

Penguin Random House LLC Terms of Sale

All Retailers and Wholesalers (“Resellers”) of Digital Audiobooks for Trade Distribution

Effective 2020

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Discount for Penguin Random House (“PUBLISHER”) Digital Audiobooks (i.e. delivered by digital means with no physical medium): The following discount for trade distribution of Digital Audiobooks is applied to PUBLISHER’s suggested digital list price (“DLP”): 40% on all copies sold. All sales are non-returnable. This discount and these terms do not apply to sales intended for schools, libraries or other institutional customers.

Reseller Eligibility Requirements

To qualify for the above discount, Reseller must meet the following eligibility standards:

- Reseller must offer for sale a minimum of 90% of all Digital Audiobooks sold by PUBLISHER for trade distribution at any given time (front and back lists);
- Reseller must accept electronic delivery of title metadata, Digital Audiobook content and promotional content per PUBLISHER’s specifications;
- Reseller must conduct a full range of marketing activities designed to increase sales of Digital Audiobooks.

Credit

Sales will be made to all accounts in good standing, as determined by PUBLISHER’s Credit Department.

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 DLP of Digital Audiobooks 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.

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 system with state-of-the-art security features acceptable to PUBLISHER (“the System”). The System will store PUBLISHER Digital Audiobooks and Metadata, receive and process electronic orders for such Digital Audiobooks from retail accounts and/or end-users, and transmit Digital Audiobooks to such customers. The System shall be maintained in a strictly secure environment, no less restrictive than that used by Reseller for its own proprietary materials and in accordance with commercially reasonable standards, so that PUBLISHER Digital Audiobooks are secure from theft, manipulation, unauthorized copying or transmitting, infringement and other misappropriation (“Misappropriation”).

PUBLISHER acknowledges that Reseller may use one or more third parties to assist with sales and fulfillment of Digital Audiobooks. Reseller’s use of such fulfillment contractor(s) shall be subject to PUBLISHER’s prior written approval. Reseller shall be responsible for ensuring that its fulfillment contractor(s) comply with the provisions of these Terms of Sale. Reseller agrees to be responsible for any breach of the Terms of Sale by its fulfillment contractor(s).

Distribution

Reseller is authorized to sell in authorized territories as designated by PUBLISHER’s metadata, single copies of PUBLISHER’s Digital Audiobooks that are purchased from PUBLISHER pursuant to these terms of sale. No rights under copyright are granted to the Reseller with respect to any Digital Audiobooks offered for sale hereunder. To the extent Reseller is making copies of the Digital AudioBooks 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 Digital Audiobooks, and advertisements may not be included in or as part of the transmission of such Digital Audiobooks. Reseller shall insure that the methods used for transmitting PUBLISHER Digital Audiobooks are free from defects that may harm the end-user’s computer, hardware, software or data.

Reseller will utilize rigorous and accurate geographic filtering technology to limit the distribution of Digital Audiobooks solely to end users in the territories authorized for each Digital Audiobook pursuant to the Metadata.

PENGUIN RANDOM HOUSE LLC RESERVES THE RIGHT TO CHANGE TERMS OF SALE AT ANY TIME

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Promotional Content

Reseller is authorized to post to its website and otherwise make promotional use of all audio excerpts and other promotional materials available on PUBLISHER’S website and/or routinely provided to PUBLISHER’s online accounts. Reseller may also permit end-users to access free samples of Digital Audiobook content that is no more than an aggregate of 10 minutes or 5% (whichever is less) of a Digital Audiobook’s total play time.

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 Digital Audiobooks 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 Digital AudioBooks under these Terms of Sale. PUBLISHER shall not under any circumstances become liable for these Indirect Taxes.

Books of Account/Security Audit

Reseller shall maintain complete and accurate books of account and records covering all purchase transactions with PUBLISHER and with Reseller’s customers involving

PUBLISHER Digital Audiobooks. Upon reasonable 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 Digital Audiobooks 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 in a six month period are found, in which event such expenses shall be borne by Reseller.

PUBLISHER shall have the right 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 Digital AudioBooks. Reseller will ensure that PUBLISHER or its designees 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 Digital Audiobooks, and upon receipt of notice of such action, Reseller will promptly remove such from its Systems and destroy such Digital Audiobook files, and provide PUBLISHER, upon request, with a certification that the digital file for the terminated Digital Audiobook has been destroyed.