



## **Terms and Conditions**

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## **U.S. Orders**

- **Orders Shipped or Fulfilled within the U.S**
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## **U.S. Orders**

### **Terms and Conditions**

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No subscription will be entered for orders of individual volumes of West Academic print products.

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- Print Products: Pocket parts, pamphlets, replacement or ancillary volumes; loose-leaf pages and other related supplemental material;
- Online Books: replacements or new editions available in a read-only format for noncommercial use;
- Study Aid Subscription (“Study Aids”): Internet-based online academic materials posting and content repository service

- Related online products.

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Charges billed by West Academic are due within 30 days of date of invoice. Orders are subject to approval by West Academic in St. Paul, MN and will be governed by Minnesota law. Applicable sales, use, personal property, value added tax (VAT) or the equivalent; ad valorem taxes and the like are your responsibility. Transportation and handling will also be added for print products. Interest may be charged on overdue charges and may be adjusted to the then-current highest rate allowable on Minnesota contracts. All collection fees including, but not limited to attorney fees, are payable by you.

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Customer's access to West Academic Study Aids ("Study Aids") is based upon the term ("initial term") elected by the Customer in the Study Aids Agreement. Payment for the initial term of the Study Aids Agreement will be due in advance and charged to the Customer's credit card. At the end of the initial term, the Customer may elect to renew on a month-to-month term ("renewal"). Renewal fees will be charged to Customer's credit card each month in advance.

### **Resale/Redistribution Restrictions**

Promotions offered through the West Academic store at [store.westacademic.com](https://store.westacademic.com) are available only to those Customers who are purchasing for their own personal or

company use and not for any sort of resale or redistribution. If you are an authorized reseller or bookstore, please contact your account manager.

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Books, e-Book and other electronic material may be returned within seven (7) days of purchase. Please call Customer Service at 877-888-1330 within seven (7) days of purchase to discontinue access to the online book, eBook or other electronic materials. We will provide an exchange or full refund.

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If you are not completely satisfied with any print product you purchased or licensed from West Academic, simply return it within 45 days of the original invoice date for a full credit or refund in accordance with West Academic's then-current returns policy.

- All expenses associated with returns are the responsibility of the customer.
- Customers forfeit any applicable discounts when returning items that were part of a promotional sale
- To ensure accurate processing, always enclose a copy of the original delivery or billing document and brief explanation of the reason for the return.

New books must be in the same condition as purchased, no marking, highlighting stickers or stamps; if the item was shrink-wrapped, the item must be returned with the shrink-wrap attached.

Please send your returns, along with your invoice, to the following address:

West Academic Distribution Center

10650 Toebben Drive

Independence, KY 41051

## **LICENSE TERMS FOR WEST ACADEMIC STUDY AIDS SUBSCRIPTION**

### **1. Study Aids License**

**1.1 Grant.** West Academic grants User a non-exclusive, non-transferable, limited license to access Study Aids, which consists of various West Academic-owned and third party academic and secondary materials, including various study aids that may change from time to time. Access to certain materials may be restricted by West Academic. The license includes the right to quote and excerpt from such Study Aids (appropriately cited and credited) by limited electronic cutting and pasting in work product created by User in the regular course of his or her research and work. User may also create printouts of insubstantial portions of Study Aids for personal use.

**1.2 Limitations on Use.** User may not copy, download, scrape, store, publish, transmit, retransmit, transfer, distribute, disseminate, broadcast, circulate, sell or otherwise use the Study Aids, or any portion of the Study Aids, in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with West Academic's prior written permission or (iii) if not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. § 107). Study Aids cannot be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in User's work product. Except as expressly permitted herein, User shall not sell, license or distribute Study Aids (including printouts and downloaded materials) to third parties or use Study Aids as a component of or as a basis for any material offered for sale, license or distribution.

**1.3 Rights to Use.** User may license such Study Aids and obtain access online via [store.westacademic.com](https://store.westacademic.com). Offline access is available via the West Academic Library app, provided via the Apple App Store or Google Play.

**1.4 Rights in Study Aids.** Except for the license granted in this Agreement, all rights, title and interest in Study Aids, in all languages, formats and media throughout the world, including all copyright and trademarks, are and will continue to be the exclusive property of West Academic and other contributors (“Contributors”).

