charge the full cost of the advertisement. Any returns of the products shall be subject to the relevant Elsevier company's return policy applicable to the product at the time of the return. Details of such policies will be provided to the Client upon request. Reprints cannot be returned once these have been printed.

14. General

The Client shall not be entitled to assign the TC or any part of it without the prior written consent of Elsevier. Elsevier may assign the TC or any part of it to any person, firm or company. If any provision of the TC is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the TC and the remainder of such provision shall continue in full force and effect. Failure or delay by Elsevier in enforcing or partially enforcing any provision (or prosecuting any breach) of the TC will not be construed as a waiver of any of its rights under the TC.

15. Privacy

To the extent that the Client or its Authorized Users provide any personal data to Elsevier during account registration or otherwise, the parties acknowledge and agree that such information will be processed by Elsevier in accordance with the Elsevier privacy policy at <https://www.elsevier.com/legal/privacy-policy> and the Elsevier Data Processing Addendum at <https://www.elsevier.com/legal/data-processing-terms> ("DPA") (where the term "Subscriber" refers to Client). The parties acknowledge and agree that each party acts as an independent controller of any personal data shared or otherwise processed under this Agreement and has complied and will comply with its obligations under the Data Protection Laws. Terms used but not defined in this section shall have the meanings ascribed to them in the DPA.