

Purchase Agreement Terms and Conditions

Unless as otherwise provided in the License Agreement entered into with CPM Educational Program, the following terms and conditions govern the purchase and use of any one or any collection of Goods, defined below:

1. Applicability. (a) Effective on the date the first order is submitted to CPM ("Effective Date"), these Purchase Agreement Terms and Conditions (unless CPM has executed a separate written Purchase Agreement with Buyer), the Order Form (whether submitted via fax, mail, email or the WebStore), and any subsequent orders placed after the Effective Date (collectively, the "Agreement") shall govern the sale of and license to use textbooks, manipulatives, eBooks, and other materials ("Goods") by CPM Educational Program ("Seller") to you ("Buyer"). Notwithstanding anything in the Agreement, if a separate written contract exists or is entered into between the parties regarding the license to use the Goods covered herein (the "License Agreement") the License Agreement shall prevail to the extent any conflicts exist with this Agreement.

(b) Subject to the License Agreement, the Agreement comprises the entire agreement between the parties and supersedes all prior or contemporaneous understandings, agreements, representations and warranties, and communications, both written and oral. This Agreement prevails over any general terms or conditions of purchase that may be contained in a standard purchase order issued by Buyer regardless if Buyer has submitted its purchase order to Seller. Fulfillment of Buyer's order does not constitute acceptance of any terms contained in Buyer's standard purchase order and does not serve to modify or amend this Agreement.

2. Delivery. The Goods will be scheduled for delivery within a reasonable time after the receipt of Buyer's order (via submission of the Order Form via fax, mail, email, or the WebStore), subject to availability of finished Goods. Seller is not liable for any delays, loss or damage in transit caused by third parties, including but not limited to publishers, printing companies, couriers or shipping companies. Upon notification by Buyer to Seller of any such delays, Seller will work with Buyer and the appropriate third party to track the shipment and resolve the issue. If for any reason Buyer is not present for the delivery of any of the Goods on the date that the Goods are delivered, or if Seller is unable to deliver the Goods on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-delivery. The quantity of any installment of Goods as recorded by Seller on dispatch from Shipping Point is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Seller shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Seller of the non-delivery within 7 days of the date when the Goods would, in the ordinary course of events, have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Shipping. The Goods will be shipped with the applicable shipping/freight costs paid by Buyer. Freight charge will be based on actual charges at time of shipping. Additional freight charges may apply on orders shipping outside the continental United States. Shipping/freight costs are not refundable.

5. Inspection and Rejection of Nonconforming Goods; Returns; Restocking Fees. (a) **Inspection by Buyer.** Buyer shall inspect the Goods within 3 days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; (ii) product's label or packaging incorrectly identifies its contents; or (iii) product is damaged, for reasons other than being damaged in transit, whereby Buyer is unable to make productive use of the product.

(b) **Nonconforming Goods.** If Buyer timely notifies Seller of any Nonconforming Goods, upon Seller's confirmation that the Goods are Nonconforming Goods,

Seller shall within a reasonable time after confirmation that the Goods are Nonconforming Goods, in its sole discretion: (i) replace such Nonconforming Goods with conforming Goods; or (ii) credit or refund the Price for such Nonconforming Goods. If requested by Seller, Buyer shall ship, at its risk of loss, the Nonconforming Goods to Seller as follows: CPM Educational Program, Attention: Returns Department, c/o TC Printing, 1215 G Street, Sacramento, CA 95814. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's expense and FOB Shipping Point, the replaced Goods. Buyer acknowledges and agrees that the remedies set forth in Section 5(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods.

(c) **Returns; Restocking Fees.** Seller will only accept returns and issue refunds or credits, to be determined in Seller's sole discretion, for Goods satisfying all of the following conditions: (i) returns authorized in writing by an authorized representative of CPM; (ii) returns received within the applicable timeframe; and (iii) returns received in a salable condition free of marks, stamps, barcodes or any other alterations. In order to request Seller's authorization to return Goods, Buyer must email returns@cpm.org with the following information: (1) Order or Invoice Number; (2) Name of each Good to be returned; (3) Quantity of each Good to be returned; and (4) Reason for return. Seller will communicate with Buyer via returns@cpm.org and will provide the return authorization or the reason for denial. Preliminary editions and out-of-print books are not returnable. Bundled items must be returned with all components to receive a full refund or credit. Returns of 50 or more items are subject to a 10% restocking fee, which will be deducted from any refund or credit.

(d) **Authorized Timeframe for Returns.** Goods purchased on or after January 1, 2016 must be returned (and received by CPM) within 90 days after the invoice date. Goods purchased on or before December 31, 2015 must be returned within one year after the invoice date.

(e) **Costs of Shipping Returns.** Except as set forth in Section 5(b) with respect to Nonconforming Goods, Buyer is responsible for the cost of shipping for all returns to Seller. Return shipments should be packed securely and insured. Seller will not issue credit for returned items damaged in transit. Seller will hold returned Goods damaged in transit for 14 days before discarding.

