

Terms and Conditions

Version February, 2010.

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY AND ENSURE THAT YOU UNDERSTAND, AGREE AND ACCEPT TO BE BOUND BY THESE TERMS IN RESPECT OF ALL SERVICES PROVIDED BY FLOREAT BOOKS LIMITED TO YOU. THESE TERMS AND CONDITIONS SHOULD BE READ IN CONJUNCTION WITH, AND ARE INCORPORATED INTO, THE ORDER FORM, THE DESCRIPTION OF SERVICES AND THE ACCEPTANCE CONFIRMATION.

1. Scope

- 1.1 Floreat Books Limited (the **Company**) is engaged in the business of providing services to authors and rights owners seeking to publish, promote and sell books in which they own or control the copyright.
- 1.2 These terms and conditions (the **Terms**) are to be read in conjunction with, and are incorporated into, the Order Form (as defined below) and the Description of Services (as defined below), as available on the Website (as defined below) or as may be provided by the Company from time to time.

2. Interpretation

- 2.1 The following definitions and rules of interpretation in this condition apply in these Terms:
 - Acceptance Confirmation** means the letter or e-mail sent by the Company to the Author that confirms the formation of the Contract between the Parties and the total Charges for the Services.
 - Additional Services** means any other service incidental to the Contract which the Author may purchase pursuant to the provision of Services;
 - Author** means the individual(s) (including his or her executors or attorney where such individual dies or becomes incapacitated) or organisation(s) (including its administrators) that agree to utilise the Services of the Company as set out in the Order Form, Description of Services, Acceptance Confirmation and these Terms;
 - Author IPR** means any Intellectual Property embodied in the Work and/or Material created or controlled by the Author or submitted in connection with the Work by the Author;
 - Book Price Confirmation** means the agreement between the Author and the Company in respect of the retail and wholesale price of the Work.
 - Charges** means the charges for the Services of the Company as shown in the Order Form and the Acceptance Confirmation;
 - Commencement Date** means the date on which the Company is in receipt and has delivered (as applicable):
 - (a) the Order Form;
 - (b) payment in full of the Charges; and
 - (c) the Acceptance Confirmation;in respect of each Service ordered on the Order Form;
 - Contract** means the documents comprising a contract between the Author and the Company, namely the Order Form, the Description of Services, the Acceptance Confirmation and the Terms;
 - Description of Services** means the description of the Services which may be provided by the Company from time to time and as available on the Website or as may be provided by the Company from time to time.
 - Distribution Channels** means the Company's network distribution partners such as Bertrams, Amazon.co.uk and Gardners and/or such other distribution companies as the Company may in its absolute discretion specify;
 - Distribution Fees** means a fee as may be determined by the Company in its absolute discretion and notified to the Author in respect of the costs incurred in making the Work available for order;
 - Incidental Charges** means those reasonable bona fide expenses incurred from time to time in the provision of the Services which are not included in the Charges or Production Charges;
 - Intellectual Property** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
 - Materials** means, in addition to the Work, any document, any map, plan, graph, drawing or photograph, or other information provided by the Author (or on behalf of the Author) with the intention that it should form part of the Work;
 - Production Charges** means separate charges incurred in the provision of the Services which are additional to the Charges and as may be notified by the Company to the Author from time to time;
 - Order Form** means the Company's order form (as available on the Website or as may be provided by the Company from time to time) submitted by the Author in accordance with the Terms;
 - Services** means such services as may be provided by the Company (including, but not limited to, design, editing, publishing and/or marketing services) as described in the Description of Services and as subject these Terms and as may be selected by the Author on the Order Form; and
 - Website** means www.floreatbooks.com, www.floreatbooks.co.uk or such other website and domain address or name as may be maintained and operated by the Company from time to time.
 - Work** means the book(s), electronic files, documents and any other materials whatsoever which are submitted to the Company by the Author or stated to be created, owned or controlled by the Author.

- 2.2 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 2.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.6 A reference to one gender shall include reference to the other genders.
- 2.7 Words in the singular shall include the plural and vice versa.

3. Contract Formation

- 3.1 Submission of the Order Form by the Author to the Company constitutes an offer to the Company to order such Services. All orders are subject to acceptance by the Company.
- 3.2 Such acceptance will be notified and communicated to the Author by the Company sending the Author an Acceptance Confirmation. The Contract between the Author and the Company will only be formed when the Company sends the Acceptance Confirmation.

