

# CSSA Trial HSC Examinations Terms & Conditions

In order to access and use the Exam Papers you must accept the terms and conditions that are set out below (Terms). Please read the Terms carefully, as they constitute a legal agreement between you and CSSA. If you do not accept the Terms, you must not access or use the Exam Papers.

CSSA reserves the right to amend the Terms without prior notice to you, by posting an updated version of the Terms on the CSSA Website. If the Terms are amended, you must comply with the amended version of the Terms for each purchase of Exam Papers using the Order Form after the date of amendment. You agree that any subsequent purchase of Exam Papers by completing an online Order Form after the amendments are made constitutes your acceptance of the amendments, and evidences your agreement to abide by (and be bound by) such amendments. CSSA recommends that you regularly check the Terms for any amendments prior to each purchase using an online Order Form.

If you do not understand the Terms or if you have any questions, please contact CSSA on [02 9287 1559] or email CSSA at [cssa.exams@csnsw.catholic.edu.au].

## 1. Definitions and Interpretation

### 1.1. Defined Terms

In this agreement, unless the context otherwise requires:

**Additional Copies** means hard copy paper copies of the Exam Papers copied by the School in accordance with clause 2.4(c).

**Australian Consumer Law** has the meaning given to that term in section 4 of the Competition and Consumer Act 2010 (Cth).

**Authorised person** has the meaning it is given in Schedule 1.

**Commencement Date** means the date an Order Form is completed by the School for the purchase of Exam Papers.

**Communicate** has the meaning given to that term in section 10 of the Copyright Act.

**Consequential Loss** means any Loss suffered by the Schools as a result of a breach of the agreement which cannot be reasonably considered to arise naturally from that breach, other than Losses suffered by third parties for which a party to the Agreement is liable (including under an indemnity);

**Consumer** has the meaning given to that term in section 3 of the Australian Consumer Law.

**Consumer Guarantees** means the statutory guarantees conferred in relation to the supply of goods or services to a Consumer under the Australian Consumer Law and other similar legislation of Australian states and territories.

**Copies** means hard copy paper copies of the Exam Papers the number of which is listed in the online Order Form completed by the School in accordance with clause 2.2.

**Copyright** means the copyright subsisting in or attaching to works or other subject matter under the Copyright Act and any other rights of a similar nature anywhere in the world (including unregistered rights, registrations and pending applications for registration).

**Copyright Act** means the Copyright Act 1968 (Cth) as amended from time to time.

**CSSA** means Catholic Schools NSW Limited ACN 619 593 369 (ABN 46 619 593 369) trading as CSSA.

**CSSA Website** means the website at [www.cssa.com.au](http://www.cssa.com.au).

**CSSA Timetable** means the CSSA Timetable for Trial HSC Examinations published on the CSSA website.

**Cut-off Date** means the date published on the CSSA Website by which online ordering of

**Exam Papers** is to be completed by Schools using the Order Form.

**Delivery Location** means the administration office at the School or any other location on the School property provided by the School in the School registration page on the CSSA Website.

**Delivery Period** means the period in which the Exam Papers will be delivered as published on the CSSA Website.

**Examination Centre** means the room at the School in which the Trial HSC Examinations are conducted and includes the Secure Area.

**Exam Exception** means the exception to copyright infringement in section 200(1A) of the Copyright Act.

**Exam Papers** means the Trial HSC Examination papers created and offered for sale by CSSA and includes any Copyright owned by CSSA in those papers. Higher School Certificate or HSC means the qualification awarded by NESA to students completing Year 12 in NSW, and the associated assessments and exams necessary to receive that qualification.

**Law** means any law of Australia or New South Wales.

**Loss** means all liabilities, losses, damages, costs and expenses suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute or under any other cause of action, and **Losses** has a corresponding meaning.

**Marking Guidelines** means marking guidelines for each of the Exam Papers and includes any copyright owned by CSSA in those guidelines.

