These terms and conditions apply to all orders placed with Springer Nature by Resellers in the Americas. By placing an order with Springer Nature, you agree that the following terms shall apply.

SECTION 1
TERMS AND CONDITIONS

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Terms.

"Affiliate" means a party controlling, controlled by, or under common control with another party, where "control" means the direct or indirect ownership of at least fifty percent (50%) of the stock or other equity interest of a party;

"Agreed Compensation" means the agreed percentage discount or fee payable to the Reseller as set out in the Publisher's Operational Guide for Resellers, or as otherwise communicated by the Publisher to the Reseller;

"Commencement Date" means the first date on which an order is placed by the Reseller for any Publication;

"Confidential Information" means any information and data disclosed to one Party by the other Party where such information and data have been so disclosed in confidence, made by either Party in the course of performance of these Terms, including all Publisher Materials;

"Customer" means a purchaser of a Publication;

"Local Regulations" means laws and regulations applicable to the Reseller Services in the Territory;

"Price List" means the Publisher's price list for the Publications as issued by the Publisher to the Reseller from time to time;

"Publisher" means Springer Nature Customer Service Center LLC;

"Publisher Marks" means the trademarks of the Publisher and/or its Affiliates and/or licensors as provided by the Publisher to the Reseller from time to time;

"Publisher Materials" means the sales collateral, materials and terms and conditions for access to Publications provided by the Publisher to the Reseller from time to time, as determined in the Publisher's sole discretion;

"Publications" means the print journals and/or access to online journals and other publications or products listed in the Price List;

"Reseller Services" means the services to be provided by the Reseller under these Terms including as detailed in Section 2 (Reseller Services);

"Sales Tax" means value added tax or any other sales, use, withholding, or similar tax;

"Statement of Sales" means a statement of sales in the form as reasonably requested by the Publisher;

"Territory" means the territory or territories in which the Reseller operates; and

"Working Day" means any day other than a Saturday or Sunday or federal holiday in the United States of America.

TERM AND APPOINTMENT

These Terms shall commence on the Commencement Date and shall continue thereafter unless terminated by either Party upon reasonable notice.

By placing an order with the Publisher, the Reseller agrees to act on a non-exclusive basis to market and sell the Publications and provide the Reseller Services subject to and in accordance with the terms of these Terms. For the avoidance of doubt, the Reseller shall not be entitled to appoint an Affiliate or any third party to perform its obligations under these Terms.

The Reseller shall act as principal in its own name and on its own account. The Reseller shall have no authority to act as agent for the Publisher or to bind the Publisher in any way, and shall not hold itself out (nor permit any person to hold itself out) as being so authorized, and shall not do any act which might reasonably create the impression that the Reseller is so acting or so authorized. The Reseller shall not make or enter into any contracts or commitments or incur any liability for or on behalf of the Publisher, including for the provision of the Publications.

Nothing in these Terms shall prevent the Publisher marketing and selling the Publications or from providing any of the Reseller Services in any territory itself, or from appointing a third party to do any of the above on the Publisher's behalf.

TERMS OF SALE

The Reseller shall market and sell the Publications and provide the Reseller Services as detailed in Section 2 (Reseller Services) with reasonable care and skill in accordance with industry standards.

The goods supplied remain the property of the Publisher until the complete settlement of all principal and subsidiary claims deriving from future and previous deliveries. In case of resale, the Reseller must retain its limited ownership of the goods until the Customer has paid for such goods in full. The Reseller hereby assigns all claims arising from the resale of conditional goods to the Publisher to secure the latter's claim. The Publisher accepts this transfer of claims. If the Reseller resells conditional goods and includes pertinent claims in a current account relationship with a third party, the periodic balance recognized in each case following balancing of the individual current account claims is considered to have been assigned. The same applies to the final
account balance existing on termination of the current account relationship, if such a balance is transferred to the current account. The Publisher also accepts this transfer of claims. If the claims of the Publisher are included in an existing current account relationship with the customer, the retention of ownership agreed upon serves as security for the balance claims of the Publisher. The Reseller is obliged to inform the Publisher immediately about any transfer of the conditional goods to a third party or claims arising from resale.

