

SCHLESSINGER MEDIA AND SAFARI MONTAGE TERMS AND CONDITIONS OF SALE

These terms and conditions apply to customer's purchase of products, services and/or support sold by Library Video Company and its divisions, Schlessinger Media and SAFARI Montage, in the United States and Canada, including, without limitation, software, hardware, Audio-Visual Materials (Schlessinger Media branded VHS tapes and DVDs and associated MARC records) and digital content licenses (collectively and individually "Products"). The term "Company" shall mean and refer to Library Video Company and all of its affiliates, subsidiaries, divisions, trade names and entities. By submitting a purchase order and/or by accepting delivery of the Products, customer accepts and is bound to these terms and conditions. If customer does not wish to be bound by these terms and conditions, customer should not submit a purchase order.

1. ORDERING

- 1.1. **Quotations, Orders and Prices.** All quotations must be in writing and issued by Company to be valid. Unless otherwise provided in the quotation, all prices contained in a quotation are firm for sixty (60) calendar days from the date of the quotation, or while supplies last. All purchase orders for Products are subject to acceptance by Company. No order shall be binding on Company until so accepted. Company is not responsible for pricing, typographical or other errors made by Company in any offer, proposal or quote, and reserves the right to cancel any orders resulting from such errors. Certain Products may require installation, which services may be identified on the quotation. In the event a customer wishes to purchase a Product that Company does not have in stock, Company will "back order" the Product and ship the Product when it becomes available.
- 1.2. **Product Modification.** Company reserves the right to change the prices, specifications, construction or design of the Products at any time and in any manner that may be deemed necessary or advisable by Company. If these changes do not affect the form, fit and function of the Products, any Products so changed shall be accepted by customer as Products conforming to existing quotations and purchase orders.
- 1.3. **Software, Digital Content.** All software is subject to a software license agreement. All digital content is subject to a SAFARI Montage Digital Content License Agreement. Customer agrees to be bound by each such license agreement and must accept the terms of the license agreements before use of the Products. These license agreements may be available on-line and/or shipped with the Product.
- 1.4. **Previewing Products.** Company does not allow customer to preview Products. Therefore, Company will not accept any orders for preview. However, customer may view Schlessinger Media Audio-Visual Materials "on approval." If customer wishes to view such materials on approval, customer must indicate "on approval" at the time of ordering. Customer will have thirty (30) days after receipt of the "on approval" products to determine whether customer wishes to keep or return them. If customer wishes to return the "on approval" products, customer must contact the Customer Service Department and return the products in accordance with the return policy described herein. Customer will be responsible for all return shipping costs. In the event customer wishes to keep the products, customer will be responsible for the entire cost of the Products. Customer can preview 3-minute video clips for Schlessinger Media programs on-line at www.LibraryVideo.com. Customer can view, download and print sole source information, curriculum correlation information and teacher's guides from www.LibraryVideo.com. Additionally, in certain cases, customers may be permitted a limited period in which to evaluate SAFARI Montage products pursuant to a SAFARI Montage Pilot Agreement. Customers interested in piloting SAFARI Montage products should contact a Company sales or customer service representative for more information.
- 1.5. **Shipping, Delivery.** All fees and charges associated with shipping and handling are additional unless otherwise expressly agreed to in writing by Company. Company does not guarantee or warrant that Products will be delivered on any specific date or by any specific carrier. Shipping dates provided by Company are estimates only and are subject to change without notice to customer. Company assumes no responsibility or liability for any loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Company. Special, large, custom or back orders, and orders with certain services, such as full processing, may extend estimated or target shipping dates. Company does not offer an over-the-counter pick-up option for any Product.
- 1.6. **Title and Risk of Loss.** Except for Company's security interest, title to hardware Products passes from Company to customer on shipment from Company's facility and, therefore, risk of loss passes to customer upon tender of the Products to the common carrier. Customer must also notify Company within twenty (20) calendar days of the date of shipment if customer believes any part of customer's purchase is missing or incorrect. After such twenty (20)-day period, customer shall be deemed to have irrevocably accepted the Products, and customer shall, therefore, have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that such twenty (20)-day period is a reasonable amount of time for such inspection and revocation. Nothing in this section conveys title in or to any software, digital content or media program, and title to any software and/or digital content and/or media program will remain with the applicable licensor(s). Accordingly, the applicable license agreements and the posted public performance rights govern customer's use of software, digital content and media programs and customer has no right to create derivative works, modify, translate or alter any such materials unless Company expressly grants such rights in the applicable agreements.
- 1.7. **Payment Terms.** Company will issue invoices upon shipment of Products. Unless otherwise agreed to by Company, customer must pay all invoices in full within thirty (30) calendar days from the date of invoice. Company may invoice portions of a purchase order separately. Company reserves the right to ship Products C.O.D., require a prepayment or down-payment, or change the payment terms, in Company's sole discretion. Customer's obligation to pay invoices is absolute and is not subject to any abatement, reduction, set-off, defense, counterclaim, deferment or recoupment for any reason whatsoever. Customer hereby grants Company a purchase money security interest in the Products until such time as Company is fully paid for such Products. Customer will reasonably assist Company in taking the necessary action to perfect and protect Company's security interest. Purchases of Audio-Visual Materials for non-educational purposes must be prepaid with VISA, Mastercard or check. Notwithstanding the foregoing, where customer is located outside of the U.S. or a U.S. Territory, payment for all Products must be made by: (i) international money order; (ii) check written in U.S. funds when the issuing bank maintains a U.S. branch or (iii) wire transfer.
- 1.8. **Failure to Pay; Rescheduling Charges; Billing Dispute.** In the event customer fails to make any payment to Company when due and/or has breached any license or similar agreement with Company, customer's account(s) with Company shall become immediately due and payable without notice or demand. Company reserves the right to charge a 1.5% service fee per month (or the highest rate permitted by law) on accounts thirty (30) calendar days or more past due. Any discounts, rebates, administrative fees, credits or other fees due or owed to customer will be applied against delinquent balances before payment or reimbursement is made. Company may refuse to sell and/or withhold further shipment until all overdue balances are made current. Customer shall be liable for and shall reimburse Company for all costs and expenses it may incur in connection with collection of any amounts owed to Company or enforcement of its rights, including without limitation, reasonable attorneys' fees and expenses, court costs and collection agency fees. In addition, if customer orders professional development and/or training services, then customer shall be liable for and shall reimburse Company for all costs and expenses that Company may incur as a result of customer rescheduling such services, including, without limitation, travel arrangement cancellation and change fees and non-refundable fees paid to Company's service providers in anticipation of providing such services to customer on the originally scheduled date. Company shall invoice customer for any such additional charges. In the event customer disputes the accuracy of an invoice, customer shall, as soon as practicable, but in no event more than twenty (20) calendar days after receipt of invoice, notify Company of the nature and extent of the problem. Customer shall include with such notice all details reasonably necessary to substantiate its claim, which details shall be reasonably capable of being verified by Company. If the problem remains unresolved on the day that the relevant invoice is due, customer shall pay the invoice "under protest," and Company shall set aside such funds until the matter is resolved or until the parties determine that no such resolution is possible.