**NESA** means the NSW Education Standards Authority.

**Order Form** means the online form completed by the School on the CSSA Website by which the School can purchase Copies of Exam Papers for that current year.

**Practice Papers** means Exam Papers to be used by the School for practice purposes in order to prepare students for the Trial HSC

Examinations, rather than for use in actual Trial HSC Examinations.

**Price List** means the list of prices published on the CSSA Website.

**Principal Information Pack** means CSSA principal information package for the current calendar year provided to the School via email.

**Privacy Law** means all privacy laws, regulations or codes that relate to the privacy, protection or processing of personal information and apply to the School (including the Privacy Act 1988 (Cth), Health Records and Information Privacy Act 2002 (NSW), Privacy and Personal Information Protection Act 1988 (NSW)).

**Remuneration Notice** has the meaning it is given in section 113Q of the Copyright Act.

**Security Period** means the period of time published on the CSSA Website in which schools must maintain security of the original Exam Papers and the students' transcripts.

**School** means the school listed in the Order Form.

**School Days** means the operational days of New South Wales schools during a school term as published by the NSW Department of Education (and for the avoidance of doubt includes student free days).

**Statutory Licence** means the licence in section 113P of the Copyright Act.

**Student** means a student enrolled at the School.

**Term** has the meaning given in clause 1.3 of this agreement.

**Third Party Materials** means any third party Copyright works in which CSSA does not own Copyright but which have been included in the Exam Papers in reliance on the Statutory Licence.

**Trial HSC Examination** means a practice or preparatory examination for the HSC administered by the School in accordance with this agreement.

## 1.2. Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (c) a reference to time is to New South Wales, Australia time;

## 1.3. Term of Agreement

This agreement commences on the Commencement Date and continues unless terminated in accordance with clause 8.

## 2. Supply of Exam Papers for Trial HSC Examinations

### 2.1. Ordering Exam Papers

- (a) All orders made by the School for Copies of Exam Papers must be made using the online Order Form.
- (d) The School may order Copies of the Exam Papers to use:
  - i. during the Security Period of the CSSA Timetable as Trial HSC Examinations; or
  - ii. after the Security Period as Practice Papers,
 as indicated in the Principal Information Package.

### 2.2. Exam Papers for Trial HSC Examinations

- (a) Where a School purchases Exam Papers for use in Trial HSC Examinations the School must:
  - i. purchase one Exam Paper for each Student undertaking the Trial HSC Examination (i.e. if 50 Students are to sit a Trial HSC Examination for a particular HSC course then 50 copies

of the Exam Papers must be purchased);

- iii. correctly complete the online Order Form before the Cut-off Date; and
- iv. confirm in the School registration account on the CSSA Website that the School is accredited by NESA to teach the Higher School Certificate.
- (e) Subject to the School fulfilling all of its obligations in clause 2.2(a), and paying any invoices in accordance with clause 7, CSSA will deliver the Copies of the Exam Papers to be used in Trial HSC Examinations to the Delivery Location within the Delivery Period.

### 2.3. Exam Papers to use as Practice Papers

- (a) Where the School purchases Exam Papers for use as Practice Papers it must order 5 Exam Papers for each HSC course.
- (f) Subject to paying any invoices in accordance with clause 7, CSNSW will provide the School with any Exam Papers ordered by the School to use as Practice Papers within a reasonable period from the date of the order and by any reasonable means.

### 2.4. Copies of Exam Papers

- (a) Subject to clause (c) and (d), the School agrees not to make copies of the Exam Papers before the end of the Security Period and otherwise than in accordance with clause 4.
- (b) CSSA excludes all liability for:
  - i. any delays in delivery of the Exam Papers or Practice Papers; or
  - ii. damage occurring to the Copies of Exam Papers,
 to the extent that such delay or damage is not directly caused by a breach of this Agreement by CSSA.
- (c) The School may make Additional Copies of the Exam Papers before the end of the Security Period only where CCSA has provided prior written consent (not to be unreasonably withheld) and:

- i. such Additional Copies are required to ensure each Student undertaking the Trial HSC Examinations has access to an Exam Paper at the time of sitting the Trial HSC Examinations; and
- ii. the School first becomes aware of the need to make Additional Copies of the Exam Papers less than 7 School Days prior to the first Trial HSC Examinations listed in the CSSA Timetable.