3.3 The Reseller shall provide to all Customers any end user license documentation as issued by the Publisher from time to time.

4 INTELLECTUAL PROPERTY RIGHTS

4.1 The Reseller shall not use the Publisher Marks without the prior written approval of the Publisher, except as is necessary to identify the Publications and promote them and then only in a manner approved in writing in advance by the Publisher. Upon termination of these Terms, the Reseller shall immediately discontinue any and all use of the Publisher Marks.

4.2 Nothing in these Terms shall constitute an assignment of the Publisher Marks, or grant to the Reseller any right, title or interest therein, except the right to use the Publisher Marks as permitted under these Terms. Any use of the Publisher Marks by the Reseller shall be for the exclusive benefit of the Publisher. The Reseller shall not register or cause to be registered, in the Territory or otherwise, any trademark or trade name used by the Publisher or any of its Affiliates in connection with its business or any other trade name, trademark, word or symbol that is identical or similar to the Publisher Marks.

4.3 The Reseller further agrees:

4.3.1 not to remove the Publisher Marks from any product, service or Publisher Materials or to alter the Publisher Marks in any way; and

4.3.2 to employ any symbol or notice with the Publisher Marks that may be necessary to identify and protect the interests of the Publisher in the Publisher Marks.

4.4 THE PUBLISHER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY INTELLECTUAL PROPERTY RIGHTS, INCLUDING COPYRIGHT AND PATENT AND TRADEMARK RIGHTS, CONCERNING THE PUBLICATIONS; AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED.

4.5 The license granted in clause 4.1 shall not permit the Reseller to use any Publisher Marks in any domain name for any website operated by the Reseller.

5 COMPENSATION AND PAYMENT

5.1 Each Publication shall have a suggested resale price (exclusive of any Sales Tax payable in accordance with Clause 5.7 to be charged to Customers) (the Publication List Price which shall be included in the price list provided by the Publisher to the Reseller from time to time. The Publisher may establish a different Publication List Price in respect of different countries within the Territory for each Publication. The Publisher shall be free to change the Publication List Prices of any Publications at any time and the Publisher will endeavor to notify the Reseller of any update to the Publication List Price from time to time. The Publication List Price may vary depending on the category of Customer, and the Reseller shall ensure that a Customer does not purchase a Publication based on a Publication List Price which is not appropriate for the category of Customer (for example, selling a personal subscription to an institution or corporate Customer).

5.2 The Reseller shall, when completing an order from a Customer for a Publication, purchase the Publication from the Publisher, and the Publisher shall sell the Publication to the Reseller, on a non-returnable basis at a price equal to the relevant Publication List Price less the Agreed Compensation (plus any Sales Tax payable in accordance with Clause 5.7 to be charged to the Reseller).

5.3 The Reseller shall as principal resell each Publication to the Customer. The Reseller shall set the actual resale price for a Publication at its discretion (plus any Sales Tax payable in accordance with Clause 5.7 to be charged to the Customer). The Reseller shall assume all risk of non-payment by the Customer and must pay the amount indicated in Clause 5.2 to the Publisher for every Publication resold by the Reseller.

5.4 As required by the Publisher, the Reseller shall send to the Publisher a Statement of Sales.

5.5 All sums payable under these Terms:

5.5.1 are exclusive of Sales Tax, which shall be added at the applicable rate to the sum in question;

5.5.2 shall be paid in full without any deductions (including deductions in respect of items such as income, corporation, or other taxes, charges and/or duties) except where the payer is required by law to deduct withholding tax from sums payable to the payee. If any such withholding or deduction is required, the payer shall, when making the payment to which the withholding or deduction relates, pay to the payee such additional amount as will ensure that the payee receives the same total amount that it would have received if no such withholding or deduction had been required.