**1.5 Responsibility for Certain Matters.** User is solely responsible for maintaining security of West Academic or other relevant passwords. User is also responsible for all access to and use of Study Aids by means of User’s account (“Account”), whether or not User has knowledge of such access and use. West Academic reserves the right to restrict access to certain Study Aids and to cancel any Account, eProduct code and/or Study Aids access.

**2. Reservation of Rights.** West Academic reserves the right to modify the terms and conditions of this Agreement, specifically including, but not limited to, the right to impose usage limitations on Study Aids access and/or printing, cutting and/or pasting.

**3. Usage Restrictions.** User shall not use any Study Aids in a manner contrary to or in violation of any applicable federal, state, or local law, rule or regulation. User acknowledges that access to certain Study Aids is subject to Contributor restrictions. User agrees not to access such Contributor Study Aids for any purpose or in any way that is contrary to such Contributor restrictions. West Academic retains the right to temporarily or permanently block access to certain Study Aids if West Academic, in its sole discretion, believes that the Study Aids may be used for an improper purpose or otherwise in violation of this Agreement, or where a Contributor requires West Academic to block such access. By accessing Study Aids, User acknowledges that from time to time, West and its Contributors and/or various government entities may inquire as to User's compliance with applicable laws or this Agreement. User agrees

to cooperate with any inquiry. User shall report to West any misuse, abuse, or compromise of Study Aids of which User becomes aware.

**4. Charges.** Charges for User's access to Study Aids are based upon the term elected by the User ("Minimum Term" or "Renewal Term"). West Academic Study Aids charges for the entire Minimum Term or Renewal Term elected by User will be charged to User's credit card in advance. A month to month agreement can be canceled at any time; however, it will automatically renew in 30 day increments and bill the credit card on file each month, until the User terminates the Study Aids. Notwithstanding the foregoing, at the end of the initial term, the Customer may elect to renew on a month-to-month term. Renewal fees will be charged to Customer's credit card each month in advance.

**5. DISCLAIMER AND LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, STUDY AIDS IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. USER BEARS ALL RISK RELATING TO QUALITY AND PERFORMANCE OF STUDY AIDS. USER ACKNOWLEDGES THAT ACCESS TO THE INTERNET IS NECESSARY FOR USE OF STUDY AIDS AND HAS RESPONSIBILITY FOR OBTAINING SUCH ACCESS. ACCESS TO STUDY AIDS MAY VARY WITH VARIOUS MANUFACTURERS' EQUIPMENT WITH WHICH IT IS ACCESSED. CERTAIN SOFTWARE USED BY USER MAY NOT BE CAPABLE OF SUPPORTING STUDY AIDS. WEST ACADEMIC DOES NOT WARRANT THE LEVEL OF PERFORMANCE OF STUDY AIDS OR THAT THE FUNCTIONS CONTAINED THEREIN WILL MEET USER'S REQUIREMENTS, BE AVAILABLE WITHOUT INTERRUPTION, BE ERROR-FREE, OR BE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL MECHANISMS. WEST ACADEMIC MAKES NO WARRANTIES ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS, ADEQUACY, OR CURRENCY OF THE STUDY AIDS, SERVICES, SOFTWARE,**

**TEXT, GRAPHICS, OR LINKS. USER ACKNOWLEDGES THAT PROVISION OF STUDY AIDS ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND**

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**AGREEMENT OR THE USE OF STUDY AIDS, EVEN IF WEST ACADEMIC, AND/OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**6. Information for California Users Only.** Under California Civil Code Section 1789.3, West Academic is required to provide the following information: (a) The provider of Study Aids is West Academic, 444 Cedar St., Suite 700, St. Paul, MN 55101, telephone 877-888-1330; and, (b) The Consumer Affairs Center of the California Department of Consumer Affairs may be reached at 400 R. Street, Sacramento, CA 95814, telephone 1-916-445-1254.

**7. Modifications.** West Academic may, at any time without notice, amend this Agreement and modify, enhance or delete Study Aids. User will be notified of the amended or new terms of this Agreement, and such new terms will be posted online and effective immediately upon posting. User is responsible for regularly reviewing this Agreement. **BY USING STUDY AIDS AFTER ANY AMENDMENT BY WEST ACADEMIC, USER AGREES TO BE BOUND BY THE AGREEMENT AS AMENDED.** Continued use of Study Aids after any such changes also constitutes User's consent to such changes. Furthermore, West Academic may periodically, at its option and/or upon Contributor request, remove Study Aids. West Academic will use commercially reasonable efforts to provide Users with online notification of such removal.

