

PICK UP IN STORE: READY IN TWO HOURS



NOOK Device Terms of Service

Welcome to the NOOK Store. The terms of service set out below govern your use of the NOOK Store (the “**NOOK Store Terms of Service**”), and this is a legally binding agreement made by and between you and NOOK. Other terms and conditions, policies and guidelines may also apply to you to govern your use of the NOOK Service, depending upon how you use or access the NOOK Service.

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Please note that nothing in the NOOK Store Terms of Service affects your mandatory statutory rights under applicable local laws, to the extent that such rights apply to you and cannot be limited or excluded.

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1. DEFINITIONS

The following definitions are used throughout these NOOK Store Terms of Service:

“**Digital Content**” means digital or electronic content or media which is available to you through the NOOK Store and which may be viewed on the NOOK App and NOOK Devices, including eBooks, eTextbooks, audiobooks, digital magazines, digital newspapers, digital journals and other periodicals, blogs, software applications (including applications developed by NOOK or third parties) and other digital content as determined by us from time to time.

“**NOOK App(s)**” means the NOOK software applications for mobile devices, computers or other electronic devices (including any updates or upgrades) that we make available to you.

“**NOOK Device(s)**” means electronic devices manufactured by or on behalf of NOOK and sold under the NOOK brand.

“**NOOK Library**” means the online digital locker or library hosted in our cloud storage facility where your purchases of Digital Content are stored and which you may access via the NOOK Website, the NOOK Store, NOOK Device and the NOOK App.

“**NOOK Service**” means collectively the NOOK App (and any services made available on or by means of the NOOK App), the NOOK Website, the NOOK Store and NOOK Devices (and any services made available on or by means of NOOK Devices).

“**NOOK Store**” means the store operated by NOOK where you can browse and purchase items and Content.

“**NOOK Store Content**” means the contents of the NOOK Store (including Content).

“**NOOK Website(s)**” means any NOOK website which you access.

2. CREATING AN ACCOUNT

(a) **Creating an Account.** You may visit and browse the NOOK Store without registering or opening a NOOK account with us. However to place orders, purchase and/or download or stream items and content from the NOOK Store, including Digital Content, you will need to first open a NOOK account by registering with us. Depending upon where you are and how you have access to our NOOK Store, you can open a NOOK account either by visiting the NOOK Store via a computer or mobile or other electronic device, or in the setup process for your NOOK Device or directly via certain NOOK Apps. Where available and offered, you may also be able to use your account details that you have registered with www.bn.com.

You agree to provide accurate and complete information when you register with us and you agree to keep that information accurate, up-to-date and complete. Information that you provide to us when registering your account or otherwise that you provide to us will be held and used in accordance with our Privacy Policy.

Once registered, you are responsible for: (i) keeping your account password confidential and secure, (ii) avoiding unauthorized access to your NOOK account, your computer, NOOK Device or any mobile or other electronic device running the NOOK App; and (iii) keeping the e-mail address associated with your NOOK account current (you acknowledge that it is important to keep the e-mail address associated with your NOOK account current because although you may be able to log into your NOOK account using an old e-mail address, you will not receive messages from us about your orders and enquiries or other matters).

You are solely responsible for all activities that occur within or through your NOOK account. You agree to notify us of any actual or anticipated security breach of your account. We will not be held liable for any loss or damage arising from your failure to comply with these obligations.

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3. USE OF NOOK STORE

(a) **How the NOOK Store works.** The NOOK Store permits you to browse and, once you have a NOOK account and through your use of your NOOK Library, purchase items, and in the case of Digital Content, download and store items, for use on supported computers or other electronic devices, NOOK Devices or NOOK Apps. Your NOOK account is designed so that all items purchased and/or downloaded are held in your NOOK Library. We will use reasonable efforts to grant you such access to your NOOK account and NOOK Library. Temporary interruptions to the NOOK Service may occur for technical reasons (including maintenance, repairs, implementation of new services) which we will use our commercially reasonable efforts to limit. The range of items available to you through the NOOK Store will depend upon a number of factors, including where you reside, where you attempt to access the NOOK Store from and the computer, mobile or other electronic device, or NOOK Device or NOOK App that you are using. Not all NOOK Store Content may be available to all users.

