

BARNES & NOBLE TERMS OF PURCHASE

WHEREVER IN THESE TERMS OF PURCHASE ("TERMS") REFERENCE IS MADE TO "BARNES & NOBLE," IT SHALL MEAN BARNES & NOBLE, INC. AND ITS SUBSIDIARIES AND AFFILIATES. WHEREVER IN THESE TERMS REFERENCE IS MADE TO THE "ORDER", IT SHALL MEAN THE PURCHASE ORDER BETWEEN BARNES & NOBLE AND THE VENDOR NAMED ON THE ORDER ("VENDOR") WHICH SUCH ORDER IS A BINDING CONTRACT, INTO WHICH THESE TERMS ARE INCORPORATED BY REFERENCE.

A. ENTIRE AGREEMENT. Except when issued pursuant to a separate written contract between the parties, (i) the Order, (ii) these Terms, (iii) the Barnes & Noble [Vendor Product and Compliance Requirements](#), (iv) Barnes & Noble [Vendor Code of Conduct](#), and (v) the Barnes & Noble [Vendor Guidelines](#) represent the entire agreement between the parties and incorporates all of the representations, promises and statements made in connection with this purchase of the goods described in the Order ("Goods") and the negotiation thereof. THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THESE TERMS, AND ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, WHETHER IN A QUOTATION, ACKNOWLEDGMENT, ACCEPTANCE, INVOICE OR OTHERWISE ARE REJECTED AND SHALL NOT APPLY UNLESS EXPRESSLY ASSENTED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF BARNES & NOBLE, NOTWITHSTANDING ANY CONTRARY LANGUAGE PROPOSED BY VENDOR THAT THE ACCEPTANCE OR USE OF, OR PAYMENT FOR, THE PRODUCTS PURCHASED BY BARNES & NOBLE OR ANY OTHER ACT OR FAILURE TO ACT BY BARNES & NOBLE, CONSTITUTES ACCEPTANCE OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS.

B. CHANGES TO THE ORDER. These Terms may not be varied in any manner except a writing signed by both Barnes & Noble and Vendor, provided, however, Barnes & Noble reserves the right at any time to make changes in the Order, including, without limitation, method of shipment or packing and time, place and manner of delivery. If any such change shall cause an increase or decrease in the cost of time required for performance of the Order, an equitable adjustment shall be made on the contract price and/or delivery schedule as agreed by the parties. Any claim by Vendor for such adjustment must be approved by Barnes & Noble in writing before Vendor proceeds with such change. Price increases shall not be binding on Barnes & Noble unless evidenced by a revision to the Order duly signed by Barnes & Noble.

C. ACCEPTANCE OF TERMS. Vendor's (i) written acknowledgement of the Order (whether through execution, correspondence, or otherwise), (ii) commencement of work on the Goods, or (iii) shipment of the Goods, whichever occurs first, shall be deemed acceptance of Barnes & Noble's offer to purchase the Goods and these Terms and the Vendor and Product Compliance Requirements. Any acceptance of the Order is limited to acceptance of the express terms of the offer, including the shipping, routing and billing instructions contained therein and any attachments or standing instructions previously furnished Vendor

(including, without limitation, the Barnes & Noble Vendor Guidelines and the other terms contained on Barnes & Noble's web site located at www.barnesandnobleinc.com, hereby incorporated by this reference). Any proposal for additional or different terms or any attempt by Vendor to vary in any degree any of the terms of the offer in Vendor's acceptance, invoice, or other document or activity is hereby objected to and rejected. No contract shall exist except as herein provided. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. Terms and conditions of this Order shall also be binding upon and inure to the benefit of Vendor's and Barnes & Nobles respective successors and assigns. Additional or different terms or any attempt by Vendor to vary in any degree any of the terms of the Order shall be deemed material and are hereby objected to and rejected.

D. CANCELLATION, TERMINATION. Without prejudice to any other rights or remedies which Barnes & Noble might have, Barnes & Noble may cancel the Order in whole or in part, relating to Goods not then received by Barnes & Noble, if there is any defect in workmanship or quality of the Goods or their packaging or labeling or if there is any breach of Vendor's warranties hereunder, or if there is any delay in delivery or departure from delivery and routing instructions, or if Vendor makes an assignment for the benefit of creditors, or if a receiver for its assets or business is appointed, or if there is any claim (whether founded or unfounded) of infringement, violation, or misappropriation of any copyright, trademark, patent, trademark, or other intellectual property right or invasion of right of privacy, defamation, or other third-party right (an "Infringement Claim") with respect to the Goods or any other materials provided by Vendor. Barnes & Noble may cancel by notice to Vendor the Order in whole or in part at any time prior to shipment of the cancelled portion, in which case Barnes & Noble shall not be liable to Vendor.