(d) If a School makes copies of the Exam Papers under clause (c), then the School must reimburse CSSA for each Exam Paper copied during the Security Period in accordance with the Price List and clause 7, unless such copies were directly required as a result of a breach of this Agreement by CSSA.

### **3. Use of Exam Papers during the Security Period**

#### **3.1. Security Requirements and Guidelines for Examinations**

During the Security Period, the School may only use the Exam Papers, including any Practice Papers, , and Marking Guidelines in accordance with the security requirements and guidelines for examinations set out in Schedule 1.

#### **3.2. Changes to the Security Requirements and Guidelines for Examinations**

CSSA may, at its reasonable discretion, make changes to the security requirements and guidelines for examinations set out in Schedule 1 (including by making changes to the Security Period and or CSSA Timetable for the Trial HSC Examinations) on reasonable notice and in writing.

### **4. Use of Exam Papers after the Security Period**

#### **4.1. General**

After the Security Period, the School may use the Exam Papers and Marking Guidelines in

accordance with this clause 4 of this agreement.

#### **4.2. Copyright Licence**

- (a) With effect from the first day after the Security Period has expired, CSSA grants to the School a royalty free, perpetual licence to reproduce and communicate the Exam Papers, excluding the Third Party Materials contained within them, for any purposes which are undertaken solely in connection with the educational activities and services of the School.
- (b) The School may not:
  - i. provide copies of the Exam Papers, or communicate them, to other schools or any third parties; or
  - ii. sub-lodge or assign any rights granted to it under this agreement, except with the prior written consent of CSSA.

#### **4.3. Third Party Materials**

The School acknowledges and agrees that:

- (a) CSSA has no right or interest in any of the Third Party Materials included in the Exam Papers and this agreement does not grant any licence, or authorise the School to reproduce, adapt or Communicate, those Third Party Materials;
- (b) the Third Party Materials have been included in the Exam Papers and provided to the School in reliance on the Statutory Licence]; and
- (c) the inclusion of the Third Party Materials in the Exam Papers does not mean that the School can reproduce or Communicate the Third Party Materials in reliance on the Statutory Licence or the Exam Exception and the School must make its own independent assessment of what uses it may make of the Third Party Materials.

*[Note: if the School requires guidance on what uses they can make of the Third Party Materials in the Exam Papers they*

*could contact their administering body and or consult smartcopying.edu.au (which is managed by the National Copyright Unit).]*

#### **4.4. Intellectual Property**

The School acknowledges that:

- (a) it has or will conduct its own investigations regarding the suitability of the Exam Papers for its purposes;
- (b) the Exam Papers and Marking Guidelines are provided to the School 'as is'; and
- (c) this agreement does not transfer to the School any right, title or interest to the Copyright in the Exam Papers and Marking Guidelines.

#### **4.5. Assignment**

- (a) CSSA may at any time transfer its rights in the Exam Papers or Marking Guidelines to a third party (the Transferee) and be substituted in this agreement by the Transferee.
- (b) The School irrevocably and unconditionally consents to such transfer and agrees to execute any documents requested by CSSA to confirm or effect such transfer.

### **5. Confidentiality**

#### **5.1. Confidentiality**

- (a) The School agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Exam Papers or the Marking Guidelines (Confidential Information) to any other party.
- (b) The School must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information.

