STANDARD TERMS AND CONDITIONS OF SALE

1. Definitions
1.1. In these conditions ‘OUP’ shall mean Oxford University Press Canada of 8 Sampson Mews, Suite 204, Don Mills, Ontario, Canada, M4X 1E1 or its duly appointed agent; ‘Purchaser’ shall mean the original purchaser of Goods from OUP; and ‘Goods’ shall mean the books, products, or other articles sold by OUP.

2. General
2.1. All sales by OUP to Purchaser are governed by and subject to these Standard Terms and Conditions of Sale, as amended from time to time by OUP. These Standard Terms and Conditions of Sale, along with any relevant invoice, purchase order, or other such agreement between OUP and Purchaser, collectively form a binding agreement between OUP and Purchaser. Any deviations from these Standard Terms and Conditions of Sale are binding and enforceable against OUP only if made in writing and signed by an authorized officer of OUP. OUP rejects any terms or conditions contained in Purchaser’s purchase order or other documents that are in conflict or inconsistent with these Standard Terms and Conditions of Sale and any such terms and conditions shall be without force or effect. If Purchaser has not otherwise agreed to these terms, Purchaser’s acceptance of delivery of, or full or partial payment for, the Goods will constitute Purchaser’s acceptance of these Standard Terms and Conditions of Sale.

2.2. All Goods are sold firm, unless otherwise agreed in writing, and are subject to the condition that they shall not, by way of trade or otherwise, be lent, re-sold, hired out or otherwise circulated in any form of binding or cover other than that in which they are published, without OUP’s prior consent, and such lending, re-selling, hiring out, or other circulation shall have all terms and conditions set out herein imposed on the subsequent purchaser.

2.3. OUP is not bound by an order until accepted by OUP in writing or by shipping the Goods to Purchaser. OUP may elect not to accept an order if, in its judgment, OUP will be unable to meet the requested delivery date or to fill the requested quantity or type of products ordered. OUP may also elect not to accept an order in its sole discretion. There shall not be implied into the terms of these Standard Terms and Conditions, or any related document, any continuing obligation to supply the Purchaser after fulfilment of each order and no notice period shall be required to be given by OUP should OUP decide to cease selling to Purchaser.

2.4. Any reference in these Standard Terms and Conditions to any provision of a statute shall be confirmed as a reference to that provision as amended, re-enacted or extended.

3. Publication Date
3.1. New books/titles sold by OUP to Purchaser shall not be sold by Purchaser before the advised publication date.

4. Prices
4.1. Prices are subject to alteration by OUP at any time up to and including the date of invoice. Sales taxes will be charged additionally at the rate current at the date of invoice on all sales where OUP must account for sales tax.

4.2. All quotations or estimates given by OUP are subject to OUP’s confirmation of its acceptance of an order and to availability of the Goods. Unconfirmed quotations or estimates shall lapse 30 days after issue, unless otherwise agreed to in writing by OUP.

5. Discount and Credit Terms
5.1. All Goods are supplied subject to the discount, credit terms, and credit limits separately agreed to by OUP and Purchaser and in force at the date of the invoice. OUP reserves the right to exercise complete discretion in respect of credit facilities, which may be withdrawn without notice.

5.2. Any claim relating to the price of Goods as stated on the invoice and, in particular, a claim that the invoice price does not match the quotation or other agreed terms must be notified by Purchaser to OUP within 30 days of receipt of the Goods.

6. Quantities and Editions

6.1. OUP will make every effort to supply the exact quantities of Goods ordered but reserves the right where necessary to vary the quantities, for example in cases of special production or to conform to printers pack quantities. OUP may deliver against any order hereunder up to 5% in excess or an unlimited percentage in deficiency of the amount specified for the delivery in question, provided that as regards such excess or deficiency, OUP shall make a corresponding adjustment in the amount payable by Purchaser who shall accept and pay for the actual quantity supplied. Unless Purchaser has specifically requested otherwise, Goods which OUP is unable to supply immediately will be despatched to Purchaser when available without further notice to Purchaser.

6.2. Where Purchaser does not specify which edition of a book or other product is required and there is more than one, OUP will normally supply the cheapest available. No variation by OUP in the manufacture or design of any Goods will constitute a breach of contract or impose any liability upon OUP.

7. Physical Delivery

7.1. For qualifying orders, Goods will be delivered to Purchaser’s usual place of business (or another location within Canada as arranged with Purchaser), and Purchaser will be billed for freight. The means of transport shall be completely at OUP’s discretion unless Purchaser has arranged otherwise.

