

Penguin Random House LLC
Terms of Sale - **eBooks** - Updated 2020
U.S. and International (excluding Canada) Academic Library Wholesalers
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Definitions. For the purpose of these Terms of Sale:
An “**Academic Library**” is an organized collection of printed materials or other media maintained for use or lending, not as merchandise or for sale (and the facilities necessary to house and support such a collection), affiliated with a public, private or religious higher educational institution (i.e. a 2 or 4-year college or university), which supports the institution’s curriculum, as well as the research of the institution’s faculty and students.

Credit

Sales will be made to all library lending wholesale accounts (“Reseller”) in good standing, as determined by the PRH Credit department.

Discount for Penguin Random House (“PUBLISHER”) eBooks for Academic Library Wholesalers: Discounts listed are off the library digital list price as stated in U.S. currency (“LDLP”): 15% on all copies sold, plus up to 10 additional discount points for providing services in accordance with the Additional Incentives set forth below. Maximum available discount: **25%**

Additional Incentives

Reseller is eligible to receive additional discounts for providing the following services:

1. Effective management of early solicitation: Reseller will provide library accounts with early notification (2-3 months ahead of the release date) of titles that will be made available by PUBLISHER, and establish a system that allows customers to place their orders for those titles at that time: **2% additional discount.**
2. Effective holds management: A system that allows library patrons to join a digital queue to borrow eBooks for which no copies are immediately available for loan because of high demand. Librarians will have access to information about titles for which patrons are awaiting copies and the number of patrons who are in the queue: **2% additional discount.**
3. Promoting specific PUBLISHER eBooks or lists of such titles through vehicles such as advertising, email newsletters, print catalogs, librarians' web interface, or any other vehicles that will highlight the PUBLISHER eBooks selections; these marketing programs must be above and beyond standard line listings: **2% additional discount.**
4. Individual title listing and search capability appropriate for eBook, including fields for title, author, publication date, imprint, ISBN and subject category: **2% additional discount.**

5. Backlist merchandising, promotion and collection development initiatives aimed at filling in gaps in libraries’ collections: **2% additional discount.**

The above discount incentives will be issued only if the above support items are reasonably fulfilled on a continuing and consistent basis to the satisfaction of PUBLISHER. Non-compliance with any of the above support items may result in Reseller forfeiting its eligibility to receive all or part of the discount incentives outlined above. Contact your Penguin Random House sales representative for more details.

Metadata

PUBLISHER’s metadata (“the Metadata”) shall be provided to Reseller via industry standard ONIX feeds. Reseller shall not substitute, alter, correct or revise the Metadata with its own metadata or with metadata supplied by third parties without PUBLISHER’s prior written consent. PUBLISHER reserves the right to change the LDLP of eBooks at any time, title-by-title or in collective batches, through changes to the Metadata transmitted via the ONIX feed or such other delivery mechanism as agreed to by PUBLISHER, and Reseller will implement those price changes within twenty-four (24) hours of PUBLISHER providing such changes.

Territories

For each PRH eBook sold to Reseller hereunder, PRH will notify Reseller of any territorial restrictions that apply to the sale and distribution of that title, and Reseller will strictly adhere to those territorial restrictions.

Sales Statements and Payments

Sales statements are due on monthly sales on or before the 10th day of each calendar month for sales occurring in the preceding month. Monthly sales statements shall conform to the standard specifications established by PUBLISHER unless an alternative reporting format has been approved by PUBLISHER.

Payments corresponding to the amounts due pursuant to Reseller’s monthly sales statements are due 5 days after issuance of Reseller’s sales statements, but no later than 30 days after the end of month for which sales have been reported. Payments in the form of checks, money orders or electronic transfers shall be made in U.S. currency.

Order Fulfillment System

Reseller, either directly or through a third party, will maintain an electronic order-fulfillment/library lending system on behalf of its library accounts, with state-of-the-art digital rights management and security features acceptable to PUBLISHER (“the System”). The System will store PUBLISHER eBooks and Metadata, receive and process electronic orders for such eBooks from library accounts, and transmit DRM-protected eBooks for loan to library patrons of such library accounts. The System shall be maintained in a strictly secure environment, pursuant to current industry standards for the housing and storage of digital content, so that PUBLISHER eBooks are secure from theft, manipulation, unauthorized copying or transmitting, infringement and other misappropriation (“Misappropriation”). PUBLISHER reserves the right, at any time, to replace, edit or modify the contents of any PUBLISHER eBook, and to declare any PUBLISHER eBook no longer for sale as a library lending product. Reseller must make the adjustments set forth in the preceding sentence immediately upon receipt of PUBLISHER’s instructions, and Reseller shall confirm in writing that such adjustments have been made.

Upon request, Reseller will furnish PUBLISHER with a written statement, signed by an officer of Reseller, that specifically describes the System used by Reseller for the sale of PUBLISHER eBooks, including the System’s digital rights management system and the manner in which such eBooks are stored, encrypted and distributed. Thereafter, Reseller shall notify PUBLISHER of any material changes made to the System, and PUBLISHER shall be given the opportunity to evaluate any such changes or to reevaluate existing Systems at any time.

