

## Terms and Conditions of Delivery and Payment of Walter de Gruyter GmbH & Co KG and Dr. Arthur L. Sellier & Co. KG – Walter de Gruyter GmbH & Co. KG

1.1 Our sales and deliveries are made exclusively pursuant to the following General Terms and Conditions of Business, which also apply to all present and future business dealings with the Customer. In addition, the relevant last valid version of the Transport Ordinance relating to the book trade shall apply to business customers; where there are conflicts with the Transport Ordinance the rules in these Delivery and Payment Terms and Conditions shall prevail.

1.2 We do not acknowledge any General Terms and Conditions of Business of the Customer which differ from or supplement these Terms and Conditions of Payment and Delivery unless we have expressly agreed in writing that they shall apply. This applies even if we make deliveries without reservation in the knowledge of differing or supplemental Terms and Conditions of Business of the Customer.

1.3 Our offers are, unless otherwise expressly agreed, non-binding. A contract only arises with our order confirmation, or, if no such order confirmation is dispatched, upon delivery of the goods.

2. Accepting and processing orders, complaints and debtor management shall be handled until further notification by Rhenus Medien Logistik GmbH & Co. KG, Justus-von-Liebig-Str. 1, 86899 Landsberg.

3.1 If the Customer is the consumer he may cancel the contract within two weeks after receipt of the order confirmation or, if one has not been dispatched, after receipt of the goods ordered without stating the grounds therefor; cancellation shall be made in writing (e.g. letter, fax or email) or by returning the goods. In the case of online databases the cancellation time limit shall begin upon receipt of the access data. To meet the cancellation time limit, timely dispatch of the cancellation or the ordered goods shall suffice. The cancellation must be sent in writing to Rhenus Medien Logistik GmbH & Co. KG, Justus-von-Liebig-Str. 1, 86899 Landsberg or by fax to: + 49 (0) 8191-97000-560 or by email to: [degryter@rhenus.de](mailto:degryter@rhenus.de).

3.2 There is no cancellation right for the order of software if the data processing media supplied have been unsealed by the Customer.

3.3 In the event of cancellation the payments or services that have been received by each party must be returned. Where the cancellation right is exercised the Customer is obliged to return the goods. Where the cancellation right is exercised, the costs of returning the goods where the order value is less than €40 shall be borne by the Customer, unless the goods supplied do not correspond to the goods ordered. Where the order value is over €40 the Customer does not have to bear the costs of returning the goods.

3.4 The Customer must pay compensation for the deterioration that has arisen as a result of utilisation of the goods in accordance with the regulations. The Customer may inspect the goods cautiously and carefully. The depreciation which, because of use that goes beyond pure inspection, leads to the goods no longer being able to be sold as “new” must be borne by the Customer.

4.1 The Customer will be supplied depending on delivery capacity. Part deliveries are permitted provided they are reasonable for the Customer. Delivery shall be made at the Customer's expense. Delivery shall be made by Rhenus Medien Logistik GmbH & Co. KG, Landsberg, unless otherwise agreed in the individual case. Delivery deadlines are only binding if they have been agreed with us in writing. Where a work that has been ordered has not yet been published the order shall (where possible) be recorded. In cases where works are already out of stock, the Customer may cancel his order or backorder any reprint or new edition for himself. In any case we shall inform the Customer immediately that the respective work is not available and refund any consideration that he has already paid.

4.2 If the Customer is a business customer risk shall pass to him when the delivery is handed over to the person commissioned to transport it. At the request and expense of the Customer we shall insure deliveries against customary transportation risks. We draw the Customer's attention to the fact that to make any claims against the carrier or its insurer time limits may have to be adhered to. Risk additionally passes to the Customer if the dispatch of the goods, or the delivery or collection thereof is delayed for reasons for which the Customer is responsible or the Customer is in default with acceptance for other reasons.

5. If the Customer is a trader, he is obliged to comply with the statutory and contractual provisions (Sammelrevers) relating to fixed book prices. In particular he is obliged to adhere to the stipulated price for sale to end-customers. In sales between booksellers the purchaser shall be bound in the same way.

6.1 Our prices are deemed to be ex warehouse Rhenus Medien Logistik GmbH & Co. KG, Landsberg, and do not include packaging or shipping. Payments must be made within the payment period indicated on the invoice.

6.2 If the Customer is in default with payment we can demand late interest at 5 per cent above the base rate pursuant to Section 247 German Civil Code (BGB). If the Customer is a business customer late interest is 8% above the base rate. After the second warning notice dunning charges shall be levied at a graduated rate in addition to the invoiced amount and late interest. The right to claim further loss or assert other rights shall remain unaffected. The Customer remains free to prove that no loss at all or only a much smaller loss has arisen.

