

Digital National Security Archive / DNSA

Before you use ProQuest Information and Learning Company's electronic products, whether marketed under the ProQuest, Chadwyck-Healey, bigchalk, Micromedia, Softline, Heritage Quest, UMI or other proprietary brands, you need to understand and agree to this Electronic Products License Agreement that governs your use of it. After reading the Agreement you must accept it by signing your name. If you have questions, please call ProQuest Information and Learning at 1-800-521-0600, extension 2971. Please retain a copy of the Agreement and keep it in your files.

I agree to be bound by the following Terms and Conditions.

CUSTOM TERMS AND CONDITIONS

If you are the representative of your firm, institution, or organization, all references to "you" in this Agreement refer to the entity that you represent. By accessing or using the product(s) you agree that you and your Authorized Users are bound by these terms and conditions.

1) License:

a) Subject to the terms of this Agreement, ProQuest Information and Learning Company ("ProQuest") hereby grants you a non-exclusive, non-transferable license to have access to and use the on-line, FTP electronic feed or CDROM products provided by ProQuest to you as listed in the attached Fee Schedule, attached invoice or accepted purchase order (the "Products"). You do not acquire any ownership interest or rights in the Products and associated materials and all such rights and interests remain in ProQuest and its licensors. This License is granted to you at your principal location for the type(s) of access (whether remote or on-site only), number of simultaneous users and the network configuration specified on the Fee Schedule; additional authorized sites or locations must be listed on the Additional Sites/Member Libraries Schedule.

b) You will use the Products solely for your own personal or internal use. You will not publish, broadcast or sell any materials retrieved through the Products or use the materials in any manner that will infringe the copyright or other proprietary right of ProQuest or its licensors. You may not use the Products to execute denial of service attacks nor may you perform automated searches against ProQuest's systems to the extent such searches unduly burden ProQuest's systems (including, but not limited to automated "bots" or link checkers). You may print and make copies of materials retrieved through the Products only as permitted in Section 1 (d) of this Agreement. You represent and warrant to ProQuest that you will not use the Products or any material retrieved from the Products to create products or perform services which compete or interfere with the publications and services of ProQuest or its licensors.

c) Notwithstanding the previous paragraph, if you represent a public library, educational institution, governmental agency or non-profit institution allowing public access to data and information, then, subject to any special restrictions of the copyright owner, you may provide public access to and retrieval of data and information through the Products by or for walk-in public users while on-site. You will limit such use to the customary services provided to patrons and you will not re-distribute the materials retrieved from the Products or provide access to the Products to other libraries or third parties either directly or indirectly, unless specifically authorized by ProQuest.

d) You may create printouts of materials retrieved through the Products via on-line printing, off-line printing, facsimile, or electronic mail. All reproduction and distribution of such printouts, and all downloading and electronic storage of materials retrieved through the Products shall be for your own internal or personal use. Downloading of all or parts of the Products in a systematic or regular manner so as to create a collection of materials comprising all or part of the Products is strictly prohibited whether or not such collection is in electronic or print form. Notwithstanding the above restrictions, this paragraph shall not restrict your use of the materials under the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States, England, or German Copyright Law respectively.

e) Individual content providers or licensors may have conditions of use applicable solely to their content. Such conditions of use shall be displayed on the computer screen displays associated with such content and shall not materially alter your use of the Products.

f) If your subscription allows you to provide remote access to the Products, you will limit access to the Products to Authorized Users (defined below) through the use of user identification numbers and passwords, IP address verification or other secure method of user verification. You will immediately notify ProQuest if you believe one or more of your secure access method(s) is being misused. If you authorize fee-per-article access to materials outside your subscription bundle, you are responsible for all charges incurred by users accessing the on-line products through your designated secure access method(s). The term "Authorized User" means: (1) For public libraries: library staff, individual residents of a reasonably defined geographic area in addition to walk-in patrons while on-site; (2) For schools and academic institutions: currently enrolled students, faculty and staff in addition to walk-in patrons and visiting scholars while on-site; and (3) For other types of organizations: employees, independent contractors and other temporary workers while performing duties within the scope of their employment or assignment.

2) **Privacy.** To the extent there are any privacy or other laws and regulations restricting the collection, use and distribution of personally identifiable information, ProQuest makes no representation as to whether any such laws and regulations may require you to obtain consent from any Authorized User (or the parent or guardian of such user) in your administration of Authorized Users access to the Products and/or services licensed hereunder. The Products and services provided by ProQuest typically do not require the entering or capture of personally identifiable information by or for the use of ProQuest.