#### **5.2. Permitted disclosures**

- (a) The Schools may disclose the Confidential Information to those of its personnel, regulatory bodies or Students that need to know for the School to exercise any of its rights or perform any of its obligations under this agreement or at law (and only to the extent that they need to know); and
- (b) The School must take reasonable steps to ensure that the Confidential Information is kept confidential by any person to whom it discloses that information.

#### **5.3. Remedies for breach**

Each party acknowledges that:

- (a) an award of damages or an account of profits may not adequately compensate the CSSA if this clause 5 is breached; and
- (b) without in any way compromising its right to seek damages or any other form of relief, CSSA may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the School from any breach or threatened breach of this clause 5.

### **6. Warranties, Indemnities and Representations**

#### **6.1. Warranty**

The School warrants that it has the benefit of a Remuneration Notice in force under the Copyright Act, and that Remuneration Notice applies to it and the Third Party Materials in the Exam Papers and Marking Guidelines.

*[Note: if the School is unsure if it has the benefit of a Remuneration Notice then it can contact the National Copyright Unit to confirm at:*

*National Copyright Unit  
Level 7, 105 Phillip Street  
Parramatta NSW 2150  
Telephone: 02 7814 3855  
Email: smartcopying@det.nsw.edu.au]*

## 6.2. Indemnity

The School indemnifies CSSA against all claims, liabilities, damages, expenses and costs (including without limitation legal costs on a full indemnity basis) that CSSA may suffer as a consequence or result, whether directly or indirectly, of:

- (a) any breach of this agreement by the School; and
- (b) any use of the Exam Papers (including the Third Party Materials) or Marking Guidelines by the School which is a breach of the terms of this agreement, or amounts to an infringement of Copyright or Moral Rights in the Exam Papers, Third Party Materials or Marking Guidelines.

## 6.3. Exclusion of consequential loss and limitation of liability

CSSA:

- (a) excludes any and all liability to the Schools (whether arising in contract or tort (including negligence) or under any statute) for any Consequential Loss, even if they have been informed of the possibility of such Consequential Loss (unless CSSA accepts the risk of liability relating to such Consequential Loss with prior express written consent); and
- (b) limits its liability (subject to clause 6.5):
  - i. in relation to Exam Papers, Practice Papers or goods, to repairing or replacing the Exam Papers, Practice Papers or goods or paying the cost of having the goods repaired or replaced; and
  - ii. in relation to services, to re-supplying the services or paying the cost of having the services re-supplied.

## 6.4. No representation

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement, except for representations

or inducements expressly set out in this agreement.

- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

## 6.5. Australian Consumer Law

- (a) Subject to clause 6.5(b)(ii), in any circumstances where you acquire goods or services as a Consumer, the operation of the Consumer Guarantees cannot be, and are not in this agreement, excluded, restricted or modified.
- (b) In respect of any goods and services of a kind not ordinarily acquired for personal, domestic or household use or consumption:
  - i. except in relation to a Consumer Guarantee as to title, encumbrances or undisturbed possession of goods conferred by the Australian Consumer Law, or where to do so would otherwise cause all or part of this clause to be void, our liability is limited as described in clause 6.3(b) to the extent permissible by law; and
  - ii. the parties agree that it is fair and reasonable in all the circumstances for our liability to be so limited.

## 7. Payment

### 7.1. Price

- (a) The price for the Exam Papers will be calculated by CSSA in accordance with the Price List (Amount).

### 7.2. Invoicing

- (a) On completion of the Order Form the CSSA Website will generate an invoice for the School for the Amount.

- (b) The School must pay each invoice issued by CSSA within 14 days of the date on which the invoice is issued.
- (c) If the School disputes the validity of, or amount specified, in any invoice, then:
  - i. the School must immediately notify CSSA of the details and the nature of the dispute; and
  - ii. CSSA and the School will negotiate in good faith to resolve the dispute.

### 7.3. Refunds

Purchases of the Exam Papers by the School are final and any payments made by the School are non-refundable to the extent permitted by law and subject to clause 6.5.

