

## **POLSTORE STORAGE SYSTEMS LIMITED**

### **TERMS OF TRADING ("TOT")**

#### **1. DEFINITIONS**

1.1 **Supplier** means Polstore Storage Systems Limited (Company No. 2929567). Registered Office and address for service: PO Box 1112, Guildford, Surrey GU1 9LE. Supplier trades using various trading names, of which a list is posted and updated from time to time on the Website.

1.1A **Affiliate** means (i) any entity that from time to time, directly or indirectly controls, is controlled by, or is under common control with Supplier, or that is a successor (including, without limitation, by change of name, dissolution, merger, consolidation, reorganisation, sale or other disposition) to any such entity or its business and assets, (ii) Polstore Storage Systems Limited, Museum Polstore or any entity or entities that from time to time is / are the parent company/companies of any of the Polstore Group of companies (each a "Parent Company") or (iii) the respective direct or indirect subsidiaries of any Parent Company. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 **Customer** means any natural person or other legal entity which orders, buys, receives or licenses Goods from Supplier.

1.3 **Customer Nominee** means any person other than Customer specified by Customer for delivery.

1.4 **Customer Services** means Supplier's customer services – contact details posted on the Website.

1.5 **Customer Terms** means any contrary, different or additional terms or conditions contained or referred to in an Order or in any other correspondence or documents from Customer, or any purported amendment to TOT.

1.6 **Contract** means an individual legally binding contract between Supplier and Customer subject to TOT created when an Order is accepted by Supplier.

1.7 **Delivery Charges** means charges to Customer for delivery and handling as specified from time to time on the Website unless specified otherwise by Supplier.

1.8 **Goods** means goods (including but not limited to print, disk and CD products and updating materials for Print/CD Subscriptions and/or, services (including but not limited to online, information, advisory, consultancy, conference, training or other services)) which are the subject of the Contract and any instalment thereof.

1.9 **Marketing Materials** means any catalogue, list, mailshot, advertisement or quotation for Goods, or posted on the Website, whether online, print or otherwise.

1.10 **Order** means any order placed by Customer for supply of Goods by Supplier to Customer (including a Standing Order and a Website Order).

1.11 **Due Date** means the date shown on Supplier's invoice as the due date for payment.

1.12 **Price** is defined in clause 5.1.

1.13 **Print/CD Subscription** means "Annual Subscription", "Anytime Start Subscription" and "Charge by Release Service" as defined in clause 6.3.

1.14 **Returns Procedure** means the returns procedure for non-trade and international customers set out on the relevant despatch note and published on the Website.

1.15 **Standing Order** means a Contract either to purchase (a) all supplements to an edition of a book; (b) all new editions of a book; (c) all new editions of a book and all supplements thereto; or (d) bound volumes to a journal subscription, each being subject to separate written documentation with Customer. Customer may terminate a Standing Order at any time by written notice to Customer Services.

1.16 **Total Price** means the amount to be paid by Customer to Supplier for Goods as specified on the Supplier's invoice which constitutes the Price (inclusive of any applicable value added tax) less any agreed discounts, plus Delivery Charges and any other agreed charges.

1.17 **Website** means the Supplier's main website at [www.polstore.co.uk](http://www.polstore.co.uk) or any successor thereto. Use of the Website is subject to Website Terms of Use posted on the Website as updated from time to time.

1.18 **Website Order** means an Order placed through the Website.

## 2. ACCEPTANCE OF ORDERS

2.1 No Marketing Materials shall constitute an offer capable of acceptance by Customer but shall be an invitation to place an Order. Orders shall be accepted entirely at Supplier's discretion and, if accepted, are governed by TOT.

2.2 TOT shall override any Customer Terms and no Customer Terms will form part of the Contract unless expressly accepted in writing by Supplier.

2.3 Subject to clause 5.5, an Order shall be deemed to have been accepted by Supplier on the earliest of:

2.3.1 acceptance by Supplier of payment in cleared funds for Goods;

2.3.2 despatch to Customer of an Order confirmation or note requesting advance payment or any other note advising that the Order will be fulfilled once Goods are available (but not an email Order acknowledgement following a Website Order);

2.3.3 delivery of Goods to Customer or Customer's Nominee, which in the case of Print/CD Subscriptions shall mean delivery of any component part; or

2.3.4 in the case of Goods which are services, commencement by Supplier of supply of the said service or Supplier having provided Customer with access thereto.