3) **Fees and Payments.** You will pay the fees for the Products as shown on the applicable Fee Schedule, attached invoice, or accepted purchase order. If you are obtaining access to Products on a fee-per-article basis, ProQuest may update and supply revised per-article fees to you from time to time. You will pay the fees for the Products within thirty (30) days of your receipt of the ProQuest invoice.

4) **Term and Termination.**

a) For subscription based Products, this Agreement shall continue until the Expiration Date listed on the Fee Schedule, an attached invoice or an accepted purchase order to this Agreement or, if the subscription is renewed, until the new Expiration Date. In the case of Products for which a one-time license fee is paid for continual or perpetual access to the materials, the license shall terminate only upon your breach of this Agreement. For fee-per-article or other transactional based access, this Agreement will continue until terminated by either party upon at least ten (10) days prior notice to the other. ProQuest may suspend delivery of Products to you if you fail to comply with your obligations under this Agreement and ProQuest can pursue any other legal remedy available to it.

b) Except for ProQuest® Image Databases (defined below), you may retain the most recent version of the CD-ROMs or FTP electronic feeds supplied to you during your subscription term. You shall destroy all superseded versions of the CD-ROM or FTP electronic feeds. All use of the CD-ROMs and FTP electronic feeds after subscription expiration is subject to the license granted under this Agreement. In the case of CD-ROM or FTP electronic feeds for which a one-time license fee is paid for continual or perpetual access to the materials, you may retain the CDROM or FTP electronic feed unless your license is terminated due to your breach of this Agreement. If you breach any term of this Agreement, ProQuest may, in addition to its other legal rights and remedies, terminate the license granted and upon written notice of such termination you shall certify the destruction of all copies of the Product(s) in your possession, including the CD-ROMs or FTP electronic feeds as well as any downloaded copies of the licensed materials or software.

5) **ProQuest® Image Databases.** (applies only if you are subscribing to a ProQuest® Image Database) "ProQuest® Image Databases" means databases marketed under the ProQuest® brand and provided in tangible medium such as CD-ROM or FTP electronic feed medium, that contain electronically scanned facsimile reproductions of the materials that are in addition to the abstract, index and/or full-text of the materials contained in the database. For CD-ROM Image Databases marketed under the ProQuest® brand, you will download the usage information to the tracking diskette and return the diskette to ProQuest as requested. Upon expiration or termination of this Agreement, you will return or destroy any ProQuest® Image Databases according to the instructions provided by ProQuest. You will certify to ProQuest the return or destruction of ProQuest® Image Databases if requested. If you want to continue to use the ProQuest® Image Databases after expiration of this Agreement, you will have to enter into a separate agreement with ProQuest.

6) **Linking.** Subject to Publisher Restrictions, you may link to search results or materials contained in the Products licensed to you. The security embedded in these links is your responsibility and only on-site users and/or Authorized Users are permitted access to the Products or the materials contained therein consistent with Sections 1(b) and 1(f) of this agreement. With respect to any original materials and third party materials that may be presented in conjunction with links into the Products, you represent that you have all rights necessary to use these third party materials.

7) **Proprietary Rights.** All intellectual property rights, including without limitation, trade secrets, copyrights and patent rights to any software, materials, databases or hardware supplied to you by ProQuest will remain the sole property of ProQuest or its licensors, and no title or license right is granted to you except as expressly set forth in this Agreement.

8) **Additional Materials.** From time to time during the term of this Agreement, ProQuest may add, delete or modify information, databases, materials, capabilities or services to the Products with or without notice to you. ProQuest will announce substantial changes to the materials available on the on-line systems on its electronic mailing list service. All such information, databases, materials, capabilities and services shall be subject to the terms and conditions of this Agreement at the time they are added to the Products and shall not materially alter your use of the Products.

9) **Hardware and Software.**

a) ProQuest may supply software from time to time for use in connection with the Products. ProQuest may designate that certain hardware and software are capable of operating compatibly with the Products, but such designation means only that the hardware or software appears to meet the necessary requirements of the Products. PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE PRODUCTS AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE PRODUCTS.

b) You are responsible for local telecommunication connections if they are needed and the charges therefor.

10) **Limited Warranty and Disclaimer of Warranty.** ProQuest warrants that it has all rights necessary to enter into this Agreement and to provide the Products to you.

EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE PRODUCTS AND ALL EQUIPMENT AND SOFTWARE PROVIDED BY PROQUEST TO YOU ARE PROVIDED "AS IS" AND "AS AVAILABLE." THE WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NEITHER PROQUEST NOR ANY PROVIDER OF INFORMATION OR SOFTWARE IN THE PRODUCTS WARRANTS THE USE OF THE PRODUCTS OR THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKES ANY WARRANTY AS TO THE AVAILABILITY OF THE PRODUCTS, THE ACCURACY, TIMELINESS OR COMPLETENESS OF THE INFORMATION OR THE RESULTS OF LICENSEE'S USE OF THE PRODUCTS, THE SOFTWARE OR THE INFORMATION, EVEN IF ASSISTED BY PROQUEST.