6.3 The Customer may only offset amounts owed by him with counterclaims which have been determined as non-appealable by a court of law or which are undisputed or acknowledged by us. If the Customer is a business customer he can only assert a right of retention based on counterclaims which are based on the same contractual relationship and are undisputed or have been determined as non-appealable by a court of law or are ready for a decision.

7.1 In the case of material defects we must first be given the opportunity to rectify the situation within a reasonable period. If the Customer is a business customer rectification shall be made at our option by eliminating the defect or by delivering a product which has no defects. Our right to refuse to rectify the situation if the costs are disproportionate (§ 439 (3) BGB) shall remain unaffected.

7.2 If the rectification fails the Customer may, if he chooses, reduce the purchase price or withdraw from the contract.

7.3 Only minor deviations from the agreed quality and material defects which adversely affect the value or suitability of the goods supplied only to a minor extent do not entitle the Customer to withdraw from the contract.

7.4 We must be notified of patent defects within a period of two weeks from receipt of the goods; otherwise there is no entitlement to make a claim based on a defect. Where objections are made, the date, type of delivery, content and number of the delivery must be stated. Timely dispatch shall suffice for compliance with the deadline; the burden of proof here is on the Customer. The rules in Section 377 German Commercial Code (HGB) apply additionally to businessmen.

7.5 If the Customer is a business customer, the period for making the aforementioned claims relating to defects is 12 months from delivery of the goods ordered. The statutory regulations concerning prescription shall apply to consumers.

8.1 Damage claims by the Customer against us, for whatever legal reason, including for breach of duty, an act that is not permitted or default, are excluded unless, a) we, our representatives or our vicarious agents or assistants have acted intentionally or with gross negligence or b) damages can be demanded for loss of life, physical injury, injury to health or damages for breach of key contractual duties (so-called cardinal duties) or c) we are liable pursuant to law on a no-fault basis (e.g. under the Product Liability Act) or d) they are claims under a guarantee. The damages claim for breach of cardinal duties is limited to typical foreseeable loss or damage provided there is no wilful intent or gross negligence or there is liability for loss of life, physical injury or injury to health or there is liability under a guarantee.

8.2 Damages claims shall expire within the statutory time limits with effect from the statutory commencement of the prescriptive period.

9.1 The publishing products supplied (hereinafter referred to as “reserved goods”) shall remain our property until all claims against the Customer to which we are entitled arising from the commercial relationship are met. If the Customer is a business customer, the rules in Clause 9.2 to 9.5 shall also apply.

9.2 The Customer is entitled to resell the reserved goods in the course of ordinary business. He shall assign all accounts receivable against third parties arising from the resale of the reserved goods, including all current account balance claims, to us in full as security.

9.3 The Customer is authorised to collect the assigned claims arising from the resale of the reserved goods. The authorisation to collect may be revoked by us if the Customer does not meet his payment obligations properly.

9.4 Where the realisable value of all security rights to which we are entitled exceeds the amount of all secured claims by more than 10% we shall at the request of the Customer release a corresponding part of the security rights.

9.5 While the retention of title exists the Customer is prohibited from pledging or assigning the reserved goods in security. In the case of attachments, confiscations or other encroachments by third parties the Customer must file an objection referring to our ownership and inform us immediately.

10.1 If the Customer is a trader who is subject to the statutory and contractual rules relating to fixed book prices, he is authorised to return goods subject to the following rules: in the case of returns our consent or the consent of Rhenus Medien Logistik GmbH & Co. KG on our behalf must be obtained first. The purchase dates must be stated with the return. We reserve the right to reject unapproved returns. Returns must be sent carriage paid. The following may not be returned a) titles the fixed store price of which has been suspended for more than 6 weeks by notices in the *Börsenblatt* [online magazine of the German book trade] and b) titles 6 weeks after a new edition has been published and c) goods which have been delivered more than 18 months before the return.

10.2 Approved and undamaged returns are credited in full to the Customer based on the original purchase price. The Customer shall be given a 25% credit on the store price for copies which arrive damaged unless otherwise agreed in the specific case. In the case of damaged copies which in our reasonable judgment cannot be resold, we reserve the right not to give a credit. Each calendar year we accept returns up to a total value corresponding to 5% of the annual turnover of the respective trader. Electronic products can only be returned in the original packaging (sealed).

