

Penguin Solutions, Inc. Web Terms and Conditions

Terms of use

These “Terms of Use” govern your use of any websites (our “Sites”) owned and operated by Penguin Solutions, Inc. (“Penguin Solutions,” “we,” or “our”) that display or link to these Terms of Use. You (on behalf of yourself and any company you represent) automatically agree to these Terms of Use and to our Privacy Policy simply by visiting, viewing, or using any of our Sites or any of the services we offer on our Sites.

PLEASE NOTE THAT SECTION 9 OF THESE TERMS OF USE CONTAINS AN ARBITRATION CLAUSE AND A CLASS ACTION WAIVER PROVISION. IT AFFECTS HOW ANY DISPUTES BETWEEN YOU AND PENGUIN SOLUTIONS WOULD BE RESOLVED.

I. Modifications to our Sites and terms of use

We reserve the right to modify our Sites at any time, with or without notice to you. For example, we may add or remove functionality or features, and we may suspend or stop a particular feature altogether. If you do not like any of these changes, you can stop using our Sites at any time. We also reserve the right to modify these Terms of Use at any time, so be sure to check back regularly. By continuing to use (or, for customers, log in to) our Sites after these Terms of Use have changed, you indicate your agreement to those revised Terms of Use. If you do not agree to our changes, you can stop using our Sites at any time.

II. Your account – If you become our customer

To become a customer, you must be at least 18 years old, or the age of majority in your state, whichever is older. If you become our customer, we may require you to create an account with a password chosen by you in order for you to make purchases or use certain features on or through our Sites. To create an account, you must provide truthful and accurate information. Don't try to impersonate anyone else when you create your account. If your information changes at any time, please update your account to reflect those changes.

You may not share your account with anyone else. Please keep your account password confidential, and try not to use the same password on other websites. You are solely responsible for all activities,

including purchases, that occur using your account. If you believe that your account has been compromised at any time, please contact us at privacy@penguinsolutions.com.

III. Your use of our Sites

Please do not use our Sites in a way that violates any laws, infringes anyone's rights, is offensive, or interferes with our Sites or any features on our Sites (including any technological measures we employ to enforce these Terms of Use). If we (in our sole discretion) determine that you have acted inappropriately, we reserve the right to terminate your account, prohibit you from using our Sites, and take appropriate legal action. Using our Sites does not give you ownership of any intellectual property rights to the content that you access. You may not use content from our Sites unless you obtain prior written permission from us, or unless you are otherwise permitted to do so by law.

IV. Information you submit

If you submit any information to Penguin Solutions, that information will be treated as non-confidential and non-proprietary. You grant Penguin Solutions, its agents and licensees an irrevocable, perpetual (non-exclusive) right and permission to reproduce, encode, store, copy, transmit, publish, post, broadcast, display, publicly perform, adapt, modify, create derivative works of, exhibit, and otherwise use that information. This license continues even if you stop using our Sites. Nevertheless, please note that Penguin Solutions does not accept any unsolicited suggestions – including, but not limited to, suggestions for new products or services, improvements to our Sites or to any of our existing services, or marketing ideas – from anyone outside of our company. We may already be working on a similar idea, and this policy eliminates potential conflicts regarding ownership of the concept.

V. Trademarks and copyrights

All trademarks, logos, and service marks displayed on our Sites are registered and unregistered trademarks of Penguin Solutions and/or of third parties who have authorized their use (collectively the "Trademarks"). You may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify any of these Trademarks in any way. All of the materials on the Sites are copyrighted, except where explicitly noted otherwise. We will enforce our intellectual property rights to the fullest extent of the law, including the seeking of criminal prosecution, if necessary.

VI. Our warranties and disclaimers

We provide our Sites using a commercially reasonable level of care, but there are certain things that we cannot guarantee. We attempt to verify that information on the Sites is complete, accurate, and current.

Despite our efforts, though, we make no representation as to the completeness or accuracy of any information on the Sites, or about whether such information is current.

OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS OF USE, PENGUIN SOLUTIONS DOES NOT MAKE ANY SPECIFIC PROMISES ABOUT ANY OF OUR SITES. FOR EXAMPLE, WE DON'T MAKE ANY COMMITMENTS ABOUT THE CONTENT ON OUR SITES, THE SPECIFIC FUNCTIONS OF OUR SITES, OR ITS RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WE PROVIDE EACH SITE "AS IS."

SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES.

VII. Indemnification and limitation of liability

You agree to defend, indemnify, and hold harmless Penguin Solutions, its parent and affiliate companies, and their respective officers, directors, employees, agents, representatives, insurers, and assigns from any and all claims arising out of your breach of these Terms of Use, and any of your activities on our Sites.

EXCEPT WHERE PROHIBITED, WE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING FROM YOUR USE OF ANY OF OUR SITES OR ANY THIRD PARTY'S USE OF OUR SITES TO THE FULLEST EXTENT PERMITTED BY LAW. THESE EXCLUSIONS INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA, COMPUTER FAILURE, OR THE VIOLATION OF YOUR RIGHTS BY ANY THIRD PARTY, EVEN IF PENGUIN SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED. IN NO EVENT, SHALL THE AGGREGATE LIABILITY OF PENGUIN SOLUTIONS ARISING OUT OF OR RELATED TO YOUR USE OF OUR SITES EXCEED THE AMOUNT YOU HAVE PAID TO PENGUIN SOLUTIONS IN THE PRECEDING TWELVE (12) MONTHS.

VIII. Disputes

You agree that any dispute or claim arising out of your use of any of our Sites or any products sold on our Sites, including any dispute or claim as to the application, enforceability, scope or interpretation of this agreement to arbitrate, will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to these Terms of Use.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief, or statutory damages), and must follow these Terms of Use.

Arbitration shall be administered by the Judicial Arbitration and Mediation Services, Inc. (“JAMS”), pursuant to the most-current JAMS Streamlined Arbitration Rules & Procedures, and conducted by a single, neutral arbitrator. Arbitration will take place by phone or videoconference, unless an in-person hearing is requested by either party. In that case, the hearing will take place in the state where you reside. To the extent this agreement to arbitrate conflicts with the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness (the “Minimum Standards”), the Minimum Standards in that regard will apply.

Disputes may also be referred to another arbitration organization if you and Penguin Solutions agree in writing, or as to an arbitrator appointed pursuant to Section 5 of the Federal Arbitration Act.

We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated, group, or representative action. If for any reason a claim proceeds in court rather than in arbitration, we each waive any right to a jury trial. We also both agree that notwithstanding our agreement to only arbitrate disputes as stated above, you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights

IX. Additional details

Certain features on our Sites may be subject to separate terms, which will be presented in conjunction with those features. Your use of those features will be governed by those separate terms. Our Sites may contain links to third-party websites. That doesn’t mean that we control or endorse those websites or any goods or services sold on those websites. When you use any of our Sites or send communications to us through our Sites, you are communicating with us electronically. Similarly, you consent to receive from us electronically communications related to your use of our Sites. You agree that all agreements, notices, disclosures, and other communications that Penguin Solutions provides to you electronically satisfy any legal requirement that such communications be in writing. All notices from Penguin Solutions to you will be deemed delivered and effective when sent to the e-mail address you provide to us (if you do provide your email address to us). If you do not comply with these Terms of Use, and we don’t take enforcement action right away, that does not constitute a waiver, and we not are giving up any rights that we may have (such as taking enforcement action in the future). These Terms of Use are governed by and construed in accordance with the laws of the state of California, without regard to its conflict of laws rules. For disputes that are not subject to arbitration, you expressly agree that the exclusive jurisdiction

for any claim or dispute under these Terms of Use and or your use of any of our Sites resides in the courts located in Santa Clara, California, and you further expressly agree to submit to the personal jurisdiction of such courts for the purpose of litigating any such claim or action. If it turns out that a particular provision in these Terms of Use is not enforceable, that will not affect any other provision.