2.4 In respect of Criminal Law Week, and where Goods are or include any item of software or online service, CD-ROM or floppy disk or other services, TOT shall apply as varied and augmented by the licence or terms and conditions relating to the said services, available with the relevant product/service, online, or on request, (together "Service Terms").

2.5 Where Goods are supplied subject to "Trade Terms" (meaning discretionary terms granted to the book trade) TOT shall apply as varied and augmented by Trade Terms.

2.6 In the event of conflict between TOT and the Service Terms or the Trade Terms the latter shall prevail but only to the extent of the conflict.

## 3. DELIVERY OF GOODS

3.1 Unless otherwise agreed, Supplier will deliver Goods through its distributor at Customer's expense. Customer shall be responsible for complying with legislation or regulations governing importation of Goods to the country of destination and for payment of any relevant duties. Goods will be despatched by Supplier within 3-5 working days of availability.

3.2 Delivery to Customer shall be deemed to have taken place when Goods are placed with Customer or delivered in accordance with clause 3.3 to Customer Nominee. Risk in Goods shall pass to Customer on delivery

3.3 Where Customer requires delivery to Customer Nominee, Customer shall notify Supplier Customer Nominee's name and address. Customer will be responsible for storage of Goods, arranging any onwards delivery of Goods to Customer and all risks thereof and will remain liable for payment for Goods.

3.4 Any time or date for delivery given by Supplier is given in good faith but is an estimate only and shall not be made of the essence by notice. Supplier shall not be liable for any delay in delivery of Goods. Where Customer is notified that Goods are unavailable (for whatever reason), Customer agrees that Supplier may perform the Contract for said Goods when they become available irrespective of any estimate of dates given by Supplier. Supplier reserves the right to make deliveries by instalments in all cases and Customer shall not be entitled to treat delayed or defective delivery in respect of one or more instalments as a repudiation of the whole of the Contract nor to defer payment for any previous instalment.

#### **4. PROPERTY IN GOODS**

4.1 Notwithstanding delivery and passing of risk in Goods to Customer, or any other provision of TOT, property in Goods shall not pass to Customer until Supplier paid in full the Total Price and all other sums which may be due by Customer to Supplier.

4.2 For the purposes of clause 4.3 and 4.4, where Goods are delivered to Customer Nominee, Customer shall (a) ensure that Customer Nominee complies with obligations owed by Customer to Supplier; and/or (b) procure for Supplier a right of entry and repossession of Goods against any Customer Nominee and/or; (c) on request of Supplier exercise any such right Customer may have against Customer Nominee.

4.3 Until property in Goods passes to Customer, Customer shall keep Goods free from any lien, charge or encumbrance and Supplier may at any time require Goods to be returned to it by Customer. If such requirement is not met within three days of Supplier's request, Supplier may retake possession of Goods and may enter any premises of Customer (including locked and steadfast premises) for that purpose. Customer shall hold Goods as Supplier's fiduciary agent and custodian, keeping them properly stored, protected and insured and identified as the property of Supplier and separate from Customer's property and from that of third parties. .

4.4 If Customer sells or otherwise disposes of or processes Goods prior to payment of the Total Price (or any part thereof) it shall receive and hold as trustee for Supplier the proceeds of such sale, disposal or process or other monies derived from or representing Goods (or any part thereof) (including insurance proceeds) and shall keep such proceeds or other monies separate from any monies or property of Customer and/or third parties, and shall as soon as possible after receipt of same pay such monies to Supplier or into a separate account in trust for Supplier.

4.5 Supplier shall be entitled to sue for the Total Price notwithstanding that property in Goods has not passed to Customer.

#### **5. PRICE AND PAYMENT**

5.1 Customer agrees to purchase Goods at the Price, defined as:-

5.1.1 for renewal of a Print/CD Subscription, as specified in the relevant renewal notice; and

5.1.2 for all other Goods (except those individually negotiated or those subject to an offer for which special offer terms may apply) including Charge by Release releases, as specified in Supplier's price list current at the time of despatch of Goods, as published on the Website.