11) **Limitation of Liability.** THE MAXIMUM LIABILITY OF PROQUEST AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY PROQUEST FROM YOU HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL PROQUEST OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE PRODUCTS OR PROQUEST'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF WHETHER PROQUEST OR ITS LICENSORS ARE NEGLIGENT.

12) **Miscellaneous.**

a) **Assignment.** You may not assign this Agreement or any right granted hereunder without the prior written consent of ProQuest, which consent shall not unreasonably be withheld.

- b) **Taxes.** You are responsible for any sales, use, VAT, personal property or other local taxes (except those based on ProQuest's income) or import duties imposed on the Products.
- c) **Waiver.** Failure of either party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce any such or other provisions of this Agreement.
- d) **Force Majeure.** Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government Restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- e) **Interruption of On-Line Products.** Neither ProQuest nor its licensors shall be liable or deemed in default of this Agreement for any failure or delay or interruption in the on-line Products or any failure of any equipment or telecommunications resulting from any cause or circumstance beyond the reasonable control of ProQuest.
- f) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all previous and contemporaneous understandings or agreements between the parties with respect to the same subject matter. The terms of your Purchase Orders, if any, are for your convenience and do not supersede any term or condition of this Agreement.
- g) **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- h) **Governing Law.** The Agreement shall be construed according to the laws of Germany and shall not be subject to or governed by The United Nations Convention on Contracts for the International Sale of Goods.
- i) **Effective Date.** This Agreement shall be effective on the Subscription Start Date listed on the Fee Schedule or, for on-line Products, as of the first date on which the Products are provided to you.

04/01/03 /jcd

Additional Terms

The following terms are for your clarification and are in addition to the ProQuest Terms and Conditions above.

1. The eligible user under the terms will be all National and central technical libraries (zentrale Fachbibliotheken), Regional libraries, Universities and (Fach)hochschulen, financed either by public or private funding, Scientific specialist libraries, mainly financed by public funding, Governmental or publicly funded Research Institutions.
2. The license under consideration is for unlimited usage of the product. The Licensee is authorized to make necessary arrangements for long term storage of the product. If the product is accessible exclusively via the licensor's technical equipment, licensor will warrant the long term unrestricted and non-alleviated access.
3. Independent academic users will be extended a license subject to a requirement of residence in Germany.
4. The usage will be restricted to academic purposes and normal library activity at each institution.
5. Access may be through licensor's server.
6. All fees for ongoing access are included in the prices quoted.
7. ProQuest will provide raw tape or CD ROMs as a backup either for archive purposes or local hosting (as defined in Schedule A). Any local hosting will be subject to the above terms and will be at the cost of the licensee. As long as use of the product conforms to the terms set out in this document and any applicable contracts and EPLA's, hosting on a third party platform is permitted.
8. Non institutional usage will be via individual name and password
9. There is no intention implied or stated to provide the products for purposes of commercial use. Copies of the search results are permitted for personal and academic use only.
10. Authentication will be via IP ranges of institutional users
11. The license includes meta data necessary for appropriate use of the products.
12. The license with all its constituent parts and rights is acquired by conclusion of the license by a single payment.

13. Jurisdiction for settling any disputes arising from this Electronic Product License Agreement will be Germany.

14. Usage statistics are available for all of the products (except for locally loaded databases). These can be retrieved by number of sessions and number of searches per month.

15. ProQuest may suspend delivery of Products to Licensee if Licensee fails to comply with Licensee's obligations under Section 1 of ProQuest's Electronic Products License Agreement and ProQuest determines that it would cause irreparable harm to it or its licensors under the specific circumstances. ProQuest acknowledges that Licensee encompasses many Institutions and that in the event that one of these Institutions fails to comply with the obligations or breaches the Electronic Products License Agreement, ProQuest will suspend the delivery or terminate access to the ProQuest Products to that Institution only, provided that ProQuest reserves the right to suspend services more broadly if (in ProQuest's sole discretion) it is necessary under the circumstances. In any event, ProQuest shall work with Licensee in good faith to cure Licensee's breach or suspected breach of Section 1 and, if access was suspended, to restore Licensee's access to the Service as soon as possible. For any other breach of the Agreement, ProQuest shall allow Licensee a cure period of at least thirty (30) days from the time ProQuest notifies Licensee of the suspected breach before suspending Licensee's access to the Services. In addition, ProQuest reserves the right to pursue any other legal remedy available to it.