

General Licensing Conditions for the Walter de Gruyter Online-Platform "Reference Global"

Preamble

Via its Reference Global platform, Walter de Gruyter GmbH & Co. KG, Genthiner Str. 13, 10785 Berlin (hereinafter: WdG) provides on-line access to electronic versions of journals (by year) and books and other electronic databases. These General Licensing Conditions apply to all contractual arrangements regarding Reference Global. They regulate the use of the platform and access to contents for which the Licensee acquires rights of use for one site (a single-site-licence). For special additional agreements (e.g. „multi-site-licence") WdG has to be contacted directly (by e-mail to service@degruyter.com).

1 Scope of Application, Conclusion of Agreement, Right of Withdrawal

1.1

The on-line provision of Reference Global does not in itself constitute an offer of contract. The legal offer comes about when the Licensee places an order. The contract is only concluded when the Licensee is informed that access has been granted (e-mail) or, in the event that the Licensee is first sent our invoice, with the receipt of this invoice.

1.2

WdG does not recognise any of the Licensee's general terms and conditions which deviate from or extend these Licence Conditions unless WdG has agreed in writing that they should apply.

1.3

WdG may on occasion modify these Conditions. The Licensee is informed of such modifications in writing or by e-mail or by the posting of a notice on the platform. The modifications are regarded as accepted if the Licensee or the Approved Users continue to access Reference Global and call down contents. WdG will draw the Licensee's attention to this consequence when giving notification of the modification.

1.4

If the Licensee is a consumer, they may withdraw from the agreement without giving any reasons within two weeks of receiving notification that they have been granted access or, in the event that the Licensee is first sent our invoice, within two weeks of receipt of this invoice; notification of withdrawal is to be given in writing (letter, fax or e-mail). The notice of withdrawal must be despatched within the two weeks 'cooling-off' period. The notice of withdrawal is to be sent by letter to Rhenus Medien Logistik GmbH & Co. KG, Justus-von-Liebig-Str. 1, 86899 Landsberg or by fax to + 49 (0) 8191-97000-594 or by e-mail to degruyter@de.rhenus.com. The cooling-off period terminates earlier if WdG has already started performing their services with the Licensee's express approval or if the Licensee themselves have brought this about. This is particularly the case if the Licensee or an Approved User have used their access data to gain access to Reference Global and call down contents from it.

2 Subject of the Licence

2.1

For the period of the Licence, WdG grants the Licensee the non-exclusive, non-transferable right which may not be sub-let to access the contents paid for via Reference Global in accordance with these Conditions and to use the platform and to allow the Approved Users such access and use. Access and use have to be via an independent network or a virtual network via the Internet which only allows access to the Approved Users who are checked and supervised by the Licensee (secure network).

2.2

Approved Users are

- current members of the Licensee's teaching staff,
- library employees and other persons employed by the Licensee,
- persons currently registered as students at an institution of the Licensee's,
- visitors to the library (Walk-in users).

3. Rights of Use, Approved Access

3.1

The contracting parties agree that the subject of the Licence is copyright-protected in WdG's favour. This applies both to the database and the works in the database and to the copyright-protected works contained therein and to any other protectable elements. The Licensee receives rights of use and access in accordance with these Licensing Conditions for the licensed products; these rights may only be enjoyed for the period of validity of the Licence. For this, use and access are only allowed to the extent expressly permitted by these Conditions.

3.2

Access rights only apply to IP addresses or user names/passwords registered with WdG. Furthermore access rights can be obtained for additional authentication processes (e.g. Shibboleth) agreed upon by WdG with the Licensee.

3.3

Walk-in library users are only granted access to the subject of the Licence via computer work-stations within the Licensee's physical premises. All other Approved Users are allowed to use the subject of the Licence via computer work-stations within the Licensee's physical premises or – if the Licensee allows this provision – through remote access via the Licensee's secure network. Beyond this, the Licensee is not permitted to reproduce the subject of the Licence or to make it available to the public.

3.4

Approved Users are allowed access to the subject of the Licence for their private use or for purposes of research, to view it and search it and to make individual print-outs or electronic copies of individual articles or chapters which do not constitute more than a small proportion of a journal or a book.

3.5

The Licensee may generate temporary local copies of the subject of the Licence which are produced for a limited time as an integral and substantive part of a technological process (caching), the sole purpose of which is to allow Approved Users use in accordance with the contractual conditions and which do not possess any independent economic value.

3.6

The Licensee and the Approved Users may use appropriate parts of the subject of the Licence to produce printed teaching materials for use by the Approved Users within the Licensee's institutions; these materials are not permitted to be used for re-sale or any other commercial purpose.

3.7

The Licensee and the Approved Users are not permitted to use or exploit the subject of the Licence in whole or in part by sale to third parties, rent, lease, loan or any other means for commercial or trade purposes.

3.8

The Licensee is not permitted to be a commercial party to paid documentation services and to make the subject of the Licence available in whole or in part for this purpose. In exception to this, however, the Licensee is allowed to respond to a request by another library to generate a print-out of part of the subject of the Licence (e.g. a journal article or a book-chapter) and to despatch this via non-commercial inter-library loan services. This only applies to paper print-outs; electronic copies may not be made. The use of the „Ariel Interlibrary Loan Software“ for the transmission of a small proportion

of the Licence to a printer/fax of another library is allowed, a transmission to e-mail addresses is not permitted.

3.9

The Licensee and the Approved Users are not allowed to make parts of the subject of the Licence available in other networks outside the Licensee's secure network, for example in the Internet or the World Wide Web.