5.2 Rates, Prices, discounts, offer terms and Delivery Charges published in Marketing Materials or Trade Terms or the Website or otherwise are subject to variation by Supplier at any time without prior notice.

5.3. The Total Price shall be paid in full in cash or cleared funds:

5.3.1 in advance of despatch of Goods;

5.3.2 where Customer has a credit account, in accordance with the credit terms granted by Supplier and by the Due Date. Time of payment shall be of the essence; and

5.3.3 where Customer pays for the Goods by direct debit, in accordance with the terms of the notified direct debit scheme.

5.4 Where Customer pays for Goods (whether available or not at the time of Order) by payment card, Customer hereby authorises Supplier to debit the said card with the Total Price. Unless agreed otherwise Supplier will only debit the said card on despatch of Goods.

5.5 Credit accounts are by application to Supplier, and are at Supplier's sole discretion, subject to any special terms notified to Customer by Supplier. Supplier shall not be obliged to supply/continue supplying Goods to Customer under any accepted Order where Customer fails a credit check made by Supplier.

5.6 The invoice (or receipted invoice where paid in advance) shall be given or despatched by Supplier to Customer on or about the date of despatch of Goods, provided that Supplier reserves the right to issue further invoices to Customer in respect of increased or other charges payable under TOT and not ascertainable at the time of issue of the original invoice. Customers should notify Supplier of any invoice error within 30 days of the Due Date quoting account and invoice number.

5.7 If the Total Price is not paid in full by the Due Date Supplier may:-

5.7.1 cancel or suspend further supplies (or access in the case of online services) to Customer (under any Contract); and

5.7.2 charge Customer interest (both before and after any judgment) on the outstanding amount at 2% per annum above base rate of Royal Bank of Scotland plc from time to time, until payment is made in full (a part of a month being treated as a full month for the purposes of calculating interest).

5.8 Customer shall reimburse Supplier (on a full indemnity basis) all costs and expenses incurred by Supplier in connection with recovery of money due to Supplier under the Contract.

5.9 Payment made by Customer to Supplier under this or any other Contract shall be applied by Supplier to invoices, and to Goods listed in invoices, in such order or manner as Supplier shall, at its entire discretion, think fit notwithstanding any purported appropriation by Customer.

5.10 No deduction shall be made by Customer without written agreement of Supplier from any payment for Goods for or on account of any matter or thing whatsoever including, but not limited to any set-off, compensation, counter-claim or present or future taxes.

## **6. PRINT/CD SUBSCRIPTIONS**

6.1 This clause 6 shall not apply to online services; or CD-ROMs and floppy disks supplied with print titles.

6.2 This clause 6 specifies additional terms that apply to Print/CD Subscriptions and to the extent of any conflict between it and other clauses in the Terms, it shall prevail over those clauses.

6.3 **Print/CD Subscription** means a print and/or CD based subscription comprising one of the following:

6.3.1 **Annual Subscription** means a subscription running for a calendar year (“the Subscription Year”) whereby Customer pays a subscription fee to receive all issues/updates releases (and any other elements) published in relation to the Subscription Year.

6.3.2 **Anytime Start Subscription** means a subscription for 12 months (“the Subscription Year”) starting on a specified date, renewable on each anniversary thereof for further Subscription Years thereafter whereby Customer pays a subscription fee to receive all issues/updates releases (and any other elements) published in relation to the Subscription Year.

6.3.3 **Charge by Release Service** means a looseleaf release charged for individually on publication rather than by Annual or Anytime Start Subscription. In purchasing a Charge by Release Service, Customer agrees to purchase all future releases until the Contract is validly terminated.

6.4 Customer acknowledges that under Annual and Anytime Start Subscriptions issues/updates releases will be delivered as and when published.

6.5 Customer may only terminate a Contract for a Print/CD Subscription as follows (unless permitted otherwise by law or with prior written agreement of Supplier):

6.5.1 for an Annual or an Anytime Start Subscription, at any time in writing to Customer Services but such termination shall not be effective until the end of the current Subscription Year. Refunds in respect of the current Subscription Year will only be given in exceptional circumstances and entirely at the discretion of Supplier;

6.5.2 for a Charge by Release Service (in respect of forthcoming releases), at any time in writing to Customer Services.