4. Payment of Charges

- 4.1 Payment of the Charges, Productions Charges or Incidental Charges for the Services specified in the Order Form shall be made prior to any work commencing by the Company in respect of the Services and shall be made in accordance with the payment procedures set out in the Order Form and Acceptance Confirmation. The Company reserves the right to suspend or withhold any or all Services, duties or obligations to be provided by the Company under the Contract unless and until the Author complies with all such payment obligations.
- 4.2 The Company shall make every effort to ensure prices are correct at the point at which the Author places an order nonetheless the Company accepts no liability for any inaccuracies or inconsistencies that may occur from such indications. The Company reserves the right to periodically update and vary its Charges from time to time as provided on the Website and which cannot be guaranteed for any period of time.
- 4.3 The Company is under no obligation to provide the Services to the Author at an incorrect or lower price where there is a pricing error and it is obvious and unmistakable and could have reasonably been recognised by the Author as a mispricing.

5. Additional Charges

- 5.1 Any corrections or changes to the Work as requested by the Author other than as described in the Description of Services will result in Production Charges which shall be payable by the Author. The Author shall also pay Production Charges if the Work is not submitted in a form that is acceptable to the Company in its sole discretion. Any such Production Charges shall be determined by the Company and the Company shall inform the Author of any such Production Charge as soon as reasonably practicable.
- 5.2 The Company shall be entitled to recover any Incidental Charges from the Author provided that the Company informs the Author of any such Incidental Charge as a soon as reasonably practicable.

6. Publishing Licence

- 6.1 The Author grants to the Company the non-exclusive right to copy, reproduce, edit, adapt and print and/or publish or procure the print and publication of the Work or any part of it in any form and media (including in electronic form such as, but not limited to, e-books) in the English language and all other translations into any other languages, in the United Kingdom and the world without exception.
- 6.2 The Author grants to the Company the right to use and allow others to use the Author's name (including any professional names), likeness and biography together with the Work and Materials in connection with the promotion or exploitation of the Work and the promotion of the Company's Services in general and in the Company's sole discretion.
- 6.3 The licence granted pursuant to conditions 6.1 and 6.2 above shall commence on the date of the Acceptance Confirmation and shall terminate in accordance with condition 16 (Termination).
- 6.4 All Author IPR shall be retained by the Author.

7. Author Obligations and Warranties

- 7.1 *General*
 - (a) The Author warrants, represents and undertakes that he has the full capacity and authority to enter into and perform the Contract and that once duly executed, the Contract will constitute his legal, valid and binding obligations.
 - (b) The Author warrants, represents and undertakes that in entering into this Contract he is acting for purposes which are within the scope of his normal business and hereby acknowledges that The Consumer Protection (Distance Selling) Regulations 2000 (as amended from time to time) do not apply to this Contract.
 - (c) The Author warrants, represents and undertakes that he shall not disclose reveal or make public except to the professional advisers any information whatever concerning the Work or the Company's business all of which shall be strictly confidential nor shall the Author make any public statement or press statement in connection with the foregoing or commit any act which might prejudice or damage the Company's reputation or the successful exploitation of the Work.
- 7.2 *Intellectual Property*
 - (a) The Author warrants, represents and undertakes that the Work is the original work of the Author and there are no rival claimants such as an employer claim, that he is the owner or licence holder of all Author IPR throughout the world and that he is a 'qualifying person' within the meaning of Section 154 of the Copyright, Designs and Patents Act 1988.

- (b) The Author warrants, represents and undertakes that the Work has not been published prior to this Contract or if the Work has been previously published the Author shall provide the Company with all relevant information in respect of such publication.
- (c) The Author warrants, represents and undertakes he shall be responsible for obtaining and paying for any and all legal clearances required for the use of any third party Materials. The Author agrees to obtain all such clearances and consents as may be required in writing and to provide the Company with such copies as may be requested.
- (d) The Author warrants, represents and undertakes he has not assigned or encumbered or licensed or transferred or otherwise disposed of any of the Work, Material or the Author IPR except pursuant to the Contract and has not entered into any agreement or arrangement which might conflict with the Company's rights under the Contract.
- (e) The Author warrants, represents and undertakes that the Work, Material and the Author IPR does not and shall not infringe any right of copyright, moral right or right of privacy or right of publicity or personality or any other right whatsoever of any third party and that the Work and Author IPR does not plagiarise the work or copyright of any third party.
- (f) The Author warrants, represents and undertakes that there is no present or prospective claim proceeding or litigation in respect of the Work or Material or the Author IPR which may in any way impair, limit, inhibit, diminish or infringe upon any or all of the rights granted to the Company and the exploitation of the Work.
- (g) The Author warrants, represents and undertakes that the Author IPR is and shall throughout the full period of copyright protection be valid and subsisting pursuant to the laws of the United Kingdom and the provisions of the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention.