E. INSPECTION OF GOODS. Barnes & Noble shall be under no obligation to inspect the Goods before resale thereof. Vendor shall be responsible for the consequences of negligent manufacture and packing, and for the consequences of negligent handling prior to delivery to Barnes & Noble. Barnes & Noble's rights and remedies, whether existing by law or equity or arising from breach of warranty by Vendor or failure by Vendor to observe or perform any of the terms and conditions hereof, may not be abridged, modified or in any way limited or restricted by Vendor. No such failure to inspect shall limit Barnes & Noble's right to reject any

such Goods or revoke its acceptance thereof in the event that the item is defective, or improper quantities are shipped to the proper destination, or Goods are shipped to the improper destination. Payment for Goods prior to inspection shall not be deemed acceptance. Please see the Barnes & Noble Vendor Guidelines for a further explanation of Barnes & Noble rights and policies. Full transportation charges due to split shipments or failure to ship to the specified destination or the failure to ship proper quantities to the specified location or any failure to comply with Barnes & Noble's routing instructions shall be paid by Vendor, including handling charges and any incidental or consequential damages resulting from such improper shipments. Vendor shall pay Barnes & Noble a handling charge with respect to any Good that is received as an over-shipment, was not ordered, is a Vendor substitution, is defective or deviates from order dates. At Barnes & Noble's election, such payments provided in this paragraph shall be in cash, or as a deduction against outstanding invoices. Barnes & Noble shall not be obligated to take a credit against future purchases.

F. REPRESENTATIONS AND WARRANTIES.

1. Vendor represents and warrants that all prices, benefits and allowances, reflected by or granted in consequence of the Goods purchased hereunder are consistently made available by Vendor to Barnes & Noble (i) on a proportionate basis equal to all persons who are or may reasonably be expected in competition with Barnes & Noble for the resale thereof or (ii) on any other legal basis.

2. Vendor represents and warrants that it has the right, license, authority and permission to sell to Barnes & Noble all Goods delivered pursuant to the Order and to allow Barnes & Noble to distribute and resell the Goods without restriction or additional charge. Vendor further represents and warrants that all Goods delivered pursuant to the Order are free of any Infringement Claim by any third party.

3. Vendor represents and warrants that all Goods delivered hereunder will have been manufactured in compliance with applicable law, rule, and regulations and all of Barnes & Noble's Vendor Product and Compliance Requirements.

4. Shipment by Vendor of any part of the Order constitutes a warranty and certification that the Goods which are the subject matter of the Order, and the production, sale packaging, labeling and transportation thereof, and all warranties, guarantees, representations and advertising by Vendor made or authorized to be made in connection therewith are in all respects in compliance with all laws, ordinances, rules and regulations including, but not limited to obscenity or pornography laws or similar laws, or all governmental or quasi-governmental bodies (e.g., industry standard-setting organizations), departments or agencies whether local or municipal or State or Federal, or a combination thereof, having jurisdiction thereof.

5. Whether or not Vendor is a merchant of Goods provided by it, Vendor represents and warrants that all Goods provided by it:

(i) shall be of good quality and workmanship and free from defects, latent or patent,

(ii) shall conform to all specifications, drawings, samples, performance standards or descriptions, furnished, specified or adopted by Barnes & Noble (Please see the Barnes & Noble Vendor Guidelines for a further explanation of Barnes & Noble rights and policies),

(iii) shall be merchantable and suitable and sufficient and safe for purposes for which purchased or apparently intended, if Vendor knows or reasonably should know of these purposes,

(iv) shall be free of claim of any third party, and shall in all respects be safe and noninjurious for the person intended to use the Goods; and

(v) will be free of hazardous substances, and Vendor has provided Barnes & Noble with a [Vendor Compliance Certification Form](#) and certifies that it maintains certifications for all manufactured or supplied children's products and other regulated non-children's products as set forth in the [Product Certification Requirements](#).

6. Vendor will at all times comply with the Barnes & Noble Vendor Code of Conduct.

7. Vendor will comply in all respects with the Barnes & Noble Vendor Guidelines.

8. None of the remedies available to Barnes & Noble for the breach of any of the representations and warranties set forth in this section may be limited except to the extent and in the manner agreed upon by Barnes & Noble in a separate agreement specifically designating such limitation and signed by an authorized representative or Barnes & Noble. Barnes & Noble's inspection or acceptance of or payment of Goods shall not constitute a waiver by it of any warranties. Barnes & Noble's approval of any sample or acceptance of any Goods shall not relieve Vendor from responsibility to deliver Goods conforming to specifications, drawings and descriptions. These warranties are in addition to all other express warranties and shall run to the benefit and shall create direct rights of enforcement and remedy in Barnes & Noble.