6.6 Renewal is automatic for subscriptions which are paid by direct debit subject to the terms of the direct debit scheme used. Supplier will notify Customer of the date on which payment for a renewed subscription will be collected. It is the responsibility of Customer to notify Supplier in writing of any changes to the address/contact details of Customer. Should Customer not wish to renew, Customer must notify Supplier in writing of the cancellation of the direct debit instruction at least 14 days before the expiry of the subscription. Supplier accepts no responsibility for requests for cancellations not received or delayed either via post or via electronic communications. Late cancellations may be accepted at the discretion of Supplier.

## **7. WARRANTIES AND LIABILITY**

7.1 Supplier warrants that:-

7.1.1 Supplier has the right to sell, provide or license Goods to Customer;

7.1.2 Goods shall correspond with their description on the Website, in catalogues, lists, mailshots, advertisements and other documents issued by Supplier, unless Customer is otherwise advised by Supplier (verbal descriptions of Goods or descriptions provided other than by Supplier shall not form part of their description); and

7.1.3 where Goods consist of or include services to be provided by Supplier, they shall be provided with reasonable care and skill.

7.2 Supplier shall not be liable under the warranties in clause 7.1 if the Total Price has not been paid in accordance with clause 5.

7.3 Whilst reasonable care is taken to ensure the accuracy and completeness of Goods, Supplier makes no representations or warranties whatsoever about Goods other than those in Clause 7.1 and all warranties, conditions or terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.4 Subject to clause 7.6, Supplier shall not be liable to Customer by reason of any implied warranty, condition or other term, or any duty at common law (including delict) or breach of statutory duty, or under the express terms of the Contract or by reason of any representation, which Customer acknowledges it has not relied on, whether caused by the negligence of Supplier, its employees or agents or otherwise, which arise out of or in connection with the supply of the Goods (including any delay or failure to supply the Goods according to the Contract or at all) or their use by Customer for:-

7.4.1 any direct loss save in respect of the warranties in Clause 7.1; or

7.4.2 loss (whether direct or indirect) of profits, goodwill, business, revenue or anticipated savings; or

7.4.3 any increased cost or expenses; or

7.4.4 any indirect, special or consequential loss or damage of any nature whatsoever, whether or not contemplated by the parties.

7.5 Subject to clauses 7.4 and 7.6, the entire liability of Supplier in connection with the Contract shall not exceed the Total Price, except in relation to the warranty in clause 7.1.1 or as otherwise expressly provided otherwise in these Terms.

7.6 Nothing in these Terms shall limit or exclude:

7.6.1 Supplier's liability for death or personal injury caused by Supplier's negligence or for fraudulent misrepresentation; or

7.6.2 the statutory rights of Customer.

## **8. RETURNS**

8.1 Subject to clause 8.2, all Goods are supplied to Customer with a "satisfaction guarantee" whereby, if Goods are not to Customer's satisfaction, Customer may return the Goods to Supplier provided that they are returned (a) within 30 days of date of the relevant invoice; and (b) in accordance with the Returns Procedure. Where Customer returns Goods in accordance with (a)-(b) above, Customer will not be charged (or will be credited) for Goods and thereafter Supplier shall have no further liability to Customer.

8.2. Supplier may determine at its sole discretion that the satisfaction guarantee shall not apply to certain types of customer or certain Goods, including but not limited to (i) releases/issues of Print/CD Subscriptions (except Charge By Release issues to which it does apply), (ii) online and other services and (iii) sales made outside Europe, (iv) sales to the book trade under Trade Terms and (v) print sales supplied as part of a print/online bundle.

8.3 Subject to clause 8.4, claims for damaged, defective, partial or non-delivery of Goods must be notified to Customer Services no later than 14 days after the invoice date and the Goods returned no later than 30 days after the invoice date. Returns must be made according to the Returns Procedure. Where any damage or defect in Goods was not apparent on reasonable inspection at the time of delivery, the periods above shall run from date that the damage/defect was discovered. If a claim is accepted by Supplier, it shall, at its discretion, be entitled to replace the

Goods (or the part in question) or refund the Price of the Goods (or an appropriate portion of the Price) and Supplier shall have no further liability to Customer.