**8. No Assignment.** User may not assign, sublicense or otherwise transfer this Agreement or any part of it including access to User's Account) to a third party without West Academic's prior written consent. User is responsible for all access to and use of Study Aids by means of User's name and password or Account, even if User did not know of or authorize such access and use.

**9. Term and Termination.** This Agreement will be effective upon User's first access to Study Aids. Access to Users will terminate upon conclusion of the Minimum Term (excluding month to month subscriptions) elected by User when placing its Study Aids order through [store.westacademic.com](https://store.westacademic.com) upon access to Study Aids. At the conclusion of the Minimum Term, User's access to and use of Study

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**10. Force Majeure.** West Academic's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire explosion, power failure, equipment failure industrial or labor dispute, inability to obtain necessary supplies and the like.

**11. Notices.** Except as otherwise provided in this Agreement, all notices must be given in writing to West Academic at 444 Cedar St., Suite 700, St. Paul, Minnesota 55101, Attention: Customer Service and to User at the address on the Order Form.

**12. General Provisions.** This Agreement will be governed by and construed under the law of the state of Minnesota, U.S.A., without regard to conflicts of law provisions. If any provision(s) of this Agreement is determined by a court to be void, invalid, unenforceable or illegal, the enforceability of the other provisions of the Agreement will not be affected. Failure to enforce any provision of this Agreement will not waive a party's right to enforce such provision. The headings and captions contained in this Agreement are inserted for convenience only and do not constitute a part hereof.

**13. Ideas and Concepts.** Any and all Feedback that User provides to West Academic shall become the exclusive property of West Academic without any payment, accounting, remuneration, or attribution to User. "Feedback" means information provided, in any manner, by or on behalf of User regarding Study Aids or the like, or

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The CasebookPlus Service ("Service") includes assessment functionality and is available for student self- assessment with certain designated casebooks. In certain limited situations, your professor may choose to view the results of your quizzes to assess your progress. The Professor will need to provide you with an additional code that allows them access to quiz results on either a class or individual basis ("Shared Content"). Under this Agreement you grant your Professor or West

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**USER'S EXCLUSIVE REMEDY AND WEST ACADEMIC'S, ITS AFFILIATES AND/OR CONTRIBUTORS' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THIS SERVICE, PRODUCTS, AND FEATURES, WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ACTUAL CHARGES PAID BY USER RELATIVE TO THE SERVICE, PRODUCT OR FEATURE, AS APPLICABLE, WHICH IS THE BASIS OF THE CLAIM(S) DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.**

### **INFORMATION FOR CALIFORNIA USERS ONLY**

Under California Civil Code Section 1789.3, West Academic is required to provide the following information: (a) The provider of Study Aids is West Academic, 444 Cedar St., Suite 700, St. Paul, MN 55101 telephone 877-888-1330; and, (b) The Consumer Affairs Center of the California Department of Consumer Affairs may be reached at 400 R. Street, Sacramento, CA 95814, telephone 1-916-445-1254.

### **RESPONSIBILITY FOR CERTAIN MATTERS**

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### **MODIFICATIONS**

West Academic may, at any time without notice, amend this Agreement and modify, enhance or delete Online Books, e-books, Videos, Audio, Quizzes, or other Digital Content . User will be notified of the amended or new terms of this

Agreement and such new terms will be made available online and will be effective immediately upon West Academic's posting. User is responsible for regularly reviewing this Agreement. BY USING LICENSED OR OTHER DIGITAL CONTENT AFTER ANY AMENDMENT BY WEST ACADEMIC, USER AGREES TO BE BOUND BY THE AGREEMENT AS AMENDED.

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## **NO ASSIGNMENT**

User may not assign, sublicense or otherwise transfer this Agreement or any part of it (including User's License Code(s)) to a third party without West Academic's prior written consent.