7.2. Time for Delivery

7.2.1. OUP will use its reasonable endeavours to meet any agreed delivery date but does not guarantee to do so. Time is not of the essence, unless expressly so agreed in writing by OUP.

7.2.2. OUP may deliver all of the Goods at one time or in portions from time to time. Each delivery of any part of an order will be deemed to constitute a separate enforceable contract to which these Standard Terms and Conditions of Sale will apply. If Purchaser causes or requests a delay in the manufacture or delivery of any Goods, Purchaser shall reimburse OUP for all resulting damages, including without limitation payment of reasonable storage expenses for the Goods during the period of delay or interruption.

8. Defective Goods

8.1. Purchaser shall inspect the Goods within seven days after their delivery and shall give written notification to OUP of any shortages or manufacturing faults revealed by that inspection.

8.2. OUP will replace such Goods as it agrees to be faulty provided that such replacement can be made from current stock.

8.3. If replacement cannot be made from stock, OUP will record a backorder for supply on arrival of new stock or, if so requested, credit the invoice value of any faulty Goods to Purchaser.

9. Claims for Loss and Damage in Transit

9.1. Purchaser shall notify OUP in writing (otherwise than by qualified signature on the carrier’s consignment note or delivery document) in respect of any loss, damage or delay to the Goods within the following time limits:

9.1.1. For loss from a package or for damage to a consignment or any part thereof: verbally within 72 hours of the date of delivery of the consignment or part consignment, followed by a valued claim in writing within 30 days after the termination of transit;
9.1.2. for loss, mis-delivery or non-delivery of the whole of a consignment or of any separate package forming part of a consignment: within 72 hours of the Purchaser becoming aware of any non-delivery, followed by a valued claim in writing within 30 days after the commencement of transit.

9.2. In computing the above time limits Saturdays, Sundays and public holidays shall not be counted. In the event of a late claim causing prejudice to OUP, OUP shall be relieved of all and any liability in respect of such a claim.

10. Returns
10.1. Returns can only be made if they are authorized in accordance with the current OUP Returns Policy, copies of which are available upon request.
10.2. Undelivered Goods or unauthorized returns shall be liable for handling and storage charges if received at OUP.

11. Risk and Title
11.1. Legal and beneficial ownership in the Goods shall not pass to Purchaser until payment in full is received by OUP (in cash or cleared funds) in respect of the following:
   11.1.1. all sums due to OUP in respect of the Goods and
   11.1.2. all other sums outstanding from Purchaser to OUP on any account, although risk of loss shall pass to Purchaser upon delivery of the Goods to Purchaser. Purchaser consents to OUP’s use of any written agreement between Purchaser and OUP, as well as Goods invoices, as financing statements for protecting the security interest in the Goods and appoint OUP as Purchaser’s agent for service of process.
11.2. If payments received from Purchaser are not stated to refer to a particular invoice OUP may appropriate such payments to any outstanding invoice.
11.3. Until ownership of the Goods has passed to Purchaser, Purchaser shall:
   11.3.1. hold the Goods on a fiduciary basis as OUP’s bailee;
   11.3.2. store the Goods (at no cost to OUP) separately from any Goods belonging to the Purchaser or any third party in such a way that the Goods are clearly marked and identifiable as being OUP’s property, and
   11.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.
11.4. OUP shall be entitled to enter Purchaser’s premises (or Purchaser’s agent’s premises where that agent is storing Goods on Purchaser’s behalf) either:
   11.4.1. upon reasonable notice to inspect the Goods or to verify Purchaser’s compliance with this sub-clause; or
   11.4.2. to repossess any Goods owned by OUP so as to discharge any sums owed to OUP or enforce the provisions of Clause 16.
11.5. Purchaser may resell the Goods before ownership has passed to it solely on the following conditions:
   11.5.1. any sale shall be effected in the ordinary course of Purchaser’s business; and
   11.5.2. any such sale shall be a sale of OUP’s property on Purchaser’s own behalf and Purchaser shall deal as principal when making such a sale.
11.6. If:
   11.6.1. Purchaser fails to make any payment to OUP when due, or
   11.6.2. Purchaser charges or encumbers the Goods, or
   11.6.3. Purchaser proposes to compound with its creditors or has a bankruptcy petition presented against it, or
   11.6.4. Purchaser enters into voluntary or compulsory liquidation or an encumbrancer takes possession or a receiver, an administrator or administrative receiver is appointed over any or all of its assets or the Purchaser takes or suffers similar action, or
   11.6.5. any event occurs which under the law of any relevant jurisdiction has an analogous effect to any of the events set out above, or
11.6.6. OUP has reasonable cause to believe that any of these events is likely to occur, then Purchaser’s right to possession of the Goods will terminate immediately and OUP shall have the right, without prejudice to any other remedies:

11.6.7. to enter, without notice, any premises of Purchaser where Goods owned by OUP may be and to repossess and dispose of any Goods owned by OUP so as to discharge any sums owed to OUP by Purchaser for Goods and in respect of any other matters, and/or

11.6.8. to require Purchaser not to resell or part with possession of any Goods owned by OUP until Purchaser has paid in full all sums due to OUP for the Goods, and in respect of any other matters, and/or

11.6.9. to withhold delivery of any undelivered Goods and stop any Goods in transit.