If the Reseller fails to make any undisputed payment due to the Publisher under these Terms by the due date for payment, then without limiting the Publisher’s remedies under clause 7.1 or at law, the Publisher may charge the other Party interest on the overdue amount at the rate of 1.5% per month, or the highest rate permitted by applicable law, whichever is less.

5.6 Termination of these Terms, howsoever arising, shall not affect the continuation in force of this clause 5 and the Reseller’s obligation to pay moneys to the Publisher in accordance with it.
ETHICAL BEHAVIOUR

The Reseller shall comply with the Publisher’s Business Partner Code of Conduct, currently available at http://resource-cms.springer.com/springer-cms/rest/v1/content/10270158/data/v3/Springer+Nature+Business+Partner+Code+of+Conduct

CONFIDENTIALITY

7 Each Party agrees that it shall at all times (both during the term of these Terms and after termination of these Terms) keep confidential, and shall not without the prior written consent of the other Party use (other than as permitted in clause 7.1.5) or disclose to any third party (other than as permitted in clause 7.3), any Confidential Information of the other Party, unless such information:

7.1.1 was public knowledge or already known to the receiving Party at the time of disclosure;
7.1.2 subsequently becomes public knowledge other than by breach of these Terms;
7.1.3 subsequently comes lawfully into the possession of the receiving Party from a third party;
7.1.4 is agreed by the Parties not to be confidential or to be disclosable; or
7.1.5 is developed by or for the receiving Party independently of the Confidential Information.

7.2 Each Party may use the other Party’s Confidential Information in the performance of its obligations and the exercise of its rights under these Terms.

7.3 Each Party may, to the extent necessary to implement the provisions of these Terms (but for no other reason), and subject to legally enforceable non-disclosure obligations consistent with those set forth in this Agreement, disclose the other Party’s Confidential Information:

7.3.1 where necessary to comply with any law, regulation, order or legitimate request, to any relevant governmental or other authority or regulatory body;
7.3.2 to any employees, officers or representatives of the receiving Party (or its Affiliates).

TERMINATION

8 Without prejudice to any rights that have accrued under these Terms or any of its rights or remedies, either Party may at any time terminate these Terms for cause with immediate effect by giving written notice to the other Party. Cause shall be deemed to include, without limitation, the following:

8.1.1 the other Party fails to pay any undisputed amount due under these Terms on the due date for payment and remains in default not less than thirty days after being notified in writing to make such payment;
8.1.2 the other Party commits a material breach of any material term of these Terms and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
8.1.3 a petition in bankruptcy or for a reorganization or arrangement pursuant to the bankruptcy laws is filed by the other Party, or a petition in bankruptcy or for reorganization or arrangement pursuant to the bankruptcy laws is filed against the other Party and such petition is not dismissed within 90 days, or an order is entered directing the liquidation of the other Party, or the other Party becomes insolvent, or the other Party assigns all or substantially all its assets for the benefit of creditors, or the other Party applies for, or consents to, the appointment of a receiver, trustee or liquidator for all, or a substantial part, of its assets, or the other Party ceases paying its debts on a regular basis;
8.1.4 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1.3; or
8.1.5 the other Party ceases, or threatens to cease, to carry on all or substantially the whole of its business.

Without prejudice to any rights that have accrued under these Terms or any of its rights or remedies, the Publisher shall have the right to terminate these Terms with immediate effect by giving written notice to the Reseller, if:

8.2.1 the Reseller repeatedly breaches any of the terms of these Terms in such a manner as to reasonably justify the opinion that the Reseller’s conduct is inconsistent with the Reseller having the intention or ability to give effect to the terms of these Terms (including where the Reseller’s behavior is likely to bring the Publisher’s reputation into disrepute);
8.2.2 the control of the Reseller’s business is transferred, excluding any intra-group reorganization; or
8.2.3 the Reseller fails to pay an undisputed amount due under these Terms on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment.

