

OCLC CatExpress® Service Terms and Conditions

The terms and conditions set forth herein ("Agreement") describe the respective responsibilities and duties of OCLC Online Computer Library Center, Incorporated ("OCLC"), the OCLC-affiliated regional network, if any ("Network") identified in the OCLC CatExpress Service order form ("Order Form") and the institution identified in the Order Form ("Institution") with respect to Institution's order ("Order") of the OCLC CatExpress Service.

1. OCLC CatExpress Service.

A. The "OCLC CatExpress Service" means a fixed price cataloging option that permits each Institution ordering the OCLC CatExpress Service to obtain access to OCLC's cataloging system, WorldCat (the OCLC Online Union Catalog), for the purpose of performing web-based copy cataloging of a pre-established number of titles, as specified in the Order, setting bibliographic holdings, and downloading the cataloged records from the OCLC CatExpress Service web site.

2. Terms for OCLC CatExpress Service.

A. General.

Institution's access to and use of OCLC's online cataloging system and the OCLC CatExpress Service shall be governed by this Agreement.

B. Annual Fee and Term.

The OCLC CatExpress Service permits the Institution to place an Order for up to a specified limited number ("Limit") of bibliographic records ("Records") that Institution may obtain through copy cataloging via the OCLC CatExpress Service during a one (1) year period (the "Term").

C. Limit and Records.

The Limit shall expire upon the expiration of the Term, regardless of whether Institution has reached the Limit for which it has paid the corresponding Annual Fee. No refunds will be issued for the unused portion of the Limit. Institution may not exceed the Limit during the applicable Term. Cataloging in excess of the Limit during the Term by more than an incidental number of Records shall constitute a breach of this Agreement, and Institution may be charged on a per-Record basis for any Records obtained in excess of the Limit, or, at OCLC's sole option, OCLC and Network may require that Institution's renewal Order of the OCLC CatExpress Service be at a Limit (and Annual Fee) commensurate with the actual number of Records cataloged and/or obtained by Institution during the previous Term under the OCLC CatExpress Service. OCLC reserves the right to suspend availability of the OCLC CatExpress Service in the event Institution exceeds the Limit by more than an incidental number of Records.

Institution is responsible for obtaining Internet access and a Web browser (or similar access software) sufficient to enable access to the OCLC CatExpress Service. Institution is solely responsible for all security for its authorization numbers and passwords for the OCLC CatExpress Service, and all use (including unauthorized use) of the OCLC CatExpress Service initiated by such authorization and password. Institution shall promptly notify OCLC in writing if its password and/or authorization number is lost or stolen. As its sole obligation with respect thereto, OCLC shall exert reasonable efforts to maintain the confidentiality of Institution's password and authorization number in OCLC's possession and shall terminate any lost or stolen password and authorization number and reissue a new password and authorization number upon receipt of Institution's notice, provided that Institution is in compliance with this Agreement.

Institution shall not use the authorization number and password outside the territorial limits of the country indicated by Institution's address on the front of this form. Institution shall be the exporter and importer of record of products and services delivered to it by OCLC outside the U.S., and shall pay and/or comply with all applicable export and import laws, customs, regulations, tariffs, duties and fees, and procurement, data and technology transfer laws. To the extent permitted by applicable law, Institution shall be responsible for all costs and damages arising from any failure of Institution to meet its obligations under this Section. OCLC's and Network's obligations hereunder are contingent upon Institution obtaining the necessary export licenses from federal agencies of the U.S.

D. Payment.

In consideration of Institution's use of WorldCat, the OCLC online cataloging system, and Records obtained under the OCLC CatExpress Service, Institution agrees to pay Network (or OCLC directly, if Institution does not have an OCLC-affiliated regional Network) the then-current Annual Fee (as reflected in OCLC's then-current price list) that corresponds to Institution's stated Limit, payable for each Term in either a single upfront payment or twelve (12) equal monthly payments, within thirty (30) days following receipt of Network's (or OCLC's) invoice. Charges are exclusive of taxes and shall be paid in U.S. dollars. Accounts not paid within thirty (30) days after the date of invoice shall be deemed delinquent and are subject thereafter to interest charges of twelve percent (12%) per annum on the unpaid balance. OCLC reserves the right to suspend availability of the OCLC CatExpress Service to a delinquent account.