9. These terms shall not be affected or limited in any way by Barnes & Noble's extension of express or implied warranties to its customers, except to the extent that any such Barnes & Noble's warranties expressly extend beyond the scope of Vendor's warranties, express or implied, to Barnes & Noble.

G. INSPECTIONS OF VENDOR'S PREMISES. Vendor shall permit Barnes & Noble or its authorized representatives to inspect Vendor's premises, facilities, activities, accounting books and invoices relevant to Vendor's manufacture and supply of the Goods.

H. BARNES & NOBLE'S RIGHTS.

1. Vendor agrees to refund the full purchase price, if then paid, and to accept the return at its expense (except for conforming Goods) and risk of all or any commercially reasonable part of the Goods in the event:

- o The Goods are defective or damaged or not fit for the purchase sold or not fit for resale, or
- o Goods sent differs from the amount ordered or is sent as a substitution, or
- o Goods vary from the specifications or samples submitted or examined, or
- o Any of the Goods fails to conform to any warranties or guarantees provided hereunder, or
- o Vendor fails to comply with Barnes & Noble's shipping or billing instructions, or
- o Vendor fails to make full and timely deliveries in violation of "DO NOT SHIP BEFORE" or the "CANCEL IF NOT SHIPPED BY" provisions of the Order, or
- o Vendor fails to comply with any of the provisions of the Order or any other Barnes & Noble vendor requirements.

Vendor shall pay to Barnes & Noble all incidental or consequential damages suffered by Barnes & Noble for any Goods returned by Barnes & Noble or any Goods not delivered by Vendor. It is specifically agreed that Barnes & Noble shall be under no obligation to sell any Goods for Vendor's account.

2. Barnes & Noble reserves the right as its option to return at Vendor's expense and for full credit any Goods and cancel the Order where an Infringement Claim is made.

3. In the event Barnes & Noble returns, for any reason, any Goods, Vendor shall inform Barnes & Noble within ninety (90) days of receipt of Barnes & Noble's chargeback document for such returned Goods if Barnes & Noble's account is not being credited with the full amount of the return and if so, the reason for disallowing the credit of any part thereof. If Vendor does not inform Barnes & Noble of the disallowance within said ninety-day period, Vendor and Barnes & Noble agree that Barnes & Noble's account shall automatically be credited with the full amount of returned Goods. Barnes & Noble shall have the right to return Goods in accordance with return privileges granted by Vendor. Barnes & Noble will not be charged any restocking, return or other fees unless agreed to in a writing signed by an authorized representative of Barnes & Noble prior to or at the time of the Order.

4. Vendor acknowledges that locations of Barnes & Noble's facilities making returns may not be the original "Ship To" location(s) on the Order.

5. Chargebacks for returns together with a handling charge shall be deducted by Barnes & Noble from remittances for Vendor's current billings. Barnes &

Noble shall not be obligated to make future purchases to offset a credit.

6. All risk of loss or damage to Goods shall remain with Vendor until receipt by Barnes & Noble of conforming Goods at the required destination. Title to, and risk of loss of, the Goods to be delivered hereunder shall, unless otherwise provided herein and subject to Barnes & Noble's rights of rejection and other remedies, pass from Vendor to Barnes & Noble upon delivery of the Goods to Barnes & Noble's destination.

I. INDEMNIFICATION. Vendor agrees that upon request it will defend and in any event indemnify Barnes & Noble, Inc. and its subsidiaries, and their respective officers, directors, members, managers, employees, and agents, and hold them harmless from and against any and all liability, claims, suits, actions, losses, judgments, settlements, costs or expenses, including attorneys' and experts' fees and costs, relating to, connected with, or arising by virtue of any claim or demand of any kind or nature brought by any third party arising from, related to, or connected with: (i) the purchase, sale or use of such Goods or from any patent or hidden defects in the quality of such Goods or for any claims or actions whether based on a claim of breach or express or implied warranty or any other legal theory based on contract or tort law or if brought pursuant to a class action statute or not; (ii) any Infringement Claim; or (iii) any breach or alleged breach by Vendor of any of (x) these Terms, including, without limitation, Vendor's Representations and Warranties set forth in paragraph F. above, (y) the Barnes & Noble Vendor Code of Conduct, and (z) the Vendor Product and Compliance Requirements.