Details of how to place orders, make purchases in and otherwise browse and use the NOOK Store can be found in the NOOK Store. This also provides you with details of how to amend and/or cancel your order, return items and, where applicable, receive a refund. Please also see Sections (f) and (g) below.

Please note that parties other than us may provide services and/or sell or rent items on and/or through the NOOK Store. To the maximum extent permitted by applicable local laws, we are not responsible for examining or evaluating, provide no warranties in respect of, and assume no liability for any of the offerings of these third parties on or through the NOOK Store or for their actions. We use commercially reasonable efforts to make you aware when a third party is involved in a transaction, although this may not always be the case. We may share your personal information related to transactions with third parties. You should review the relevant third party’s privacy policy and/or any of their applicable terms of use or sale.

(b) **Prices.** Prices listed or shown on the NOOK Store may differ from the price shown in your shopping basket. It is possible that prices may increase or decrease between the time an item is placed in your shopping basket and the time that the purchase is actually made.

Despite our best efforts, on rare occasions an item may be priced incorrectly on the NOOK Store. If we have made a mistake and the correct price for the item is actually *higher* than the price listed on the NOOK Store at the time of purchase, then we may either (at our sole discretion and to the maximum extent permitted by applicable local law): (i) contact you to see whether you want to buy the product at the higher price; (ii) cancel your order for such item and notify you of the cancellation; or (iii) ship the item to you at the incorrect lower price to your benefit.

Please note that this Section 3(b) above regarding prices applies only to items sold and shipped by us.

(c) **Risk of Loss.** With the exception of Digital Content, the risk of loss and title for all items purchased via the NOOK Store pass to you upon delivery of the item to the carrier.

The risk of loss of title for all items purchased via the NOOK Store pass to you upon delivery of the item to the delivery address specified in your order confirmation.

(d) **Availability.** Wherever possible, we list information regarding availability of items sold through the NOOK Store. Despite our best efforts some products may be shown incorrectly as available on the NOOK Store. We will inform you during the order process if an item you order turns out to be unavailable and you will not be charged or will be refunded for such items.

(e) **Content and Product Descriptions.** All information and descriptions provided about items made available through the NOOK Store are for your information only; information and descriptions may be less detailed and, in certain circumstances, different to information contained in actual item packaging, materials and other descriptions. Please read all packaging, labels, safety warnings, instructions and directions for use prior to using items made available through the NOOK Store. The items made available through the NOOK Store that are not produced by us contain descriptions that are provided directly by the publisher, manufacturer, developer, distributor or seller of such item (as the case may be).

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LOCAL LAW, WE ACCEPT NO RESPONSIBILITY FOR INACCURATE OR INCOMPLETE INFORMATION ABOUT ANY ITEMS DISPLAYED, ADVERTISED, MADE AVAILABLE AND/OR SOLD IN OR THROUGH THE NOOK STORE WHICH HAS BEEN PROVIDED TO US BY A THIRD PARTY. FURTHER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LOCAL LAW, WE DO NOT REPRESENT OR WARRANT THAT THE DESCRIPTIONS OF SUCH ITEMS ARE ACCURATE OR COMPLETE. IF YOU PURCHASE AN ITEM FROM US THAT IS NOT AS DESCRIBED ON THE NOOK STORE, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LOCAL LAW YOUR SOLE AND EXCLUSIVE REMEDY IS TO RETURN SUCH ITEM IN AN UNUSED CONDITION FOR A REFUND OF THE PURCHASE PRICE, SUBJECT TO SECTIONS 3 (F) AND (G) BELOW.

THIS SECTION DOES NOT AFFECT YOUR STATUTORY RIGHTS AS A CONSUMER UNDER APPLICABLE LOCAL LAWS, TO THE EXTENT THAT SUCH RIGHTS APPLY TO YOU AND CANNOT BE EXCLUDED OR LIMITED.