CONSEQUENCES OF TERMINATION

The following clauses shall continue to apply after the termination of these Terms: clauses 5, 7, 9, 10 and 13.

Termination of these Terms, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

Upon expiration or termination of these Terms for any reason:
9.3.1 the Reseller shall immediately cease to promote, market or advertise the Publications;

9.3.2 the Reseller shall immediately cease to describe itself as a reseller of the Publisher and cease to use the Publisher Marks; and

9.3.3 where a Customer has purchased a subscription for a print Publication, the Reseller shall continue to be responsible for delivering such Publication in accordance with Section 2.

10 LIMITATION OF WARRANTIES AND LIABILITY

10.1 EXCEPT FOR THE EXPRESS WARRANTIES AND STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PUBLISHER PROVIDES THE PUBLICATIONS AND THE PUBLISHER MATERIALS "AS IS" AND MAKES NO OTHER REPRESENTATION OR WARRANTY. THE PUBLISHER EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY CLAIM ARISING FROM OR OUT OF THE PUBLICATIONS OR THE PUBLISHER MATERIALS, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PUBLISHER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PUBLISHER'S LIABILITY FOR ANY AND ALL CLAIMS UNDER THIS AGREEMENT IS LIMITED TO THE AGreed COMPENsATION ACTUALLY PAId TO THE RESELLER IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM.

11 FORCE MAJEURE

Neither Party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure results from events, circumstances or causes beyond its reasonable control, excluding, however, any obligation of either Party to remit amounts owed to the other Party.

12 GENERAL

12.1 Any notice or other communication required to be given under these Terms, shall be in writing and shall be delivered personally, or sent by pre-paid certified or registered mail, return receipt, or by commercial courier, to the Party's usual place of business, or as otherwise specified by the relevant Party by notice in writing to each other Party.

12.2 These Terms constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

12.3 Each Party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these Terms.

12.4 The Reseller shall not at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms without the prior written consent of the Publisher.

12.5 The Reseller is an independent contractor, and nothing in these Terms shall constitute the creation, establishment or relationship of partnership, joint venture or employer and employee between the Parties.

12.6 No failure or delay by a Party to exercise any right or remedy provided under these Terms 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.

12.7 If any court or competent authority finds that any provision of these Terms (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 these Terms shall not be affected.

12.8 Except as required by law or as otherwise provided for in these Terms, no publicity shall be made by either Party relating to any matter in connection with these Terms without the prior written consent of the other Party.

13 GOVERNING LAW AND JURISDICTION

13.1 These Terms and the rights and obligations of the Parties hereto shall be construed, interpreted and determined in accordance with the laws of the State of New York without reference to its choice-of-law principles.

13.2 The Parties acknowledge and agree that any controversies arising out of the License Agreement shall be decided exclusively in the federal and state courts located within the Southern District of New York, and consent to personal jurisdiction therein. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL, OBJECTION TO VENUE OR INCONVENIENT FORUM.
SECTION 2
RESELLER SERVICES

1 RESELLER’S OBLIGATIONS

1.1 The Reseller shall:

1.1.1 comply with all reasonable and lawful instructions of the Publisher from time to time concerning the marketing and sale of the Publications in the Territory;

1.1.2 act in accordance with sound commercial principles in its relations with Customers in the Territory;

1.1.3 be responsible for determining, collecting, paying to the relevant tax authorities and accounting for all Sales Tax due in respect of all sales of Publications in the Territory by or on behalf of the Reseller; and

1.1.4 comply with all Local Regulations concerning marketing and sale of the Publications.

2 ORDERS AND FULFILMENT

2.1 The Reseller shall solicit sales of the Publications to Customers.

2.2 For the purposes of paragraph 2.1 above, sales shall include both subscription renewals and new subscriptions to the Publications.