## **TERM AND TERMINATION**

This Agreement will be effective upon User's first access to Licensed or other Digital Content by means of the applicable License Code. License Code(s) issued to User for its Online Books, Videos, Audios, Quizzes, or other Digital Content access will terminate 12 calendar months following such initial access ("Minimum Term"). Upon conclusion of the Minimum Term, User's access to and use of Online Books, Videos, Audio, Quizzes, or other Digital Content including User highlighting, notes and the like, will terminate. User may, at its option, renew his/her access to Online Books, Videos, Audios, Quizzes, or other Digital Content by ordering applicable renewal license code(s) online through [store.westacademic.com](http://store.westacademic.com). In the alternative, West Academic may notify User about additional renewal options prior to the end of User's Minimum Term. Notwithstanding the foregoing, User may terminate this Agreement after completion of the User's minimum term by giving West Academic notice by United States mail to West Academic Programs, 444 Cedar St., Suite 700, St. Paul, MN 55101 and ceasing all use of Online Books, Videos, and/or Quizzes and the License Code(s). West Academic reserves the right to terminate this Agreement at any time and can revoke User's e-Product codes or cancel the Account.

## **NOTICES**

Except as otherwise provided in this Agreement, all notices must be given in writing to West Academic at 444 Cedar St., Suite 700, St. Paul, Minnesota 55101, Attention: Customer Service and to User at the address on the Order Form.

## **FORCE MAJEURE**

West Academic's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire explosion, power failure, equipment failure industrial or labor dispute, inability to obtain necessary supplies and the like.

## **IDEAS AND CONCEPTS**

Any and all Feedback that User provides to West Academic shall become the exclusive property of West Academic without any payment, accounting, remuneration, or attribution to User. "Feedback" means information provided, in any manner, by or on behalf of User regarding Study Aids or the like, or their enhancement, customization, configuration, installation, or implementation, including but not limited to ideas, concepts, suggestions, materials, functions, methods, processes, and rules.

## **International Orders**

## **Terms and Conditions**



This document contains the terms and conditions that apply to Customer's purchases of Products from West Academic. Acceptance of Customer's order is based on these terms and conditions of sale applying. By accepting delivery of products from West Academic, Customer agrees to be bound and to accept these terms and conditions. These terms and conditions shall apply unless Customer and West Academic have signed a separate purchase agreement with different terms and conditions which expressly control.

## 1. Definitions

In these Conditions:

**“Carrier”** means the agent or agents of the Company or the Customer who from time to time handles the carriage of Goods;

**“Commercial Invoice”** means document issued by the Company to the Customer which accompanies shipment of the Goods;

**“Company”** means West Academic;

**“Conditions”** means these terms and conditions of sale;

**“Contract”** means any contract between the Company and the Customer for the supply of Goods resulting from a Customer order and accepted by the Seller in accordance with these Conditions;

**“Customer”** means a person contracting with the Company for the supply of Goods by the Company as agent for a Publisher under a contract for the purchase of Goods;

**“Delivery”** means when the Goods are delivered to the applicable Carrier for shipment of the Goods to the Customer;

**“Goods”** means books, study aids, electronic products, and any and all other items which the Publisher offers for sale;

**“Pro Forma Invoice”** means the document from the Company offering to sell to the Customer Goods under specified terms of sale;

**“Purchase Order”** means the document the Company receives from Customer agreeing to the terms of sale specified by Company in the Pro Forma Invoice; and

**“Trade Customer”** means a Customer that is either a retailer or wholesaler of any category of Goods.

## **2. Application of these Conditions**

**2.1.** Subject to any variation under Condition 2.2, every Contract shall be subject to these Conditions to the exclusion of all other terms and conditions (including all other conditions which the Customer purports to apply under any purchase order, confirmation, specification or other document).

**2.2.** No variation to these Conditions shall have effect unless expressly agreed in writing by an authorized representative of the Company.

**2.3.** The Company’s employees and agents are not authorized to make any representations concerning the Goods or their characteristics prior to the conclusion of the Contract in accordance with Condition 2.4. The Customer acknowledges that it has not relied on any statements, promises or representations which are not set out in the Contract.

**2.4.** All statements and terms concerning Goods, including prices, quoted or listed by or on behalf of the Company, and published price lists, catalogues and pamphlets constitute invitations to treat, and shall not be construed as offers under any circumstances. Any order for Goods received by the Company from the Customer shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions. No such order shall be deemed accepted by the Company until the

earlier of shipment of the Goods in accordance with these Conditions and dispatch by the Company of a written acknowledgement of the order (in each case, the “Company Acknowledgement”).