### 7.4. GST and other taxes

- (a) In this clause 7.4, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act, unless the context requires otherwise.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this agreement unless specifically described as GST inclusive, does not include an amount on account of GST.
- (c) If a party (Supplying Party) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described as GST inclusive) the consideration payable or to be provided for that supply but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient Party) must also pay to the Supplying Party, an amount equal to the GST payable by the Supplying Party on that supply (GST Amount).
- (d) If a payment to a party under this agreement is calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to

- which that party is entitled for that loss, cost or expense.
- (e) The Recipient Party need not pay the GST Amount until the Supplying Party has given the Recipient Party a tax invoice for the supply to which the payment relates.
- (f) Subject to this agreement, all taxes imposed or levied in connection with this agreement or any transaction contemplated by this agreement will be borne by the School.
- (g) If a Law requires the School to deduct an amount in respect of taxes from a payment under this agreement, then:
  - i. the School agrees to deduct the amount for the taxes;
  - ii. the School agrees to pay an amount equal to the amount deducted to the appropriate tax authority in accordance with the applicable Law and give the original receipts to CSSA; and
  - iii. the parties agree that if CSSA notifies the School that it is unable to obtain a credit for any taxes deducted or withheld, the School is required to pay an additional amount to CSSA so that, after the deduction is made, CSSA would receive a net sum equal to the sum that it would have received if the deduction had not been made.

## 8. Termination

### 8.1. Termination

This agreement including the licences granted within may be terminated by CSSA if the School commits a breach of any of the terms of this agreement, and does not rectify that breach within 14 days of receiving a written notice from CSSA, calling upon it to do so.

### 8.2. Effects of termination

On termination of this agreement, all of the School's rights under this agreement immediately cease and the School must as soon as reasonably possible, but in any event

within one (1) month from the date of termination, ensure that it:

- (a) ceases using the Exam Papers and Practice Papers; and
- (b) returns all copies of the Exam Papers and Practice Papers to CSSA.

### 8.3. Survival

Clauses 1.2, 5, 6.2, 6.3, 6.5, 8.2 and 9 survive termination or expiry of this agreement.

## 9. Miscellaneous

### 9.1. Notice

- (c) A notice or communication under this agreement (Notice) must be in English, and delivered to the following email or post addresses:
  - i. for CSSA:  
[cssa.exams@csnsw.catholic.edu.au; and

- ii. for the School, as provided in the Order Form.

### 9.2. Relationship of parties

This deed does not create a relationship of employment, agency or partnership between the parties.

### 9.3. Governing law and jurisdiction

- (a) This deed is governed by the laws applicable in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia in that jurisdiction, and the courts of appeal from them.
- (b) No party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.



## Schedule 1 – Security Requirements and Examination Guidelines

### 1. Security and Storage

#### 1.1. Security Requirements

Upon receipt of the Copies of the Exam Papers by the School, including any Practice Papers, it must as soon as reasonably possible ensure that for the entire Security Period:

- (a) the Exam Papers and Marking Guidelines are locked in a secure area, that has security alarms or is monitored by CCTV systems (Secure Area);
- (b) only authorised persons have access to the Secure Area: an authorised person means the person(s) that has been delegated by the Principal of the School to oversee the CSSA Trial HSC Examinations in the School and includes employees, contractors or volunteers of the School who are responsible for the administration of the Trial HSC Examinations, and are trained to do so in a way that maintains the security and integrity of the examination process (Authorised Persons); .
- (c) people who are private tutors for high school students, or have relatives sitting the Trial HSC Examinations during the Term of this agreement may not be Authorised Persons and may not have access to the Secure Area.
- (d) the contents of the Exam Papers and Marking Guidelines:
  - i. are not witnessed or viewed by any persons before the Trial HSC Examinations without the presence of a member of the Authorised Person;
  - ii. if viewed, are not disclosed to any other person other than an Authorised Person.
- (e) no mobile phones, cameras, or other digital devices are taken into the Secure Areas at any time; and
- (f) the Exam Papers and Marking Guidelines are not removed from the Secure Area except to conduct the Trial HSC Examinations in accordance with clause 2 of this Schedule below.