6. Price of Goods. Buyer shall purchase the Goods from Seller at Seller's published prices, which are found at <http://cpm.org>, in force as of the date Buyer submits the order ("Published Prices"). All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer is responsible for all applicable charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

7. Payment Terms. Buyer shall pay all invoiced amounts due to Seller on receipt/within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder in US dollars by cash, check, or credit or debit card. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible by law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law, Seller shall be entitled to suspend the delivery of any Goods (including the disabling of any eBook licenses) if Buyer fails to pay any amounts when due hereunder and such failure continues for 15 days following written notice thereof.

8. License Grant. In consideration of Seller's grant of the license and conditioned upon Buyer's performance of its obligations and conditions under this Agreement, including Buyer's Professional Development Commitment as set forth in Section 9 of this Agreement, Seller hereby grants to Buyer a fixed-term, fully-paid-up and royalty-free, non-exclusive, non-sub-licensable, non-transferable, limited license to use the Goods provided by Seller and described in the Order Form throughout the world solely for educational purposes in accordance with this Agreement, the Website Terms of Use, and the License Agreement (if applicable) (collectively, the "License"). Under the License, Buyer may make physical copies of Goods

provided by Seller for educational, non-commercial use in Buyer's classroom(s) or school(s). Buyer may employ projection equipment to use the Goods for instruction of groups of students. Buyer and its employees, contractors, and affiliates may not reproduce or use Goods provided by Seller for any commercial or non-educational use. Buyer may not place or cause to be placed any part or excerpt of any Goods from Seller on the Internet or in any place outside of the Buyer's school and accessible to the public. Buyer's teachers shall use the Goods in the manner described in the teacher notes, newsletters and workshops. For example, teachers shall use student pairs or study teams for most of the problems designated as in-class work, assign the designated in-class work during class time and not for homework, and use alternative approaches to assess for understanding whenever possible. Unless otherwise provided in the License, Buyer shall not use Seller's name, logo, or any other Seller mark or copyright without the prior written permission of Seller, which permission may be given or withheld in Seller's sole discretion.

9. Professional Development Commitment. Buyer shall send its first-time teachers of a CPM course to attend Seller's complimentary professional development workshops and meetings for that course ("**Programs**"). Buyer agrees to provide release time to its teachers to attend such Programs during the school-year and to provide the necessary materials (i.e., manipulatives, textbooks and calculators) for its teachers to participate in the Programs. Teachers must register for Seller's professional development programs at: <http://cpm.org/professional-development/> or <https://cpm.gosignmeup.com/public/course/browse>.

10. Limited Warranty. SELLER DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID TO SELLER BY BUYER FOR THE GOODS SOLD HEREUNDER or \$2,500, WHICHEVER IS LESS.

12. Termination. In addition to any remedies that may be provided under this Agreement, Seller may terminate this Agreement, including any license(s) granted hereunder, with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Upon early termination of the License, Buyer must destroy or turnover to Seller all Goods provided by Seller, at Seller's option. Provisions of this Agreement which by their nature should survive any termination or expiration of this Agreement shall survive.

13. Confidentiality. (a) Confidential and Proprietary Information. At all times hereafter, the parties shall keep in confidence and trust all confidential and proprietary information (including, without limitation, information on a party's finances, employees, students, or alumni) that a party learns of or receives during the term of this Agreement, and will not use, reproduce, or disclose to others any confidential information without the disclosing party's advance written consent, except as may be directly necessary in the ordinary course of performance of the Agreement, or as otherwise may be required by law.

(b) Student Records. If Buyer provides Seller with any "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act, the Children's Online Privacy Protection Act, the California Online Privacy Protection Act or any of such Acts' associated implementing regulations (collectively, "**Protected Information**"), Buyer hereby certifies that access to Protected Information is necessary for Seller to perform its duties and responsibilities under this Agreement, and the parties agree that Seller shall be subject to, and shall comply with, the same conditions and restrictions on the use and re-disclosure of Protected Information as apply to Buyer pursuant to applicable law. Buyer further certifies that it has obtained all parental consents necessary under the applicable local, state, and federal laws, and the laws of any foreign jurisdictions (as applicable). Buyer's failure to comply with these provisions, or Buyer's failure to abide by legally applicable security measures, parental consent requirements, and disclosure and re-disclosure restrictions with regard to Protected Information, shall constitute a material breach of this Agreement. Buyer agrees to indemnify, defend, and hold harmless Seller against any breach of the Family Educational Rights and Privacy Act, the Children's Online Privacy Protection Act, or the California Online Privacy Protection Act resulting from the provision of Protected Information to Seller under this Agreement.

14. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, fire, governmental actions, war or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, epidemic, 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 materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 30 days, Buyer shall be entitled to give notice in writing to Seller to terminate this Agreement.

15. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations, liabilities, or rights under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void.

16. Governing Law; Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rules. Any proceeding arising out of or relating to this Agreement shall be instituted in the federal or state courts located in the City and County of Sacramento, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such proceeding.

17. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances and with all export and import laws of all countries involved in the sale of Goods under this Agreement.

18. General Provisions. Nothing contained in this Agreement shall be construed to create any agency, partnership, or other form of joint enterprise between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. This Agreement may only be amended or modified in a writing signed by an authorized representative of each party. This Agreement shall be interpreted in an even-handed manner and without regard to any presumption against the party that was responsible for its drafting. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby, unless the effect of such severance would be to alter substantially this Agreement or the obligations of the parties, in which case this Agreement may be immediately terminated.