10.3 Returns must, unless otherwise expressly agreed, be sent to: Rhenus Medien Logistik GmbH & Co. KG, Justus-von-Liebig-Str. 1, 86899 Landsberg.

11.1 The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods shall not apply. If the Customer is a businessman, a legal entity under public law or a public investment fund, the exclusive jurisdiction for all disputes arising from or in connection with these Terms and Conditions of Delivery is Berlin. If claims are assigned to the publishers’ collection agency, Hamburg shall be deemed to be the place of jurisdiction.

11.2 In the event that individual provisions of this Agreement are or become invalid or unenforceable, this shall not affect the validity and enforceability of the other provisions.

**For journal subscriptions (print and online) and online databases the following rules shall apply in addition:**

12.1 The subscription contract for journals shall be entered into for an unlimited period. Journal subscriptions shall be billed in advance for 12 months in each case beginning with the month of the first purchase or for the calendar year, regardless of the frequency

in each case. Each contractual party has the right to terminate the contract as at the end of a calendar year upon giving six weeks' notice.

12.2 For online databases the contract shall run for one year from receipt of the access data by the Customer. It shall be renewed for a further year in each case unless it is terminated by one of the parties on giving notice of six weeks as at the end of the respective contract year.

12.3 Notice of termination may be made in writing or by email. The notice must be sent to the following address: Rhenus Medien Logistik GmbH & Co. KG, Justus-von-Liebig-Str. 1, 86899 Landsberg.

12.4 The right of either contractual party to terminate for good cause shall remain unaffected.

12.5 Trial subscriptions for journals shall be valid for the time stated in each case. Unless the Customer has stated to the Publisher 14 days before the expiry of the trial subscription in writing or by email that he does not intend to continue the contractual relationship, the contract shall be deemed to be renewed as a paid subscription contract. The start date for the regular subscription contract is then the first day after expiry of the trial subscription.

13. For contracts for the online version of a journal or an online database, the Customer's right to cancel pursuant to Clause 3 shall expire early if the Publisher has started to perform his services with the express agreement of the Customer before the end of the cancellation period or the Customer has initiated this himself. This is particularly so if the Customer has with his access data procured access to the online version of a journal or the online database and called up contents.

14.1 To register for the online version of a journal or for an online database the Customer must provide truthful, up to date and complete information. He must keep his user data updated at all times.

14.2 The Customer is obliged to keep his access data secret. In the event of loss of the access data or where there is suspicion of unauthorised use of said access data by third parties, the Customer is obliged to inform the Publisher of this immediately. The Customer shall be liable for any abuse of his access data for which he is responsible. Where the Publisher is not at fault the latter is not liable for loss or damage incurred by the Customer as a result of abuse or loss of his access data (e.g. user identification, password).

14.3 The Customer is solely responsible for linking up to the internet and maintaining said link and for the hardware and software required for communicating with the server of the online version of the journal or the online database as well as for providing any further data communication devices. Details concerning the minimum standards that are necessary or sensible for this shall be provided by the Publisher at the request of the Customer. The Customer shall ensure that the systems used by him are adequately protected against viruses and unauthorised access in accordance with the latest state of technology. The Publisher shall not be liable for virus damage which could have been prevented by corresponding technical measures.

14.4 Where a right of use for multiple user licences is acquired, the Customer shall oblige the other authorised users to adhere to the use provisions of this contract. If he learns of an abuse he shall immediately stop the abuse and inform the Publisher.

15. The Publisher is entitled to adjust the prices for the journal or the online database with effect for the future. The notice to the Customer may be made in writing with the invoice or by email. In the case of price increases the Customer may within two weeks of receipt of the written notice notify the Publisher that he is terminating the contract exceptionally. Termination may be made in writing or by email. The notice of termination shall come into effect as at the date of the announced price increase; until said date the old price shall apply. The right to make routine termination shall remain unaffected.

16.1 The Customer shall receive for the term of the contract the simple, non-transferable right to use the online version of a journal or the online database in accordance with said contract. The number of authorised users is determined by information given by the Customer when he registers. Where a single user licence is acquired, the Customer alone is entitled to use the online version of the journal or the online database. Where a multiple user licence is acquired, the number of persons stated in the order slip is entitled to use the online version of the journal or the online database. The Publisher is entitled to check the number of the persons stated in the order slip and compliance with the use provisions. Upon demand the Customer shall provide the Publisher with a reasonable amount of documents and information necessary for this.