2. RETURNS, WARRANTIES, LIMITATION OF LIABILITY

- 2.1. **Returns.**
 - 2.1.1. **Hardware Products, Software and Digital Content:** Unless otherwise agreed by Company in writing, all sales of services and hardware, software and digital content Products are final and may not be returned or canceled. If any of these Company-branded Products are deemed by Company in its sole discretion to be defective, Company will repair or exchange them in accordance with the applicable Company warranty and/or Software Upgrade Plan.
 - 2.1.2. **Audio-Visual Materials:** Audio-Visual Materials may be returned only if the Audio-Visual Materials are damaged or defective, or if the Audio-Visual Materials were sent in error by Company. The determination of whether Audio-Visual Materials are damaged or defective, or were sent in error by Company, is entirely within the discretion of Company. To return Audio-Visual Materials that Company has determined to be sent in error by Company or Audio-Visual Materials that Company has determined are damaged or defective, customer must contact the Customer Service Department at 1-800-843-3620 (U.S. & Canada) or at 610-645-4000 (worldwide) for a return authorization number within sixty (60) calendar days of the invoice date. In the event Company determines that the Audio-Visual Materials are damaged, defective or were sent in error, Company will pay for return shipping to Company. In such an event, Company will supply customer with a prepaid shipping return label, which customer shall affix to the return package prior to customer shipping package to Company. Customer should return all Audio-Visual Materials, with the return authorization number written or placed on the outside of the shipping package, to the Schlessinger Media Distribution Center at 1100 East Hector Street, Building D, Conshohocken, PA 19428 by UPS or another form of traceable insured mail. Unauthorized returns will be sent back to the customer.
- 2.2. **Limited Warranty.** Company warrants each specific Company-branded Product only pursuant to the terms of the express, written, limited warranty accompanying each Product (collectively and individually, "Product Warranty" or "Product Warranties"), which may be available on-line and/or shipped with the Product. Company will neither retain nor assume any responsibility for the Products apart from the Product Warranties. THE FOREGOING LIMITED PRODUCT WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. In particular, Company does not represent or warrant that any Products purchased will meet customer's requirements or that the operation of them will be uninterrupted or error-free. Except for the limited Product Warranty, the Products are provided "as is." Customer assumes responsibility for the selection of the Products to achieve intended results, and for the use and results obtained from the Products. As a result, the entire risk as to the quality and performance of the Products is borne by customer. COMPANY MAKES NO WARRANTIES FOR THE NON-COMPANY BRANDED PRODUCTS, SERVICES, MAINTENANCE OR SUPPORT. SUCH PRODUCTS ARE PROVIDED BY COMPANY "AS IS" AND ANY THIRD-PARTY WARRANTIES, SERVICES, MAINTENANCE AND SUPPORT ARE PROVIDED BY THE ORIGINAL MANUFACTURER OR SUPPLIER, NOT BY COMPANY. If customer purchases third-party-branded products, services, maintenance, or support, additional third-party terms and conditions may apply.
- 2.3. **Limitation of Liability.** THE REMEDIES PROVIDED FOR IN THE LIMITED WARRANTY ARE THE EXCLUSIVE AND SOLE REMEDIES AVAILABLE TO THE CUSTOMER CONCERNING THE PRODUCTS. COMPANY AND ALL AFFILIATES, SUBSIDIARIES, DIVISIONS, SUCCESSORS, ASSIGNS, AND/OR ANY OF ITS SUPPLIERS OR MANUFACTURERS, SHALL NOT BE LIABLE, REGARDLESS OF CIRCUMSTANCES AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSSES OR DAMAGES OF ANY NATURE OR KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF OR RESULTING FROM USE OF THE PRODUCTS, LOST OR CORRUPTED CUSTOMER OR THIRD PARTY DATA, LOST PROFITS OR LOST GOODWILL, FAILURE TO REALIZE SAVINGS, OR FOR ANY CLAIM OR DEMAND AGAINST THE CUSTOMER BY ANYONE, EVEN IF SUCH CUSTOMER OR PARTY HAS BEEN ADVISED (OR KNOWS OF OR SHOULD HAVE KNOWN OF) THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. SAFARI MONTAGE'S CUMULATIVE LIABILITY FOR LICENSEE'S DIRECT DAMAGES ARISING OUT OF OR RESULTING IN ANY MANNER WHATSOEVER FROM ANY PRODUCT, LICENSE OR SERVICE DELIVERED HEREUNDER, INCLUDING, WITHOUT LIMITATION ANY UNCURED MATERIAL DEFAULT, BREACH, OR FAILURE ON THE PART OF SAFARI MONTAGE, SHALL IN NO EVENT EXCEED THE FEES PAID BY THE CUSTOMER FOR SUCH PRODUCT(S), LICENSE(S) OR SERVICE(S).
- 2.4. **Indemnification.** Company shall not be responsible for any losses or damages sustained by customer or any other person as a result of misapplication or misuse of the Products, including without limitation any improper installation. Customer shall defend, indemnify and hold harmless Company and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury or death of persons or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with customer's installation, use, repair of the Products or in connection with information supplied by customer. The obligations, indemnities and covenants contained in this paragraph shall survive the termination of these terms and conditions and/or the underlying transaction.