11.7. Where OUP is unable to determine whether any Goods are the Goods in respect of which the Purchaser’s right to possession has terminated, the Purchaser shall be deemed to have sold all Goods of the kind sold by OUP to the Purchaser in the order in which they were invoiced to the Purchaser.

12. Insurance
12.1. Until ownership of the Goods has passed to Purchaser, Purchaser shall maintain the Goods in satisfactory condition and shall maintain comprehensive general liability insurance, including without limitation products liability insurance, in an amount equal to the full price of the Goods, with an insurance company having a Best rating of A, to the reasonable satisfaction of OUP. On request, Purchaser shall produce the policy of insurance to OUP and shall hold the proceeds of an insurance payout, if any, on trust for OUP and not mix them with any other money nor pay the proceeds into an overdrawn bank account.

13. Payment and Interest
13.1. Payment shall be net cash according to the terms separately agreed between OUP and Purchaser in accordance with Clause 5 or shall be made before delivery if so required by OUP.

13.2. Payment by debit or credit card is subject to OUP’s prior approval and a handling fee, further details of which are available on request.

13.3. Non-payment of accounts on or before the due date or the exceeding by Purchaser of any credit limit shall entitle OUP to stop all deliveries and to terminate any contract or commitment in respect of undelivered Goods. Evidence of the amount due to OUP shall be as per the relevant paper or on screen statement of account or alternatively suitable certificate under signature of the OUP credit or finance manager to Purchaser’s last known address. Should OUP not receive full payment by the due date Purchaser shall, without any need for OUP to give notice, become liable to pay interest on the overdue amount at a rate of 4% per cent per annum above the prime rate of TD Canada Trust from the due date for payment until payment is received (before as well as after judgment). Any partial payments will be first credited against interest due. No claim by Purchaser (whether by way of set off, counterclaim or otherwise) against OUP shall entitle Purchaser to withhold payment of the whole or any part of invoices due for settlement. Costs incurred by OUP in recovery of any debt shall be payable by the Purchaser, including agents’ commission, solicitors’ fees and charges incurred under the jurisdiction of a court of OUP’s choice.

13.4. OUP reserves the right to invoice Goods which are not immediately supplied but are reserved for consolidation in order to secure economic freight costs.

14. Cancellation of Orders
14.1. Once despatched, Goods must be accepted and paid for by Purchaser and notice of cancellation will not be accepted.

15. Libel
15.1. OUP reserves the right to withdraw from Purchaser any Goods which are the subject of a libel action, or for any other reason at OUP’s complete discretion, and to forbid the re-sale of any Goods which OUP’s Purchaser has purchased. OUP undertakes to bear the expense of the return of such items and also to credit Purchaser with the purchase price. OUP completely disclaims responsibility for the continuing sale of Goods which OUP has asked to be withdrawn, and any such responsibility will pass to Purchaser acting in defiance of OUP’s instructions.

15.2. Purchaser shall co-operate fully in any withdrawal (at the expense of OUP) by OUP of any Goods pursuant to this clause 15 and shall give all reasonable assistance requested by OUP in recovering the Goods and preventing their sale to third parties.

16. Ethical conduct
16.1. The Purchaser undertakes to OUP that in relation to any business conducted in relation to OUP products:
   16.1.1. it will not offer, give or receive bribes or inducements for any purpose whether directly or through a third party;
   16.1.2. it will always behave ethically when competing for Purchasers’ business and when placing business with suppliers; and
   16.1.3. it will not offer financial inducements to public officials.

17. Amendments
17.1. OUP reserves the right to alter or amend these Standard Terms and Conditions of Sale generally, or for any particular sale of Goods. Purchaser should refer to the latest Standard Terms and Conditions of Sale, which are available upon request or from OUP’s website www.oupcanada.com.