(f) **Returns and Refunds – Physical Items (e.g. devices and accessories).**

Physical goods purchased from the NOOK Store may be returned to us for a full refund within fourteen (14) days of receipt.

Physical items (but excluding NOOK Devices): Items must be returned undamaged in their original packaging, with all components included in the box. The packaging may be opened (unless it is an audiovisual product, sound recording or software) but the packaging and all components must be in re-sellable condition.

Physical goods should be returned to the following address:

Barnes & Noble
Returns Department
1 Barnes & Noble Way
Monroe Township, NJ 08831

Return postage costs are covered by us (via UPS return delivery label) if the return is due to our error or the products are faulty. In all other cases, you are responsible for meeting the return postage costs and insurance as we do not take title to the returned items until they arrive at the returns address. Where you are due a refund, refunds will be made in the original form of payment.

If you prefer, you may bring the item and your packing slip to any Barnes & Noble bookstore within 14 days of receipt. Please call your local store for more details.

If you used PayPal to complete your order for a NOOK Device and want a refund to your PayPal account you must call 1-800-THE-BOOK (843-2665) and get a return authorization number for credit back to your PayPal account.

If you purchased NOOK products from another retailer, your right to return and receive a refund (and procedures for doing so) will be governed by the policies of that retailer. Please check with your retailer for the applicable returns policy and procedure.

NOOK Devices: You must request a Return Material Authorization by contacting customer service at www.nook.com/support. Customer service will provide you with details of the correct return center where you should send the NOOK Device. You are encouraged to de-register your NOOK Device from your NOOK account and remove all personal content.

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(g) Returns and Refunds – Content.

(h) **Notice and Take Down Procedure For Claims of Infringement.** If you believe in good faith that materials contained on the NOOK Store or within the NOOK Store Content, infringe your rights (for example, your copyright), you (or your agent or representative) may send us a notice requesting that the material be removed or access to it blocked. The notice must include the following information (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) identification of the work claimed to have been infringed (or if multiple works are covered by a single notification, a representative list of such works); (iii) identification of the material that is claimed to be infringing or the subject of infringing activity, and information reasonably sufficient to enable us to locate the material on the NOOK Store or within the NOOK Store Content; (iv) your name, address, telephone number and e-mail address; (v) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the rights-holder, its agent or representative, or the law; and (vi) a statement that the information in the notification is accurate, and under penalty of perjury (where applicable in accordance with applicable local laws), that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. If you are seeking to send us such a notice with respect to a non-exclusive right, you must comply with the foregoing sections (i)-(vi), but in addition provide evidence to us on what basis you have the right to allege infringement and make a complaint.

Notices and counter-notices with respect to the NOOK Store should be sent to: IP Agent, Nook Digital, LLC, 122 Fifth Avenue, New York, New York 10011, USA at DMCANOTICE@Barnesandnoble.com. Giving false, misleading or inaccurate information in a notice or counter-notice may result in civil and/or criminal liability. We suggest that you consult your legal advisor before filing a notice or counter-notice.

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NOTWITHSTANDING THE ABOVE, CERTAIN LOCAL LAWS DO NOT ALLOW SUCH EXCLUSIONS OF OR LIMITATIONS OF LIABILITY, IN WHICH CASE NOTHING IN THESE NOOK STORE TERMS OF SERVICE SHALL EXCLUDE OR IN ANY WAY LIMIT OUR OR OUR SUPPLIERS' OR LICENSORS' LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY OUR OR OUR SUPPLIERS' OR LICENSORS' NEGLIGENCE, OR THAT OF OUR SUPPLIERS' OR LICENSORS' EMPLOYEES, AGENTS, REPRESENTATIVES OR SUB-CONTRACTORS (AS APPLICABLE), GROSS NEGLIGENCE, FRAUD OR FRAUDULENT MISREPRESENTATION, WILLFUL DEFAULT OR ANY OTHER LIABILITY TO THE EXTENT THE SAME MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LOCAL LAW.