8.4 Where an issue of a Print/CD Subscription is not received by Customer, Customer shall within 30 days (14 days in the case of weekly products) of receipt of the next issue of the said product (time being of the essence) give written notice to Customer Services of the non-delivery of the previous issue. If accepted Supplier shall re-supply the missing issue. Failure to provide such notice shall be deemed conclusive evidence of Customer having received and accepted the previous issue and Supplier shall have no further liability to Customer.

8.5 Unless agreed otherwise, all Goods being returned (other than those being returned in accordance with the Satisfaction Guarantee under this clause) shall be at the expense and risk of Customer.

8.6 Trade customers and international customers are subject to different returns policies and procedures as set out on the Website or as agreed with an individual trade customer.

## **9. COPYRIGHT AND PERMISSIONS**

9.1 All intellectual property rights whatsoever in Goods or any materials derived therefrom (other than legal documents prepared for a particular client from a style or precedent) are reserved to the owner (Supplier or its licensors) and Customer irrevocably acknowledges and agrees that supply of Goods to it shall not transfer any such rights.

9.2 No part of Goods may be reproduced in any form (including photocopying or storing it in any medium by electronic means) without written permission of Supplier or as permitted by law or under the terms of a licence issued by the Copyright Licensing Agency Ltd, ([www.cla.co.uk](http://www.cla.co.uk)). Permission requests should be address to Supplier's Permissions Department - contact details posted on the Website).

## **10. TERMINATION**

10.1 In the event of Customer committing any breach of any term of the Contract, going into liquidation, having a Receiver, Administrator, Judicial Factor or other similar officer appointed over the whole or any part of its assets, becoming bankrupt or notour bankrupt or apparently insolvent or granting any trust deed or entering into any composition or similar arrangement with its creditors, or if any circumstances arise which, in the sole opinion of Supplier, render any of the foregoing likely to occur then Supplier shall be entitled, without notice and without any liability whatsoever, to terminate the Contract forthwith and to exercise the rights of repossession of Goods as specified in clause 4.3. In such circumstances, Supplier shall also be entitled to cancel all Contracts or any part thereof remaining unfulfilled between Supplier and Customer and to sell to any other party or otherwise dispose of and deal with Goods.

10.2 Termination of the Contract shall not discharge any pre-existing liability of Customer to Supplier and on termination Supplier shall be entitled to recover from Customer such loss or damage as Supplier has suffered by reason of termination.

## **11. GENERAL**

11.1 Telephone calls may be recorded for training and administrative purposes and Customer agrees that such recordings may be made and retained.

11.2 No failure or delay by Supplier to exercise any right, power, remedy or privilege shall operate as a waiver thereof.

11.3 Except as otherwise provided, all notices must be given in writing to Supplier at address given in TOT and to Customer at last known address.

11.4 Where Customer is a legal entity (as opposed to a natural person), the person placing the Order warrants and represents that s/he is authorised by Customer to do so and to bind Customer thereby.

11.5 Should any term (or part of a term) of TOT be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other terms or remainder of the term in question will not be affected thereby.

11.6 Supplier shall not be responsible for any delay or failure to fulfil any of its obligations under the Contract nor be liable for any loss or damage suffered or incurred by Customer by any of act of God, war, government or parliamentary restriction, import or export regulation, strike, lockout, trade dispute, fire, theft, flooding, breakdown of plant or premises, late or non-delivery of any supplies or any other cause whatsoever beyond the control of Supplier.

11.7 Headings and captions contained in TOT are inserted for convenience only and do not constitute a part of the Contract.

11.8 Supplier may at its discretion amend alter TOT from time to time. Updated versions shall be posted to the Website (“the Website Version”) and the Website Version shall prevail without further notice to Customer over all other versions and shall apply to Contracts entered into after the date of such posting.

11.9 Supplier may, without notice or prior written consent of Customer, assign any benefit or delegate or sub-contract any of its duties and obligations under any Contract. Supplier may, upon written notice to Customer and without prior consent, assign or transfer this Contract or any rights or obligations thereunder to an Affiliate or to a third party successor to all or substantially all the business, stock or assets of Supplier to which the Contract relates.

11.10 Contracts shall be governed by the laws of England, Scotland or Ireland depending on where Goods are provided and the courts of the relevant territory shall have non-exclusive jurisdiction over any dispute arising from the said Contracts in relation to those Goods.