7.3 *Defamatory or blasphemous material*

- (a) The Author warrants, represents and undertakes that nothing in the Work or Material is under the laws of any jurisdiction obscene or blasphemous or offensive to religion or defamatory or amount to a malicious falsehood of any person and does not contain any material which has been obtained in violation of law or legislation and nothing contained in the Work or Material would if published constitute a contempt of court.
- (b) The Author warrants, represents and undertakes all statements purporting to be facts in the Work are true and correct and insofar as there may be instructions, directions, recipes, formulae, or advice to be acted upon or copied by the public, the Author has personally verified such material and is certain that it does not pose any risk to the health and safety of the public, especially children. The Author undertakes that it is not likely to and shall not cause or result in any loss, damage or injury of any nature.

7.4 *Submission and presentation of the Work*

- (a) The Author warrants, represents and undertakes that he shall at the Author's own expense supply the Company with the Work in an electronic file in a form that is ready to publish and all Materials and other necessary information relating to the Services to enable the Company to provide the Services in accordance with the Contract.
- (b) The Author acknowledges that the Company will have control over the paper, binding, format and typography of the Work.

7.5 *Times for making representations and warranties*

- (a) The representations and warranties set out in this condition 7 are made by the Author on the date of the Contract. Each representation and warranty is deemed to be repeated by the Author immediately prior to publication of the Work.
- (b) When a representation and warranty is repeated, it is applied to the circumstances existing at the time of repetition.

7.6 *Indemnity*

- (a) The Author warrants, represents and undertakes to notify the Company with full details immediately if the Author become aware of any breach of this condition 7 or any infringement or threatened infringement of the Author IPR or other Intellectual Property belonging to the Company, or any claim (or threatened claim) that the Work or Material infringes the rights of any other person.
- (b) The Author undertakes to indemnify the Company and keep the Company at all times fully indemnified from and against all actions, proceedings, claims, demands, costs, (including without prejudice to the generality of this provision the legal costs and any matter settled on the advice of counsel or the Company's insurers) awards and damages however arising directly or indirectly as a result of any breach (actual or claimed) or non-performance by the Author of any of the above undertakings, warranties or obligations under this Contract. This indemnity shall apply whether or not the Company has been negligent or at fault.
- (c) If a payment due from the Author under this condition is subject to tax (whether by way of direct assessment or withholding at its source), the Company shall be entitled to receive from the Author such amounts as shall ensure that the net receipt, after tax, to the Company in respect of the payment is the same as it would have been were the payment not subject to tax.
- (d) The Author completely and wholly accepts responsibility for the content of the Work. The Company reserves the right to immediately discontinue all Services if the Author violates the above warranties, representations and undertakings and the Company may retain a fee to defray setup costs.

8. The Company's Obligations and Liability

- 8.1 The Company shall provide the Services using reasonable care and skill. The Company reserves the right not to provide the Services or any part of the Services at any time at the Company's discretion without any liability.
- 8.2 The Company provides no guarantee of the level of sales of the Work and shall have no liability for the same.
- 8.3 The Company shall not be responsible for retrieving the Work or any sales of the Work in the possession of an entity other than the Company.
- 8.4 The Company does not give any warranty, guarantee or other undertaking as to the quality, fitness for purpose or otherwise of any of the Work or Material and shall have no liability as to the content of the Work or Material.