(d) **NOOK STORE CONTENT DISCLAIMER.** SOME OF THE NOOK STORE CONTENT MADE AVAILABLE TO YOU VIA THE NOOK STORE MAY BE INAPPROPRIATE FOR, OR OFFENSIVE TO, SOME USERS. WE DO NOT EXERCISE ANY EDITORIAL CONTROL OVER THE NOOK STORE CONTENT. WE PROVIDE ONLY THE NOOK SERVICE, WHICH IS INTENDED TO ALLOW YOU ACCESS TO THE NOOK STORE CONTENT. TO THE MAXIMUM EXTENT PERMITTED BY LOCAL LAWS, UNDER NO CIRCUMSTANCE WILL WE BE HELD RESPONSIBLE FOR ANY LOSS, DAMAGE OR HARM CAUSED BY YOUR ACCESS TO, USE OF AND/OR RELIANCE ON THE NOOK STORE CONTENT. YOU MUST DETERMINE WHETHER THE NOOK STORE CONTENT ACCESSED THROUGH THE NOOK SERVICE IS APPROPRIATE, USEFUL, ACCURATE AND COMPLETE. TO THE MAXIMUM EXTENT PERMITTED BY LOCAL LAWS, YOUR ACCESS TO, USE OF AND/OR RELIANCE ON THE NOOK STORE CONTENT AND THE NOOK SERVICE IS SOLELY AT YOUR OWN RISK.

(e) **IMPACT OF LOCAL LAWS.** CERTAIN LOCAL LAWS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF OR LIMITATION OF CERTAIN DAMAGES. AS SUCH, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

(f) **ESSENTIAL PURPOSE.** UNLESS LIMITED OR MODIFIED BY APPLICABLE LOCAL LAWS, THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS APPLY, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

(g) **FORCE MAJEURE.** WE WILL NOT BE LIABLE TO YOU FOR FAILING TO PERFORM OUR OBLIGATIONS UNDER OR ARISING OUT OF THESE NOOK STORE TERMS OF SERVICE OR ANY APPLICABLE LOCAL LAWS OR REGULATIONS, OR LIABLE TO YOU FOR YOUR USE OF OR INABILITY TO USE THE NOOK STORE AND/OR NOOK STORE CONTENT, ANY NOOK ACCOUNT AND/OR ANY NOOK LIBRARY, BECAUSE OF ANY EVENT BEYOND OUR REASONABLE CONTROL, INCLUDING A LABOR DISTURBANCE, AN INTERNET OUTAGE OR INTERRUPTION OF SERVICE, A COMMUNICATIONS OUTAGE, FAILURE BY A SERVICE PROVIDER OR ANY OTHER THIRD PARTY TO PERFORM, ACTS OF WAR OR OTHER ACTION OF MILITARY FORCES, TERRORISM, RIOT, CIVIL COMMOTION, SABOTAGE, VANDALISM, ACCIDENT, FIRE, FLOOD, ACTS OF GOD, STRIKE, LOCK-OUT OR OTHER INDUSTRIAL DISPUTES (WHETHER OR NOT INVOLVING OUR EMPLOYEES OR THOSE OF OUR AFFILIATES, SUPPLIERS OR LICENSORS) OR LEGISLATIVE OR ADMINISTRATIVE INTERFERENCE (INCLUDING THOSE GIVING RISE TO CURRENCY CHANGES OR OTHERWISE AFFECTING OUR ABILITY TO OPERATE OR PROVIDE THE NOOK SERVICE, IN WHOLE OR IN PART).