**2.5.** Any quotation is given by the Company on the basis that no Contract will come into existence until the Company issues a Pro Forma Invoice setting out the terms of sale and the Customer accepts such terms by transmitting a Purchase Order to Company.

### **3. Cancellations**

Cancellations shall be expressed in writing to the Company seven (7) days prior to delivery of the Goods in accordance with Condition 7. No cancellation will be effective unless and until acknowledged by the Company in writing.

## **4. Publication Dates, Copyright and Returns**

**4.1.** Goods must not be sold to the general public before the publication date, if any, indicated by the Publisher. Goods may be subject to copyright protection as stated thereon.

**4.2.** Subject to Condition 9.3, Goods may only be returned to the Company in accordance with the Company’s returns policy (the “Policy”). Any returns made in accordance with the Policy will only be credited to the Customer’s account if they are in perfect condition. Returns made other than in accordance with the Policy will not be credited to the Customer’s account and, at the discretion of the Company or a Publisher, may be sent back to the Customer or destroyed, in each case, at the Customer’s expense.

**4.3 West Academic Online Books, eBook and other Electronic Materials Returns Policy.** Online Books, e-Book and other electronic material may be returned within seven (7) days of purchase. Please call Customer Service at 877-888-1330 within seven (7) days of purchase to discontinue access to the online book, eBook or other electronic materials. We will provide an exchange or full refund.

**4.4 West Academic Print Book Return Policy.** If you are not completely satisfied with any print product you purchase or license from West Academic, simply return it within 45 days of the original invoice for a full credit or refund.

- All expenses associated with returns are the responsibility of the customer
- Customers forfeit any applicable discounts when returning items that were part of a promotional sale
- To ensure accurate processing, always enclose a copy of the original delivery or billing document and a brief explanation of the reason for the return.
- New books must be in the same condition as purchased –no marking, highlighting, stickers, or stamps; if the item was shipped shrink-wrapped, the item must be returned with the shrink-wrap attached

**All returns should be sent to:**

**West Academic Distribution Center**

**10650 Toebben Drive**

**Independence, KY 41051**

***\*Failure to follow the West Academic return policy could lead to restricted returns or no return privileges. This policy is subject to change without notification.***

**4.5 West Academic International Resale/Bookstore Returns Policy.** It is the policy of West Academic to allow full return privileges to Reseller/Bookstores for publications under the following guidelines:

### **Documentation Required for a Return**

Returns require prior return authorization through the West Academic Customer Center. A copy of the Return Authorization should be included with returned shipments to ensure proper processing and credit to customer accounts. If prior return authorization is not obtained, returns may be delayed or disallowed.

### **Carton Instructions for Returns**

When returning publications to West Academic, please indicate which carton contains the packing list information. All returns should be sent to:

#### **West Academic Distribution Center**

**10650 Toebben Drive**

**Independence, KY 41051**

**West Academic Publishing Titles:** American Casebook Series, Statutes, Interactive Casebook Series, Experiencing Series, Learning Series, Hornbook and Concise Hornbook Series, Nutshell Series, Acing Series, Black Letter Series, Exam Pro Series, Global Issues, High Court Case Summaries, Sum & Substance Quick Review and Audio Series, Bridge to Practice, Developing Professional Skills, Flow Charts, Logic Maps, Short and Happy Series, Student Guides, Mapping

**Foundation Press Titles:** University Casebook Series, Statutes, Interactive Casebook Series, Concepts & Insights Series, Law Stories Series, Turning Point Series, University Textbook Series

**Gilbert Titles:** Gilbert Law Dictionaries, Gilbert Law Summaries, Legalines Briefs, Law School Legends Audio Series, Employment Guides, Career Guides

**Current editions of casebooks and texts may be returned within 90 Days of purchase**

## **5. Prices**

**5.1.** Unless otherwise agreed by the Company in writing, the price of the Goods shall be the price set out in any valid quotation, or where no price has been quoted or a quoted price is no longer valid, the price set out in the Company's price list published on the date of the Company Acknowledgement. The Customer acknowledges that the Company may change the price of the Goods, with or without notice to the Customer.