16.2 The Customer may use the online version of the journal or the online database only for his own use; this includes use in the course of his day to day professional activity. The Customer is prohibited from

(a) reproducing the contents publicly or making them accessible to the public and/or from

(b) selling, letting, leasing or lending the contents to third parties or from otherwise using them for commercial or trade purposes and/or from

(c) printing out the contents or transferring them onto permanent data processing media and passing them on to third parties and/or from

(d) using the contents to develop systematic compilations or in a local retrieval system and/or from

(e) translating the contents to other data formats and/or from

(f) processing or adapting the contents and/or from

(g) saving the contents permanently unless this is provided by a function of the online version of the journal or the online database.

The above prohibitions also apply to parts of the contents and to the instigation of corresponding actions by third parties. Any mandatory rights of use of the Customer existing under the statutory provisions shall remain unaffected.

16.3 The Customer's rights of use are subject to the condition that any amounts due are paid.

16.4 The Customer may not remove, alter or suppress any copyright notations, references to identification marks (including trademarks, corporate designations) logos

or other references in the contents which are for identification purposes or which are relevant under copyright law. The same shall apply to other legal remedies in the online version of the journals or the online database.

17.1 The online version of the journal or the online database has an average availability of 95%. Apart from the guaranteed availability some restrictions may occur for instance due to maintenance work.

17.2 The availability of the online version of the journal or the online database applies to the point of delivery in the internet at the Publisher's end. Technical problems which are outside the sphere of influence of the Publisher (such as functional disruptions to the public transmission lines) do not constitute a defect.

17.3 If the Publisher learns of an abuse of the access data of the Customer or if such an abuse is a real concern, the Publisher may block the corresponding access until the abuse is no longer suspected. The same applies where there is knowledge or suspicion of abuse of access data of or by the authorised users in the case of multiple user licences.

18.1 The Customer is aware that an online database may be subject to new technical developments, new scientific findings and new statutory regulations. The Publisher is entitled to alter, swap or limit the contents of the online database; if this results in a major restriction or change in the online database in comparison to the offer made when the contract was concluded, the Customer is entitled to terminate this contract without notice.

18.2 Use of the online database can be subject to the use of cookies for checking the access entitlement of the Customer (trial Customers and subscription Customers) and for the smooth running of the operation. If cookies cannot be used due to settings in the Customer's browser software, registration and use of the online database may not be possible or only possible with significant limitations. The Publisher makes no warranty in this respect.

19. The Publisher has taken the trouble and care that is customary in the industry to compile, process and represent the contents of the online databases in accordance with the current standard of knowledge. Despite careful compilation of the material, preparation, monitoring and correction, errors cannot, however, be completely excluded. Except in the case of wilful intent the Publisher therefore assumes no warranty or liability for loss or damage incurred by the Customer or the other authorised users directly or indirectly in any way from the use of the contents and data from the online database or parts thereof.

#### **The following provisions apply in addition to CD ROMs and DVDs:**

20.1 The Customer shall receive the single, non-transferable right, unlimited in time, to install and use the CD-ROM or DVD ordered on one single user platform. The use of the CD-ROM or DVD is only permitted for the Customer's own private or own professional use. Use of the CD-ROM or DVD by more than one user requires a

separate agreement with the Publisher. After installation of the CD-ROM or DVD on the computer this shall serve as a backup copy. Making further copies is not permitted.

20.2 The Customer may, moreover, only duplicate the CD-ROM or DVD if and insofar as this is necessary for its use in accordance with the regulations. This includes the possibility of looking at the content of the CD-ROM or DVD on the screen including the duplication that is technically associated therewith. In addition, the Customer is not permitted to duplicate the CD-ROM or DVD in whole or in part. In particular it is not permitted to print out the CD-ROM or DVD or a significant amount of the contents thereof and/or pass such printouts on to third parties or place the CD-ROM or DVD or individual contents thereof wholly or partially on the internet or another network or otherwise make them accessible to third parties or the public generally.

21.1 The Customer is not entitled, himself or through third parties, to alter, process, translate or otherwise adapt contents, databases or programs of the CD-ROM or DVD or to decompile said programs or subject them to reverse engineering.

21.2 The CD-ROM or DVD may not be relinquished or passed on in whole or in parts to third parties for use whether with or without payment. The Customer is not entitled to transfer the right of use for the CD-ROM or DVD in whole or in part to third parties unless the transfer is done by handing over the CD-ROM or DVD and handing over or destroying all additional data processing media on which the CD-ROM or DVD is saved, and subject to you surrendering any further use by yourself.

21.3 You are prohibited from removing, altering or suppressing any copyright notations, references to identification marks (in particular trademarks, corporate designations or logos) or other identifying references in or on the WORK. The same applies to all references relevant under copyright law and to other legal reservations.