Distribution

Reseller is authorized to sell copies of PUBLISHER eBooks that are purchased from PUBLISHER pursuant to these terms of sale and to provide back-end library lending services to its library accounts, which include making and distributing copies of such PUBLISHER eBooks as necessary to implement an online library lending system on behalf of Academic Libraries, subject to the user limitations set forth below. No rights under copyright are granted to the Reseller with respect to any eBooks offered for sale hereunder. To the extent Reseller is making copies of the eBooks as part of the electronic order fulfillment and transmission functions of the System, Reseller will be deemed to be making such copies as a vendor

and service provider on behalf of PUBLISHER. Reseller may not abridge, expand, edit or otherwise modify or alter the contents of any PUBLISHER eBook, and advertisements may not be included in or as part of the transmission of such eBooks.

Reseller shall use commercially reasonable measures to insure that the methods used for transmitting PUBLISHER eBooks are free from defects that may harm the end user’s computer, hardware, software or data. Reseller shall impose the following user limitations with respect to all PUBLISHER eBooks sold hereunder and distributed for library lending:

- One copy/one registered user: At any given time, a library or institution may loan out only as many digital copies as it has actually purchased from the Reseller, and only to its registered patrons who have hard copy lending privileges;
- Check-out periods: Once a designated purchased copy is checked out by a patron, no further copies attributed to that designated copy may be accessed by other patrons until the end of that patron’s check-out period. At the end of the check-out period, the patron’s access to the copy will be terminated;
- File sharing prohibited: Reseller’s System will prohibit patrons from copying the file of a PUBLISHER eBook or emailing or otherwise sharing it with another user. Resellers shall display to all customers a reasonably prominent notice that the eBooks are protected by copyright and provide a proper warning against Misappropriation.
- No Consortium Lending: eBooks purchased and resold to Academic Libraries pursuant to these Terms of Sale may **not** be loaned or otherwise shared with other library lending institutions or the patrons of other library lending institutions that are not directly affiliated with the Academic Library or the academic institution that is supported by the Academic Library that purchased the eBook.

Promotions/Sampling

Reseller is authorized to post to its website and make promotional use of all eBook excerpts and other promotional materials available from PUBLISHER and on PUBLISHER’s website. Reseller is authorized to permit sampling by library buyers and patrons of up to 10 percent of any PUBLISHER eBooks.

Digital Rights Management

Reseller will utilize digital rights management and security technology approved by PUBLISHER to secure the eBooks from Misappropriation and insure compliance with the user limitations set forth above.

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In the event that PUBLISHER reasonably believes its eBooks are being Misappropriated as a result of Reseller's distribution of the eBooks pursuant to a previously approved digital rights management scheme used by Reseller, upon notice from PUBLISHER, Reseller will be required to either cease distribution of PUBLISHER eBooks or take immediate steps to upgrade or replace its digital rights management and security technology, provided that any such new or upgraded technology shall be subject to PUBLISHER's prior written approval. If PUBLISHER is not satisfied with the Reseller's solution, PUBLISHER may require immediate withdrawal of its titles from the Reseller's System. If compromised security is related to a specific electronic format as opposed to Reseller's System, PUBLISHER may instruct Reseller to cease selling its eBooks in the compromised format.

Indirect Taxes

Indirect Taxes are any value added tax, goods and services tax, business tax, consumption tax, sales tax, levies, import and custom duties, excise duties or other similar taxes and duties. If the sale of eBooks provided by PUBLISHER to Reseller or any remittance by Reseller to PUBLISHER in connection with such sales attracts Indirect Taxes, Reseller shall bear the liability for such Indirect Taxes. Indirect Taxes shall be charged by PUBLISHER where applicable, and Reseller acknowledges that this shall be paid by Reseller before the Indirect Tax is due. Reseller shall be responsible for the payment of any Indirect Taxes that may apply to any resale of eBooks under these Terms of Sale. PUBLISHER shall not under any circumstances become liable for these Indirect Taxes.

Books of Account

Reseller shall maintain complete and accurate books of account covering all purchase transactions with PUBLISHER and with Reseller's library customers, and all lending activity involving PUBLISHER eBooks. Upon notice to Reseller, PUBLISHER and/or its representatives shall have the right to inspect, analyze, audit, and copy the business records of Reseller that relate to such transactions in order to confirm sales and receipts pertaining to the transmission of PUBLISHER eBooks and to verify the accuracy of information reported through the System. The expense of any such audit shall be borne by PUBLISHER unless errors in accounting in Reseller's favor amounting to five percent (5%) or more of the sums paid to PUBLISHER during the

audit period are found, in which event such expenses shall be borne by Reseller.

PUBLISHER may designate an independent auditor or consultant to conduct penetration tests or security systems audits of all systems, servers and databases owned or controlled by Reseller that host and store copies of PUBLISHER's eBooks. Reseller will ensure that any auditors or consultants hired by PUBLISHER to conduct such a study will be provided with sufficient access to the System to enable a comprehensive review of such System.

Cease Publication

PUBLISHER may at any time in its sole discretion withdraw from sale by Reseller any or all of PUBLISHER's eBooks, and upon receipt of notice of such action, Reseller will promptly cease selling, marketing, promoting and distributing such eBook files. Notwithstanding such termination of Reseller's distribution rights to any eBook, Reseller may continue to host and transmit copies of the eBooks previously purchased by its library lending customers.