7. DISPUTE RESOLUTION

Any claim or controversy at law or equity arising from, relating to, or connected with these NOOK Store Terms of Service, the NOOK Store, the NOOK Store Content, any NOOK account and/or any NOOK Library (each a “Claim”) will be resolved through binding arbitration conducted by telephone, online or based solely upon written submissions where no in-person appearance is required. In such cases, the arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules (including the Supplementary Procedures for Consumer-Related Disputes, if applicable), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be New York or, where limited by applicable local law, the country of your domicile. Notwithstanding this Section 7, we may bring a Claim for injunctive or other equitable relief in any court of competent jurisdiction as necessary to enforce our intellectual property rights or those of our affiliates, suppliers, or licensors. Any Claim will be arbitrated or litigated, as the case may be, on an individual basis and shall not be consolidated with any Claim of any other party whether through class action proceedings, class arbitration proceedings or otherwise. **EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THESE NOOK STORE TERMS OF SERVICE. FURTHER, EACH PARTY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF EITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.** Each of the parties acknowledges that this Section 7 is a material inducement for the other party to enter into these NOOK Store Terms of Service. You acknowledge and agree that, regardless of any statute or law to the contrary, any Claim or cause of action you may have arising out of, relating to, or in connection with these NOOK Store Terms of Service must be filed within one (1) calendar year after such Claim or cause of action arises, or forever be barred.

For purposes of any Claim that is not subject to the arbitration procedures in this Section 7, we both agree to the governing law and jurisdiction as set out in Section 8(i) below.

8. GENERAL

(a) **Interpretation.** Headings used in these NOOK Store Terms of Service are for reference only and shall not affect the meaning of any terms. “Including” means “including, without limitation”. The singular includes the plural and vice versa. These NOOK Store Terms of Service are binding upon each party and its successors and permitted assigns.

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- (d) **Our Affiliates, Suppliers and Licensors.** Our affiliates, suppliers and licensors are intended third-party beneficiaries of these NOOK Store Terms of Service.
- (e) **No Waiver.** Our failure or delay to exercise or enforce any right, remedy or provision of these NOOK Store Terms of Service or by law will not operate as a waiver of such right, remedy or provision.
- (f) **Notices.** Where we need to send you notices under these NOOK Store Terms of Service or in connection with your use of the NOOK Store (and any NOOK Store Content, any NOOK account and/or any NOOK Library, and any Digital Content), you hereby consent to receive electronic notices from us, whether addressed to the email address associated with your NOOK account or another email address that you provide to us. To the maximum extent permitted by applicable local law, you acknowledge and agree that any communication via email or by postings on the NOOK Store satisfies any legal requirement that such communications be made in writing.
- (g) **Changes to NOOK Store and Amendments to these NOOK Store Terms of Service.** To the maximum extent permitted by applicable local law, we may, in our sole discretion, change, modify, suspend, make improvements to or discontinue any aspect of the NOOK Store (and any NOOK Store Content, any NOOK account and/or any NOOK Library, and any Digital Content), temporarily or permanently, in whole or in part, at any time with or without notice to you, and we will not be liable for doing so. We reserve the right from time to time to modify these NOOK Store Terms of Service in our sole discretion. You should periodically review these NOOK Store Terms of Service so that you are aware of the terms and conditions that apply to your use of the NOOK Store (and any NOOK Store Content, any NOOK account and/or any NOOK Library, and any Digital Content). Your use of the NOOK Store (and any NOOK Store Content, any NOOK account and/or any NOOK Library, and any Digital Content) after any modification constitutes your acceptance of the most recent version of these NOOK Store Terms of Service as modified.
- (h) **Assignment.** These NOOK Store Terms of Service and all of your rights and obligations under it are not assignable or transferable by you without our prior written consent. We may freely assign or transfer this Agreement or any of our rights and obligations under it.

(i) **Governing Law; Jurisdiction**

To the maximum extent permitted by local laws, the laws of the State of New York, without regard to principles of conflict of laws, will govern these NOOK Store Terms of Service and any dispute or claim of any sort that might arise between you and NOOK.

Subject to Section 7 (Dispute Resolution) above and applicable local laws, we both agree that the federal and state courts of New York County, New York shall have the exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these NOOK Store Terms of Service or their subject matter.

- (j) **Contact Information.** For help with the NOOK Store (and any NOOK Store Content, any NOOK account and/or any NOOK Library) or if you have any questions regarding these NOOK Store Terms of Service, please contact customer service at www.nook.com/support.

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