E. Grant of License.

Institution acknowledges that use and transfer of Records and other information from WorldCat received through the OCLC CatExpress Service are subject to the "WorldCat Rights and Responsibilities for the OCLC Cooperative", as modified from time to time as a result of the policy review process described therein (the "Policy"). A copy of the current version of the Policy is available at the following url:

<http://www.oclc.org/worldcat/recorduse/policy/default.htm>

Institution hereby grants to OCLC, its users and designees, the perpetual, non-exclusive, royalty-free, transferable, worldwide right to use (in compilations and otherwise), copy, display, publish, prepare derivative works from and distribute all bibliographic holdings and other information supplied to OCLC by Institution under this Agreement, under any copyright, patent, secrecy or other proprietary right therein owned or controlled by the Institution.

If, during the term hereof, an organization from which OCLC acquires bibliographic records for addition to WorldCat informs OCLC that records it thereafter furnishes to OCLC will be subject to usage or transfer restrictions beyond or in addition to those applicable under this Section, and if OCLC nevertheless elects to accept such records for addition to the OCLC database, it will so notify Institution, with full details, after which, Institution agrees that its rights to access, use and transfer such records will be subject to said usage and transfer restrictions.

The parties' rights and obligations under this Section shall survive the expiration or termination of this Agreement.

3. Miscellaneous.

A. Warranties and Limitation of Liabilities.

Machine-readable copies of bibliographic Records with associated local holdings data, in OCLC MARC format, resulting from the use of the OCLC CatExpress Service under this Agreement, are available from OCLC AS IS and in the format in which they exist in WorldCat.

OCLC EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE WITH RESPECT TO THE OCLC CATEXPRESS SERVICE AND ASSUMES NO OTHER OBLIGATIONS IN ADDITION TO THOSE PROVIDED FOR IN THIS SECTION, 3.A.

OCLC SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES, WHETHER BASED IN TORT, CONTRACT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT OCLC HAD PRIOR NOTICE THEREOF. IN NO EVENT (EVEN IF THE EXCLUSIVITY OR LIMITATION OF LIABILITY PROVIDED FOR IN THIS

SECTION 3.A IS, FOR ANY REASON, HELD UNENFORCEABLE), SHALL OCLC'S OR NETWORK'S LIABILITY EXCEED REIMBURSEMENT OF THE AMOUNT OF ACTUAL PAYMENTS MADE BY THE INSTITUTION TO OCLC OR NETWORK UNDER THIS AGREEMENT.

B. Default.

The following are defined as events of default:

- (i) Failure to pay amounts when due and not reasonably in dispute within ten (10) days after receipt of written notice of nonpayment;
- (ii) Failure to remedy, or to diligently take necessary corrective action to remedy within a reasonable time, any material breach of an obligation under this Agreement within twenty (20) days after receipt of written notice of said breach;
- (iii) If there is a transfer or assignment of the majority interest of a party for the benefit of creditors; if a receiver, trustee in bankruptcy, or similar officer is appointed to take charge of its property; or if a party is adjudicated a bankrupt; and such conditions are not remedied to the reasonable satisfaction of the other party within sixty (60) days after written notice has been given to the defaulting party.

In any event of default, the nondefaulting party shall have the right to terminate or suspend performance under the Agreement without liability therefor.

C. Renewal

No later than ninety (90) days prior to the expiration of the Term or any renewal Term, OCLC and Network may, but shall not be required to, offer Institution the opportunity to renew its Order for an additional Term at then-current pricing, and, if needed, may assist Institution in determining the appropriate Limit for Institution's library operations. Institutions given the opportunity to renew shall have their Orders automatically renewed for an additional Term and shall be invoiced for the corresponding fees unless they give OCLC written notice of their intention not to renew at least thirty (30) days prior to the expiration of the then-current Term.

D. Cancellation

Institution may cancel its Order or renewal Order upon thirty (30) days prior written notice. The following terms shall apply to cancelled Orders:

- i. Institutions who have performed no OCLC CatExpress Service activity during the then-current Term will receive full credit for fees paid for the uncompleted Term less a cancellation handling charge of \$25.00.
- ii. If Institution has performed OCLC CatExpress Service during the then-current Term, Institution may request a credit of its unused fees paid to OCLC. Such credits will be pro-rated based on the amount of activity Institution has performed and reduced by a cancellation handling charge of \$25.00
- iii. Credits issued pursuant to Section 3.D(i) and (ii) above may be redeemed only for the purchase of OCLC products and services and expire two (2) years after the date of issue. Credits may not be redeemed for cash or in any other manner.
- iv. This Section 3.D does not apply to cancellations in the first month of the 13/12 Introductory Pricing Option, if offered to Institution. Instead, such cancellations will result in no invoice being sent to Institution.