**5.2.** Invoiced prices for Trade Customers outside the United States will be exclusive of delivery charges, and such Customers will be responsible for such charges, unless otherwise agreed by the Company in writing prior to delivery. All invoiced prices are exclusive of VAT or any other sales tax, for which (if applicable) the Customer shall be additionally liable.

**5.3.** Any special request by the Customer for Goods to be delivered by any means other than the Company's usual arrangements shall be subject to an additional charge to cover any extra charges that may apply. The Company reserves the right to levy order surcharges or reduce discount entitlements which are below the Company's minimum quantity and/or value in force at the time the Company receives the order.

## **6. Payment**

**6.1.** A Commercial Invoice will be issued to the Customer on shipment of the Goods. Payment is due to the Company on or before the last working day of the month following the month in which the invoice is dated, unless otherwise agreed by the Company in writing. Acceptable forms of payment include check, money order, wire transfer, SWIFT Transfer, VISA, MasterCard, or American Express, all in United States currency only (USD). The Company reserves the right not to deliver Goods unless the Company has received in full (in cash or cleared funds) all sums which are due to the Company from the Customer on any account.

**6.2.** The Company reserves the right to charge interest on a daily basis from the date payment is due until the date payment is received. The basis of the interest will be two (2) basis points above the published Base Rate of HSBC Bank PLC for the period of any default. The Company reserves the right to recover from the Customer any collection or legal costs incurred in connection with the overdue amount.

## **7. Delivery**

**7.1.** Any delivery dates are given as estimates only and in no circumstances shall the Company be liable for late delivery beyond such dates. Neither the Company nor the Carrier is obliged to provide loading or unloading facilities on delivery.

**7.2.** Subject to Conditions 6.1 and 7.4, unless otherwise agreed in writing by the Company, the Company shall procure that the Goods are delivered using a Carrier to the delivery address shown on the Company's invoice and, if none is shown, to the person to whom the invoice is addressed or dispatched. Unless otherwise agreed by the Company in writing, the Carrier shall be nominated by the Company.

**7.3.** Any dates specified for delivery of the Goods are intended to be estimates only and time of delivery shall not be of the essence. Subject to Condition 10.3, the Company shall not be liable for any direct, indirect or consequential losses (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's own negligence).

**7.4.** Risk of the Goods shall pass to the Customer upon delivery of the Goods to the Customer, which shall take place when the Goods are delivered to the applicable Carrier for shipment of the Goods. If for any reason the Customer will not accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents or authorizations, risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence) from the moment of attempted delivery, the Goods will be deemed to have been delivered, the Company may store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses and Condition 5.3 shall apply.

**7.5.** If the Goods are to be delivered in installments, each such installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Customer to repudiate or cancel any other Contract or installment.

**7.6.** Subject to Condition 7.3, any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or, at the option of the Company, crediting the value of the Goods (as detailed on the relevant invoice) to the Buyer's account.

## **8. Title**



**8.1.** Title to any Goods supplied at any time to the Customer by the Company shall pass to the Customer upon Delivery.

**8.2.** The Buyer's right to possession of the Products shall terminate immediately if (a) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or the Customer ceases to trade, (c) the Customer encumbers or in any way charges any of the Products or (d) there occurs any events similar to any of the foregoing under the laws of any jurisdiction, irrespective of whether such occurrences are voluntary or involuntary, or whether they are by operation of law or otherwise.

**8.3.** The Customer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the goods are or may be stored in order to inspect them or, where the Buyer's right to possession has terminated, to recover them. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so, all monies owing by the Customer to the Company shall, without prejudice to any other right or remedy available to the Company, forthwith become due and payable.

## **9. Warranties and Defective Goods**

**9.1.** The Company does not make or give any warranty representation or undertaking:

(a) as to the correspondence of the Goods with their description, their fitness for purpose or their satisfactory quality; or

(b) that they are not defamatory, injurious, obscene, unlawful or in breach of copyright or in any other manner whatsoever.

**9.2.** Without prejudice to the foregoing provisions of this Condition, the Company shall not be liable:

(a) for any defective Goods (i) unless claims for any damage to or shortages in Goods delivered are notified in writing to the Company within 10 days of delivery to the Customer and (ii) if the defect arises because the Customer failed to follow the Company's instructions (whether oral or in writing) as to the storage, installation, configuration, use or maintenance of the Goods or (if there are none) good trade practice; or

(b) for non-delivery of Goods unless the Customer gives to the Company written notice of any non-delivery within 14 days of the invoice date.