17.2. OUP should be notified in writing of any change to Purchaser’s ownership or legal or financial status.

18. No Waiver
18.1. OUP has all rights and remedies given to sellers by applicable law, and OUP’s rights and remedies are cumulative and may be exercised from time to time. Failure by OUP to enforce any of the provisions hereof shall not be construed as a waiver of its rights nor prejudice OUP’s right to take subsequent action. No waiver by OUP of any right shall be a waiver of any future exercise of that right.

19. Force Majeure and Liabilities
19.1. No liability shall attach to OUP for loss or damage or delivery delays or failure to manufacture or supply Goods arising from factors outside its reasonable control including but not limited to acts of God, acts or omissions of civil or military authority, war, fire, flood, nature, disasters, labour disputes, plant breakdown, shortage of supplies, or compliance with orders lawfully given by any public authority.

19.2. The express terms of these Standard Terms and Conditions of Sale together with any other terms expressly agreed to by OUP set out Purchaser’s remedies in the event that the Goods prove defective, are not delivered on time, or OUP is otherwise in breach of contract.

19.3. In any event, OUP’s liability under or in connection with the supply of the Goods, whether in contract, tort, breach of statutory duty or otherwise shall not, except where expressly provided for in these Terms or where such liability cannot be excluded or limited by law, exceed the price paid by the Purchaser for the Goods.

19.4. To the extent permitted by law, any action by Purchaser against OUP for breach of any obligation of OUP to Purchaser or for any other claim arising out of or relating to the Goods or their design, manufacture, sale, or delivery, must be brought within one (1)year after the cause of action accrues.
19.5. To the fullest extent permitted by law, Purchaser shall indemnify, defend, and hold harmless OUP, its subsidiaries, affiliates, parents, successors, and assigns, and their respective officers, directors, agents, and employees, from any claim, demand, cause of action, debt, or liability (including without limitation reasonable legal fees, expenses, and court costs) that relates to: (a) Purchaser's breach of its representations or any failure to comply with its obligations to OUP; (b) Purchaser's negligence; (c) Purchaser's failure to abide by all applicable laws, rules, regulations, and orders; (d) damage to any person or property to the extent such claim is based on Purchaser's modification, misuse, or abuse of the Goods; or (e) intentional harm to any person or property caused by Purchaser. Indemnified claims, debts, and liabilities include the amount of any discount in price or concession that is made available by OUP to you.

19.6. All Goods are sold by OUP “AS IS, WHERE IS”. BISSELL DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PURCHASER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE PRODUCTS. TO THE EXTENT PERMITTED BY LAW, OUP SHALL HAVE NO TORT LIABILITY TO PURCHASER WITH RESPECT TO ANY OF THE GOODS AND SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NONDELIVERY, OR OTHER BREACH. PURCHASER AGREES THAT FOR ANY LIABILITY ARISING FROM OR RELATED TO THE PURCHASE OF ANY GOODS, OUP IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY PURCHASER TO OUP FOR SUCH GOODS THAT CAUSED THE LIABILITY, TO THE EXTENT PERMITTED BY LAW. THE REMEDIES SET FORTH IN THESE STANDARD TERMS AND CONDITIONS OF SALE SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE. Purchaser shall have no right of rejection or of revocation of acceptance of the Goods.

20. Use and Disclosure of the Purchaser’s Information
20.1. OUP and Purchaser undertake to each other that they will comply with all privacy and personal information laws insofar as they relate to the sale of Goods by OUP to Purchaser.

20.2. Purchaser agrees that OUP may disclose its information to licensed credit reference agencies in order to carry out credit checks for the purposes of these Standard Terms and Conditions of Sale and note that any enquiry by OUP will be logged by such licensed credit reference agencies.

20.3. OUP may disclose information about Purchaser or the conduct of Purchaser's account (including Purchaser's payment record) to any licensed credit agencies or any other publisher or supplier organisation which requests credit information.

20.4. Purchaser understands that OUP may transmit the data it holds to any company or other person that is a subsidiary of OUP or in which OUP has a direct or controlling interest and Purchaser agrees to such processing.

21. Construction
21.1. The section headings used herein are for convenience of reference only and do not form a part of these Standard Terms and Conditions of Sale, and no construction or inference shall be derived there from. If any provision of these Standard Terms and Conditions of Sale or the parties’ other written agreements is void or unenforceable, the remainder of these Standard Terms and Conditions of Sale or the parties’ other written agreements shall remain in full force and shall not be terminated.

22. Assignment
22.1. Purchaser may not assign or transfer or sub-contract to any third party its rights or obligations under these Standard Terms and Conditions of Sale without the prior written consent of OUP.