- 8.5 The Company shall have no liability to the Author arising out of or in connection with any act or omission on the part of any third party involved in the provision of the Services.
- 8.6 The Company shall have no liability to the Author for any loss, damage, costs, expenses or other claims for compensation arising from the provision of Services and/or from the Work or Material which are incomplete, incorrect, inaccurate, illegible, or arising from their late arrival or non-arrival, or any other fault by the Author.
- 8.7 Nothing in the Contract shall serve to exclude or limit liability of the Company in respect of death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.
- 8.8 The Company shall not be liable to the Author by reason of any representation (unless fraudulent) and all warranties, conditions or other terms implied by law are excluded to the fullest extent permissible.
- 8.9 The Company shall not be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Company's negligence or servants or agents or otherwise) which arise out of or in connection with the provision of the Services including any delay in providing or failure to provide the Services.
- 8.10 Subject to condition 8.7 above the entire liability of the Company under or in connection with the Contract or otherwise shall not exceed the amount of the Charges paid by the Author for the provision of the Services;
- 8.11 The Company shall not be liable to the Author or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control including but not limited to third party consultation in relation to publicists, printers and line-editors. For the avoidance of doubt such delay shall include but shall not be limited to the Author's delay.
- 8.12 No delay or omission on the part of the Company in exercising any of the Company's rights or remedies contained in the Contract shall be construed as a waiver of any of those rights or remedies.

9. Actions for Infringement

- 9.1 If during the period when the rights granted hereunder are vested in the Company, a claim is issued against the Company in respect of an (actual or claimed) infringement of Intellectual Property contained in the Work and/or Materials without prejudice to any other remedy available to the Company, the Author hereby authorises the Company to negotiate, settle, or defend any such claim at the Author's expense.
- 9.2 The Author agrees to do any and all acts and execute all documents in such manner and at such locations as may be required by the Company in its sole discretion in order to negotiate, settle, or defend any such claim.
- 9.3 The Company shall put the Author on notice of a third party claim and shall thereafter have the right to withhold the payment of any and all monies to the Author pursuant to the Contract in an amount commensurate with the relevant claim and to use and apply any and all such monies pursuant to the terms of the indemnity provision. The Company also has the right to immediately remove the Work in its finished form from any and all Distribution Channels.

10. Royalties and Pricing

- 10.1 The Company will remit payments to the Author on a half-yearly basis (i.e. twice a year) or such other period as the Company may notify to the Author, accompanied by a sales report by email for the relevant period. If the royalty payment is less than £20, the Company reserves the right to withhold payment until accumulated, unpaid royalties is greater than £20.
- 10.2 The Company reserves the exclusive right to modify the selling price of the Work if costs should change or market conditions warrant in the Company's opinion. In such event, the selected royalty payments will remain the same. The royalty payments made to the Author will be the amounts as defined in the Book Price Confirmation, less any outstanding amounts owed by the Author to the Company and/or withheld pursuant to condition 10.3 below governing laws.
- 10.3 The Company shall have the right to deduct and retain from payments to the Author all sums required to be deducted or retained by way of withholding or other tax pursuant to the laws of any country. In the event that the remittance of royalties to the Author is prohibited by reason of exchange control restrictions in any part of the world the Company shall, if requested by the Author, deposit the amount of any sums due to the Author in an account in the Author's name situate in the country in question subject to the payment or reimbursement by the Author to the Company of the administrative costs incurred in so doing.

11. Return of Work

The Company shall be under no obligation to the Author to return the Work or Materials and the Author should retain back-up copies of anything submitted. The Company shall not be responsible for or have any liability for the misplacement loss or damage to the Work or Materials.

12. Transfer of Ownership

Subject to the Company's prior written approval the Author may assign the ownership of the Work and the right to receive royalty payments to any third party provided that such third party covenants with the Company to perform all of the Author's obligations and liabilities under this Contract and provided further that if the Company consents to the assignment of payments, the Author and the transferee shall jointly and severally reimburse, indemnify the Company for any tax liability, penalty, interest or fee imposed by any local taxation authority.

13. Data Protection

The Company shall comply with the Data Protection Act 1998, (the "DPA"), any regulations made under the DPA, all relevant guidelines and guidance notes issued from time to time. The Company reserves the right to compile and use information about the Author and statistical information about the sale of the Work. Such information may be used for statistical analysis, administration and marketing other products and/or services or for the Company's business partners from time to time. The Author hereby consents to the transfer out of the UK of such data, including to the USA, which does not provide the same levels of data protection.

14. Good Faith

Both parties shall act in good faith at all times and shall use their reasonable endeavours to work together to resolve all issues and disputes relating to Services before seeking any other remedy.

15. Co-obligors (joint and several liability)

15.1 Where two or more authors and/or rights owners are deemed to be the “Author” for the purposes of the Contract, such authors and/or rights owners shall be jointly and severally liable for the obligations and liabilities arising under the Contract.