**9.3.** Subject to Condition 9.2, if any of the Goods are considered, in the reasonable opinion of the Company, to be defective, (a) the Company shall at its option replace such Goods (or the defective part), provided that, if a replacement is in the Company's opinion not practicable, the Company will credit the value of the defective Goods (as detailed on the relevant invoice) to the Buyer's account and (b) the Company shall be responsible for the transport charges of returning the defective Goods to the Company.

**9.4.** Refunds will be given at the sole discretion of the Company.

## **10. Liability**

**10.1.** The following provisions of Condition 10 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of (a) any breach of these Conditions, (b) any use made or resale by the Customer of any of the Goods and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**10.2.** Subject to Condition 9, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**10.3.** Nothing in these Conditions excludes or limits the liability of the Company (a) for death or personal injury caused by the Company's negligence, (b) for any matter in respect of which it would be illegal for the Company to exclude or attempt to exclude its liability or (c) for fraud or fraudulent misrepresentation.

**10.4.** Subject to Conditions 7, 9 and 10.3, (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to and in no circumstances shall exceed the price payable by the Customer for the Goods under the Contract and be limited to the 12 month period preceding the event giving rise to such claim and (b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11. Termination**

**11.1.** The Company may at any time terminate the Contract for any reason by giving to the Customer one month's prior written notice.

**11.2.** Without limiting the generality of the foregoing:

(a) the Company may terminate the Contract and withhold any supplies in respect of any outstanding order for Goods made by the Customer at any time, with or without notice, if the Company is subject to any of the events described parts (a), (b) and/or (d) of Condition 8.3; and

(b) the Company shall have the right, without prejudice to its other rights or remedies, to terminate the Contract and/or withhold any supplies of Goods forthwith if any sum payable by the Customer hereunder is not paid in full in accordance with Condition 6.1.

**11.3.** Upon termination of the Contract by the Company in any of the circumstances referred to in this Condition 11, the Company shall be released from any further obligation towards the Customer in relation to the Goods.

## **12. Overseas Duties, Levies, Imports and Taxes**

Unless otherwise agreed by the Company in writing the Customer shall be responsible for all duties levies imposts taxes or other liabilities arising on the export of the Goods from the United States and import of the Goods overseas.

## **13. General**

**13.1.** The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it unless the Company consents to such assignment in writing.

**13.2.** All notices required to be given hereunder shall be given in writing to the recipient at the relevant address stated in these Conditions and/or in the relevant purchase order or invoice (or to such other address as the recipient may from time to time specify in writing). All notices shall, (a) if sent by post, be deemed to be delivered forty eight (48) hours after posting if the recipient is located in the same jurisdiction as the sender and seven (7) days after posting if the recipient is located in a different jurisdiction from the sender, (b) if sent by facsimile, shall be deemed to have been received at the time of delivery as indicated on the facsimile activity report of the sender and (c) if sent by e- mail, on receipt by the sender of a notice of receipt.

**13.3.** Without prejudice to any other of these Conditions, the Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable supplies.

**13.4.** No delay or omission on the part of either party in exercising any right, power or remedy provided by law or under these Conditions shall impair such right, power or remedy or operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other further exercise thereof or the exercise of any other right, power or remedy.

**13.5.** If any provision of the Contract (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**13.6. THIS AGREEMENT AND ANY SALES THEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA.** The United Nations Convention on Contracts for the International Sale of goods shall not apply. Customer agrees to comply with all applicable laws and regulations of the various states and of the United States. Seller has separate terms and conditions governing re-sales and transactions outside the United States. Customer agrees to comply with all United States laws concerning export or re-export of products and related technology and documentation. The parties agree that the courts of the State of Minnesota shall have exclusive jurisdiction over any claim, or dispute or controversy (whether in contract, tort or otherwise) against Seller, its agents, employees, successors, assigns or affiliates arising out of or relating to this document, Seller's products advertising, or any related purchase. Customer agrees to appear in any such action and hereby consents to the jurisdiction of such court.

*Last updated January 1, 2021*