3. SCOPE OF TERMS AND CONDITIONS, GENERAL TERMS

- 3.1. **Entire Agreement, Other Documents, Non-Waiver.** These terms and conditions constitute the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contain all the terms and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. These terms and conditions may NOT be altered, supplemented, or amended by the use of any other document(s) unless otherwise agreed to in a written agreement signed by both customer and Company. Accordingly, all differing terms and conditions contained in any prior oral or written communication, negotiation or representation, such as a proposal, are hereby rejected and not binding on Company. Any additional and/or conflicting terms, conditions and/or warranties set forth in any purchase order or any other document issued by customer shall not apply. Company's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Company's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future.
- 3.2. **Force Majeure, Severability.** Neither party shall be liable to the other if delayed or prevented from performance by causes beyond its reasonable control that would make performance commercially impracticable. In the event of a force majeure event, the affected party shall be entitled to a reasonable extension of time for the performance of its obligations hereunder. In the event that a court of competent jurisdiction finds any specific term or condition herein to be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions contained shall not, in any way, be affected or impaired thereby.
- 3.3. **Compliance with Applicable Laws.** Customer agrees to comply with all applicable laws and regulations of the various states and of the United States.
- 3.4. **Applicable Taxes.** Customer is responsible for all taxes, duties and other governmental charges in connection with the sale, purchase, delivery and use of any Product. For sales delivered to states where Company collects tax, Company will add the amount of any applicable sales or other taxes to the amount due under its invoice and, upon collection, remit such tax to the appropriate taxing authority; otherwise, Customer shall report and pay applicable taxes itself. In the event Customer claims an exemption from tax that Company would otherwise be required to collect, Customer shall, upon request, provide Company with a copy of its valid tax exemption certificate.
- 3.5. **Not for Resale or Export.** Customer agrees and represents that it is buying the Products for its own internal use only, and not for resale or export. Please contact Company for Company's separate terms and conditions governing resale of Products.
- 3.6. **Governing Law and Jurisdiction.** Customer agrees that any claim, dispute or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including statutory, common law and equitable claims) between customer and Company arising from or relating to these terms and conditions, any sales made hereunder, Company's advertising, or any related purchase, shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws rules. Subject to Company's right to elect binding arbitration under paragraph 3.7, below, Customer consents to the exclusive jurisdiction of the state courts of the Commonwealth of Pennsylvania, Montgomery County and the United States District Court for the Eastern District of Pennsylvania in all such disputes.
- 3.7. **Arbitration.** Customer agrees that Company may, at its sole discretion, elect to submit any controversy or claim arising out of or relating to these terms and conditions, or the breach thereof, to be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any such arbitration shall be held in Montgomery County or Philadelphia, Pennsylvania.

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