#### 1.2. Security Breaches

- (a) If an Authorised Person or other staff member of the School becomes aware of a breach or suspected breach of the security requirements in clause 1.1 of this Schedule it must immediately report the breach or suspected breach to the School principal.
- (b) As soon as reasonably possible after the School principal becomes aware of a breach or suspected breach it must:
  - i. in the case of suspected breaches, ensure necessary investigations are promptly conducted to determine if the suspected breach is in fact a breach of clause 1.1 of this Schedule;
  - ii. in the case of actual breaches, ensure that:
  - iii. the Head of CSSA Exams is promptly notified via email on [cssa.exams@csnsw.catholic.edu.au](mailto:cssa.exams@csnsw.catholic.edu.au)
  - iv. the School promptly completes the Security Breach Form contained at Schedule 2 to this agreement.

The School acknowledges that CSSA may deem that the completed Security Breach Form must be sent to NESA and lodged on their Register of Malpractice;

- (c) Both parties agree that the Security Breach Form will be completed in accordance with any applicable Privacy Laws or School privacy policy.

### **1.3. Modification of Exam Papers**

- (a) Schools may not make any modification to, or in any way adapt, the Exam Papers during the Security Period.
- (b) If a topic in an Exam Paper for a particular subject has not yet been covered in class at the School by the time of the Trial HSC Examination for that subject, then an alternative question may be set and presented to Students on a coloured insert sheet.

### **1.4. Storage after each exam**

The School must collect all Exam Papers at the end of each Trial HSC Examination and store them securely for the duration of the Security Period.

## **2. Guidelines for Conduct of Trial HSC Examinations**

### **2.1. CSSA Timetable**

- (a) The School must conduct the Trial HSC Examinations at the date and time given for each course in the CSSA Timetable.
- (b) No Trial HSC Examination may be conducted by a School at a date and time earlier than that published in the CSSA Timetable.

### **2.2. Supervision**

The School must ensure that each Trial HSC Examination will be conducted with active supervision to ensure that Students:

- (a) are abiding by the rules of the Examination Centre; and
- (b) are not permitted access to electronic devices during the examination other than those which are deemed allowable by NESA for HSC examinations.

### **2.3. Rescheduling by the School**

The School may reschedule a Trial HSC Examination for a particular Student if there is a reasonable reason for doing so (such as course clashes for a Student). Any rescheduling must take place within the Security Period and after the CSSA Timetable scheduled date and time for the Trial HSC Examinations.



## Schedule 2 - Security Breach Form

Section 1.01 CSSA Trial HSC Examinations Breach of Security Report Template

NAME OF SCHOOL	
<b>NOTIFICATION</b>	
Date of Breach	
What section(s) of the CSSA Term and Conditions are breached?	
Description of the allegation:	
Description of scope/impact. Does the incident compromise the student/ the teacher/the school/ the CSSA Trial HSC Examinations?	
Description for person responsible for incident	
<b>INVESTIGATION</b>	
Who has been involved in the investigation?	
Description of evidence considered:	
<b>DETERMINATION (FACTS)</b>	
Whether the breach is substantiated:	
<b>DETERMINATION (RESPONSIBILITY AND INTENT)</b>	
Whether the breach has been substantiated and whether responsibility /culpability has been substantiated	
Whether intent has been substantiated	
<b>DETERMINATION (CONSEQUENCES)</b>	
Consequences at the school level	
Consequences at the CSSA Exams level	
If the School is a member of a system, does the system's office need to be notified?	
Does the NSW Education Standards Authority (NESA) need to be notified of the breach?	
<b>PROGRESS</b>	
Findings of the investigation	
Status of Investigation	