J. LIABILITY. IN NO INSTANCE SHALL BARNES & NOBLE BE LIABLE TO VENDOR IN EXCESS OF THE ACTUAL COST OF THE ORDER, LESS APPLICABLE DISCOUNTS AND OTHER DEDUCTIONS, AND NO INTEREST OR OTHER CHARGE SHALL BE RECOGNIZED OR PAID BY BARNES & NOBLE UPON ANY SUCH ORDER OR RESULTING invoice, WHETHER CLAIMED BY REASON OF LATE PAYMENT OR OTHERWISE. IN NO EVENT SHALL BARNES & NOBLE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES, REGARDLESS OF THE CAUSE OF ACTION UPON WHICH THEY ARE BASED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

K. DISCONTINUANCE OF BARNES & NOBLE'S BUSINESS. Discontinuance of, or substantial interference with Barnes & Noble's business, in whole or in part, by reason of fire, flood, earthquake, tempest, strikes, war, terrorism, acts of God, embargo, civil commotion, governmental regulation or other causes beyond Barnes & Noble's control (whether like or unlike the foregoing), shall give Barnes & Noble the option of canceling all or any part of the undelivered Goods covered by the Order without liability in respect of Goods so cancelled.

L. NONWAIVER. Barnes & Noble's right to require strict observance or performance of each of the (x) these Terms, (y) the Barnes & Noble Vendor Code of Conduct, and (z) the Vendor Product and Compliance Requirements, shall not be affected by the waiver of any other term or provision or by any previous waiver, forbearance or course of dealing nor shall it be affected by any delay in exercising or failure to exercise any right hereunder. No express waiver shall operate beyond the express terms thereof nor waive the same provision at any future date. The validity in whole or in part of any condition of the Order shall not affect the validity of other conditions. The remedies herein reserved by Barnes & Noble shall be cumulative and in addition to any other remedies in law or in equity.

M. APPLICABLE LAW. Barnes & Noble and Vendor expressly agree that all rights and duties under the Order or any contract arising therefrom shall be governed by and construed in accordance with the laws of the State of New York. Each party submits to jurisdiction in the State of New York and further agrees that any cause of action arising under this Agreement shall be brought exclusively in a court in New York, New York.

N. INSURANCE. Vendor agrees to insure, at its expense, any Goods ordered pursuant the Order for its full and true value, which by the terms of the Order is to be stored at other than Barnes & Noble's warehouse. Vendor shall supply Barnes & Noble with written evidence of such insurance coverage upon request.

O. CONFIDENTIALITY. Vendor shall not without first obtaining Barnes & Noble's written consent disclose the fact that Barnes & Noble has ordered the items covered by the Order, nor except as required for Vendor's performance disclose any of the details associated with the Order to any third party. Vendor may be exposed to certain proprietary or confidential information concerning Barnes & Noble's business, plans, employees, or products that is designated as confidential or due to its nature, Vendor should know is confidential ("Confidential Information"). Vendor agrees that it will not use the Confidential Information except as strictly necessary to perform under the Order. Vendor shall not disclose the Confidential Information to any third party and will take every precaution to protect the confidentiality of the Confidential Information, using at least the same measures as it does to protect its own most sensitive information, and in any event no less than reasonable measures. The terms of this Order will be deemed Confidential Information. If Vendor is required by applicable law to disclose any Confidential Information, it will give Barnes & Noble reasonable advance notice to seek confidential treatment or otherwise protect its Confidential Information. Unless otherwise agreed in writing, no commercial or technical information disclosed or supplied by Vendor to Barnes & Noble shall be deemed secret or confidential and Vendor shall have no rights against Barnes & Noble with respect thereto except such rights as may exist under any applicable patent or copyright law.

P. ASSIGNMENT. The Order and any right or obligation or performance thereunder is not assignable or delegable by Vendor without the prior written consent of Barnes & Noble, and any such attempted assignment of delegation shall be void and ineffective for all purposes. No invoices may be rendered by other than the named Vendor without Barnes & Noble's written permission.

Q. CONFLICTS AND INTERPRETATION: The parties have read these Terms and understand and agree that the Vendor Guidelines, Vendor Code of Conduct, and Vendor Product and Compliance Requirements are considered part of and are incorporated into this Agreement. In the event of any conflict among the Terms and any of the foregoing, the order of precedence will be as follows: first, these Terms, second, the Vendor Code of Conduct; third, Vendor Product and Compliance Requirements; fourth, any supplemental or other written agreement signed by both Vendor and Barnes & Noble, Inc. or any of its subsidiaries (although, if such agreement is between Vendor and a subsidiary of Barnes & Noble, it shall only be enforceable against such subsidiary); and fifth, the Vendor Guidelines, provided that if the Vendor Guidelines are more lenient on a given provision than that which may be contained in these Terms, then at Barnes & Noble's option, Barnes & Noble shall have the right to waive any provision in these Terms which conflicts with such provision in the Vendor Guidelines and permit such provision in the Vendor Guidelines to govern instead.

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