Terms and Conditions of Sale (March 2012)
22.2. OUP may perform any of its obligations or exercise any of its rights under these Standard Terms and Conditions of Sale by itself or through any company or other person which is a subsidiary of OUP or in which OUP has directly or indirectly a controlling interest.

23. **Severability**

23.1. If any provision of these Standard Terms and Conditions of Sale is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of these Terms shall not in any way be affected.

24. **Notices**

24.1. Any notice or other communication required or permitted to be given under these Standard Terms and Conditions of Sale shall be properly given by either OUP or Purchaser if it is sent in legible form by facsimile transmission, first class recorded delivery or registered post or by personal delivery to OUP at 8 Sampson Mews, Suite 204, Don Mills, Ontario, M4X 1E1 or Purchaser at Purchaser’s last known address or if it is sent by email to the last known email address of OUP or the Purchaser and such email is acknowledged by the recipient.

24.2. Any notice served shall be deemed to have been received:

24.2.1. in the case of email, at the time the email is acknowledged by the recipient;

24.2.2. in the case of a facsimile transmission, one hour after the time of despatch, evidenced by the relevant completed transmission report;

24.2.3. in the case of any notice sent by post, 96 hours from midnight on the date of posting, evidenced by the relevant proof of posting;

24.2.4. in the case of personal delivery, one hour after the time of delivery to the addressee’s address, evidenced by signature for and on behalf of the addressee;

except where the day of receipt of such a notice is not a day on which the recipient is normally open for business or is a day on which the recipient is normally open for business but occurs after 6.00 p.m. (local time) on that day, in which case notice shall be deemed to be received at 9.00 a.m. (local time) on the next day on which the recipient is normally open for business.

25. **Third Party Rights**

25.1. A person who is not a party to these conditions has no rights to enforce any of its provisions.

26. **Law**

26.1. These Standard Terms and Conditions of sale and any other terms agreed upon by OUP and Purchaser shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law principles. Ontario courts shall have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in conjunction with the sale of Goods by OUP to Purchaser. Purchaser represents and warrants that in the performance of its obligations herein, it shall comply with all applicable federal, provincial, and local laws, ordinances, rules, and regulations.

27. **Arbitration**

27.1. Any dispute between OUP and Purchaser relating to these Standard Terms and Conditions of Sale or the parties’ other written agreements, their interpretation, or the breach, termination, or validity thereof, the relationships that result from these Standard Terms and Conditions of Sale, or the parties’ other written agreements, or any related purchase, shall first be submitted to mediation. The parties shall work in good faith to agree upon a mediator. If no such agreement is possible, each party shall choose their own independent representative. Each party’s independent representative shall choose a mediator to preside over any mediation required by this paragraph. Any mediation initiated under this paragraph shall take place in Toronto, Ontario. If, despite the parties’ good faith efforts, the dispute is not resolved at mediation, any remaining claim(s) shall
be brought to arbitration. Any question regarding whether a claim is subject to arbitration shall be determined by the arbitrator(s). The parties agree to split evenly the costs of any arbitration initiated under this paragraph, with the exception of the filing fee, which shall be the sole responsibility of the party initiating the arbitration, subject to any subsequent allocation by the arbitrator(s). Any arbitration initiated pursuant to this paragraph shall take place in Toronto, Ontario. Any action brought in court to confirm any arbitrator’s award shall be brought in Toronto, Ontario. PURCHASER SHALL NOT BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER RESELLERS OR PARTNERS OR ARBITRATE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION. The individual (non-class) nature of this dispute provision goes to the essence of the parties’ arbitration agreement, and if found unenforceable, the entire arbitration provision shall not be enforced. This paragraph shall not prevent either party from seeking emergency injunctive relief in a judicial form, although the merits of the underlying dispute shall be resolved in accordance with this paragraph. Any such action for emergency injunctive relief must be brought in Toronto, Ontario and the parties consent to the jurisdiction of the courts of Ontario for any purpose and waive any argument that Toronto, Ontario presents an inconvenient forum for any litigation, mediation or arbitration between the parties.

28. Relationship/Customers.

28.1 Although OUP and Purchaser may share common sales and marketing goals, the parties are each independent businesses, and the relationship between OUP and Purchaser shall be that of seller and buyer and not a joint venture, partnership, principal-agent, broker, sales representative or franchise relationship. Purchaser does not have authority to make any promise, commitment or agreement on behalf of OUP, and Purchaser shall not represent to anyone that it has such authority. PURCHASER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL REPRESENTATIONS AND OMISSIONS IT MAKES OR FAILS TO MAKE TO ITS CUSTOMERS OR TO THE PUBLIC.