2.3 The Reseller must describe itself in all dealings with Customers and in all associated advertising and promotional material and (if any description is provided there) at its premises as “authorized reseller” of Publications.

2.4 The Reseller shall not, without the Publisher’s prior written consent, make or give any representations, warranties or other promises concerning the Publications which are not contained in the Publisher Materials which are distributed publicly by the Publisher in the Territory.

2.5 The Reseller shall be responsible for its billing of and payment collection from Customers. The timing of payment by Customers shall not affect the Resellers obligations to make payment to the Publisher as set out in these Terms.

2.6 If the Publisher permanently discontinues the publication of one or more of its Publications, the Publisher shall, at the time of discontinuation, credit the Reseller on a pro rata basis, based on the Price List, all monies pre-paid by the Reseller for the discontinued Publications in question. Under all other circumstances, should the Reseller elect to issue a refund to a Customer for the whole or any portion of any Publication the Reseller will be solely liable for that refund.

2.7 Where a Customer purchases a Publication on a subscription basis, the Reseller will confirm to the Publisher (in an agreed form) each resale of any subscription with a clear subscription start request (date and/or volume/issue). The Publisher will inform the Reseller if it is unable to comply with that request. The Reseller and the Publisher agree to use each other’s respective subscription reference numbers, as relevant, on communications between them.

2.8 The Reseller shall confirm with the Publisher in respect of Publication resold by the Reseller under these Terms whether supply shall be fulfilled by the Publisher or on a consolidation basis.

2.9 When supply is fulfilled by the Publisher, the Reseller shall provide to the Publisher (in an agreed form) complete address details for the Customer immediately after the resale to that Customer and shall ensure that any subsequent changes to those details which the Reseller receives during the subscription period (if relevant) are also provided to the Publisher (in the same form) without delay. The Publisher agrees to supply the Publications to the address details provided in accordance with its standard delivery policies as set out or referenced in the Publisher Materials.

2.10 When supply is fulfilled on a consolidation basis:

2.10.1 for print Publications, the Publisher shall deliver the relevant Publications to the consolidation center(s) of the Reseller in accordance with its standard delivery policies as set out or referenced in the Publisher Materials. Risk and title shall pass to the Reseller on delivery. The Reseller shall provide to the Publisher (in an agreed form) complete address details if its consolidation center(s) immediately following the Commencement Date and shall ensure that any changes to those details are also provided to the Publisher (in the same form) without delay during the term of these Terms. The Reseller shall be responsible for supply of the Publications to the Customers; and

2.10.2 for electronic Publications, the Reseller shall provide to the Publisher the Customer’s contact information as specified in the ICEDIS standards, including Customer email address(es), contact person(s) and IP address ranges.

2.11 The Publisher agrees to work towards a process whereby Publications shipped in bulk are not individually wrapped. For supply fulfilled on a consolidation basis the Reseller shall pay the regular shipping and handling costs.

2.12 All goods must be examined upon delivery. The Reseller must notify the Publisher of any defects without delay (and no later than 2 weeks following delivery). The Publisher shall remove any defects covered by guarantee by either removing the defect or providing replacement goods at no cost to the Reseller.
2.13 The Reseller shall allow the Publisher, on reasonable notice, to access its accounts and records relating to the Publications for inspection.

3 MARKETING

3.1 The Reseller shall:

3.1.1 use best efforts to market and promote the Publications in the Territory with all due care and diligence and to seek to increase sales in the Territory; and

3.1.2 monitor all renewal dates and contact Customers in advance of such renewal date to provide such Customers with a renewal price.

3.2 The Publisher shall provide the Publisher Materials to the Reseller together with any such further information about the Publications as is relevant for the promotion, sales and customer support to assist the Reseller in performing its obligations under these Terms. The right to use such Publisher Materials shall expire automatically upon expiry or termination of these Terms for any reason.