4. Special Terms for Group Orders Only.

If Institution is ordering on behalf of itself and other qualifying Institutions, Institution shall be deemed the "Central Member" for purposes of these special terms.

By placing a group order hereunder (and completing the OCLC CatExpress Group Order Form), Central Member orders authorizations and passwords for the OCLC CatExpress Service, in which case Central Member shall be licensed itself to use the OCLC CatExpress Service, subject to the terms set forth in Sections 1.- 4. of this Agreement. Central Member also orders and allocates authorizations and passwords for the OCLC CatExpress Service on behalf of other Institutions listed on the OCLC CatExpress Group Order Form ("Group Members").

Group Member's Agreement. Central Member shall either (a) obtain and submit to OCLC a written order signed by each Group Member, prior to OCLC distributing any authorizations and passwords, on the then-current, OCLC-provided order form which shall govern the Group Member's use of the OCLC CatExpress Service, or (b) if Central Member is indicated to be agent for Group Members on this form, Central Member hereby agrees as agent for each Group Member that each Group Member shall comply with the OCLC CatExpress Service Terms and Conditions. Under subclause (b), Central Member warrants that it is authorized to bind Group Members thereto and shall indemnify OCLC from all loss, expense and damage arising from a breach of such warranty, and Central Member shall provide each Group Member with a copy of this Section and the OCLC CatExpress Service Terms and Conditions prior to OCLC activation of an authorization therefor. Central Member shall ensure that Group Members comply with such Terms and Conditions.

Resale. Central Member is not a buyer of the OCLC CatExpress Service for resale, and shall not charge Group Members for the OCLC CatExpress Service, nor for its services as agent thereof, nor for other services provided by Central Member in connection with the OCLC CatExpress Service.

Direct Contract. Subject to OCLC acceptance, each order for Group Members shall constitute a direct contract between OCLC and the Group Member.

Payment by Central Member. Central Member shall pay for itself and collect from and pay on behalf of each Group Member to OCLC or its designee or, if applicable, shall ensure that Group Member pays to OCLC or its designee directly, all prevailing OCLC charges, in U.S. dollars, including the current charges set forth on this order form. Unless already advanced by Central Member to OCLC for the Group Member, all payments of OCLC charges received by Central Member from Group Members shall be remitted to OCLC by Central Member promptly following receipt, prior to which they shall be segregated and separately earmarked from all of Central Member's own funds and held in trust by Central Member for OCLC. Central Member shall not modify such OCLC charges nor invoice or include any other charges except that Central Member may collect OCLC charges (which are stated in U.S. dollars) from Group Members in their local currency at a commercially reasonable, fixed exchange-rate acceptable to OCLC.

Relationship. The relationship of the parties hereunder is that of independent contractors, and not employee/employer, agent/principal, partners, joint venturers or franchisor/franchisee. Central Member is not authorized to make any representations or contract commitments on behalf of OCLC, nor to sign or negotiate any changes to any OCLC terms. Any modifications proposed by any Group Member to the applicable OCLC terms and conditions shall be submitted in writing to OCLC in advance for OCLC's written prior approval.

Notice. Any notices desired or required to be given by either party pursuant to this agreement shall be in writing and shall be deemed sufficient if delivered by hand or if sent by certified or registered mail, return receipt requested, to the address of the other party set forth below or to such other address as has been furnished by means of a notice given in accordance with this Section or via facsimile with a copy by U.S. mail:

If to OCLC: General Counsel
OCLC Online Computer Library Center, Inc.
6565 Kilgour Place
Dublin Ohio 43017-3395
FAX: 614-764-0740

If to a Central Member, see address on the front of the OCLC CatExpress Group Order Form.

Non-exclusivity. OCLC's retention of Central Member's assistance in making the OCLC CatExpress Service available hereunder shall be on a non-exclusive basis, and nothing herein shall limit OCLC's right to distribute services independent of Central Member, including to Group Members.

Other Terms. OCLC shall have the rights and the benefit of all terms set forth in the OCLC CatExpress Service Terms and Conditions included in this order form, as amended by OCLC from time to time, with respect to this order as a whole and for Central Member and each Group Member individually.

Confidential Terms. Central Member agrees to keep the terms and prices of this order as confidential except as to Group Members, and to impose the same duty upon each Group Member.