15.2 In the event that there is more than one person as Author engaging the Services it is agreed that in performing the Company's obligations to one of such persons, the Company shall be deemed discharged from performing our obligations to all and any of you jointly and severally.

16. Termination

16.1 The Author may by giving twenty-eight days notice in writing by post or by email to the Company terminate this Contract.

16.2 In the event of termination of the Contract by the Author prior to completion of the Services in respect of the Work(s) the refund of Charges will be entirely at the discretion of the Company and subject to appropriate deductions in respect of any time spent and/or any Services commenced or provided.

16.3 The Company reserves the right to terminate this Contract at anytime and without cause with such notice to be provided to the Author in writing by post or by email. In the event of termination by the Company, any sums paid by the Author to the Company will be refunded to the Author within 30 days to the extent that any Services, duties or obligations of the Company to the Author under the Contract remain unsatisfied. Reasonable costs incurred by the Company in good faith may be deducted from such amounts at the Company's sole discretion.

16.4 The Author warrants for the period of two years following termination that the Author will not independently employ or utilise the services of any of the Company's sub-contractors who were involved in the performance of the Services.

16.5 The provisions of conditions 6.4 (Publishing Licence), 7 (Author Obligations and Warranties), 7.6 (Indemnity), 9 (Actions for Infringement), 17 (Insurance and Risk) and 24.6 (General) shall continue to apply after termination of the Contract.

17. Insurance and Risk

All Work and Materials shall be at the Author's sole risk and the Author shall at his own expense effect and maintain such policy or policies of insurance as may be necessary to cover loss or damage to the Work or Materials.

18. Force Majeure

The Company shall not be in breach of this Contract if it is prevented or delayed by events outside its reasonable control, including, without limitation, Acts of God, wars, terrorism, riots, strikes or other labour disputes, natural disasters, fire or severe weather. In such event the Company will notify the Author and will provide an estimate as to the extent of the delay. If the operations will be delayed for more than ninety (90) days, the Company may terminate this Contract in accordance with condition 16.

19. Purchase of Additional Services

In the event of the Author purchasing additional Services, these Terms take precedence for all Services. The Author will be required to fill out an additional Order Form in respect of the additional Services and such Order Form shall form part of the Contract.

20. Conflict of Terms

Except as otherwise expressly provided in these Terms, in the event of any conflict between any of the other documents which together constitute the Contract, the Terms shall take precedence.

21. No partnership or agency

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

22. Rights of Third Parties

Any person who is not a party to these terms has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of these terms.

23. Description of Services and Variation of Contract

23.1 The Description of Services is incorporated into and forms a part of this Contract. The Description of Services describes in detail the nature of the Services and also contains additional obligations on the Author. The Description of Services is subject to change from time to time by the Company, without the Author's consent, however, the Company agrees to notify the Author, in writing, of any material change to the Description of Services if the Company is actively providing Services to the Author at such time.

23.2 The Company has the right to revise and amend these Terms from time to time however, the Company agrees to notify the Author, in writing, of any material change to the Terms if the Company is actively providing Services to the Author at such time.

24. General

24.1 A notice required or permitted to be given by either party to the other under the Contract shall be in writing (by post or by email) addressed to the other party at the registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

24.2 If any provision of the Contract is held by any competent to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected.

24.3 The Company shall be entitled without the Author's prior consent to assign, transfer or sub-contract or in any way make over the benefit or burden of the Contract to a third party.

24.4 Any waiver of rights must be in writing and no prior waiver will affect a party's rights in the event of a subsequent breach. The Company's rights and remedies shall be distinct, separate and cumulative. No action or inaction by the Company shall operate to exclude or deprive the Company of any other rights allowed to it by law.

24.5 This Contract embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements (including, but not limited to, the summaries of each of the Services provided on the Website), understandings or arrangements relating to the subject matter of this Contract. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Contract save for any representation made fraudulently.

24.6 This Contract shall be governed by and construed in accordance with the laws of England and, subject to this clause, the parties submit to the nonexclusive jurisdiction of the Courts of England. Any dispute or difference arising out of or in connection with this Contract shall be determined in accordance with the Arbitration Act 1996 by a single arbitrator to be agreed between the parties, or failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators. The seat of the arbitration shall be London and the language shall be English.