3.10

The Licensee and the Approved Users are not permitted to deploy robots, spiders, crawlers or other automated download programs or other aids to search, index or download the subject of the Licence continuously and automatically (e.g. systematic download, deployment of retrieval software).

3.11

The Licensee and the Approved Users may not process, operate on or in any other way alter the subject of the Licence unless this is necessary for the subject to be used in accordance with these contractual conditions.

3.12

The contents are only made available via the Reference Global platform. Archiving of the subject of the Licence (in whole or in parts) requires prior written approval from WdG. Any contents thus made available are subject to these present conditions for access via Reference Global.

3.13

Within the scope of the Publisher's current corporate principles, the Licensee is also granted access to the contents of previous volumes of a journal or what is known as a year-book published before the volume currently subscribed and which have never been actively ordered or received. This only applies if these previous volumes are available on Reference Global and only back as far as 1998 as the earliest year of publication. This access is provided on an ex gratia basis. If the current volume is no longer being subscribed to, the access to the contents described in sentence 1 is also terminated. The Licensee's rights of use laid down by legal provisions remain unaffected by the foregoing restrictions (art. 3)

3.14

WdG reserves the right to withdraw individual products or parts of the subject of the Licence if WdG no longer owns the requisite rights or if there is reasonable cause to suspect that individual products or parts of the subject of the Licence offend the rights of third parties or are illegal in any other way – for example are defamatory or obscene.

3.15

Authors' names, copyright notices, references to registered marks (esp. brands and company names), logos, other references serving identification or relevant for copyright purposes, together with liability exclusions, legal reservations etc. may not be removed, altered or suppressed.

3.16

The Licensee must in writing or on-line inform in due form the Approved Users of these Licence Conditions and oblige the Approved Users to observe them. Furthermore the Licensee is required to make all appropriate efforts to ensure that

- only Approved Users are granted access to the subject of the Licence;
- the Approved Users are appropriately informed of the importance of observing the copyright and other rights attached to the subject of the Licence;
- the Conditions of this Licence are adhered to.

4 Availability, Maintenance, Technical Requirements, Security Measures

4.1

WdG grants the Licensee access to the subject of the Licence via the Internet for the agreed duration of the licence. WdG will make appropriate efforts to ensure that its servers maintain sufficient capacity

and bandwidth to guarantee availability for the Licensee and the Approved Users at a level comparable to that of the availability of information services of a comparable type and size via the Internet. WdG's responsibility for providing and transmitting data ends however at the point where WdG's servers are linked to the Internet ("handover point").

4.2

Maintenance and servicing work can lead to temporary restrictions in the availability of the service. WdG will carry out the required work as speedily and smoothly as possible.

4.3

The Licensee bears sole responsibility for their connection to the Internet and the maintenance of such connection and for the requisite hardware and software for communicating with the Reference Global server together with any additional telecommunication equipment. On request, WdG will provide the Licensee with details of the minimum standards required or desirable. The Licensee has to provide adequate state-of-the-art protection from viruses and unauthorised access for their deployed systems.

4.4

When placing an order or registering, the Licensee is obliged to provide truthful, up-to-date and complete details. They have to keep their user data up to date. In addition, the Licensee is obliged to keep access data secret. In the event of loss of the access data or if there are grounds to suspect that third parties have made unauthorised use of these data, the Licensee is obliged to report this to WdG without delay. The Licensee is liable for any misuse of their access data for which they are responsible. Provided no blame is attached to WdG, WdG is not liable for any damage caused to the Licensee by misuse or loss of their access data (especially IP address or user name/password).

4.5

The Licensee is obliged to take all appropriate and suitable technical and legal steps to prevent use in contravention of the agreement or in excess of the rights granted, misuse and other disruptions and to prevent any repetition of such incidents. The Licensee is in addition obliged to inform WdG without delay and in detail of all such incidents and to furnish WdG with all the data and documentation relevant to the analysis and removal of such incidents.

4.6

To establish whether illicit use or misuse has occurred, WdG is entitled to monitor access to the subject of the Licence and use of the platform.

4.7

If WdG receives knowledge of illicit use or misuse of the Licensee's access data, or if there are objective grounds for fearing such an illicit use or misuse, WdG will inform the Licensee without delay and set a time-limit for cessation. On expiry of the time-limit, WdG is entitled to block access (for the Licensee as a whole or for individual IP addresses) until the suspicion of illicit use or misuse has been removed.

4.8

The Licensee is obliged to compensate WdG for all damage caused by illicit or careless use by Authorised Users or by third parties which gain unauthorised access to Reference Global via the Licensee's network and which the Licensee could have prevented by fulfilling their obligations under sect. 4.5.

5 Payment, Price Adjustment

5.1

The rights of use and access are granted on condition that payments due are met.

5.2

WdG is entitled to adjust the prices with future effect for the contents made available via Reference Global. Notification can be made to the Licensee in writing with the invoice or by e-mail. In the event of prices being increased, the Licensee can give WdG extraordinary notice to terminate the agreement

within two weeks of receiving the written notification of the price increase. The notice can be given in writing or by e-mail. The notice takes effect on the date of the price increase announced; the old price applies up to this point. The ordinary right to terminate the agreement remains unaffected by this.

5.3

The Licensee can only set off such counter-claims as have been established by the courts, are uncontested or have been recognised by WdG.

6 Disruption of Service, Guarantee

6.1

Disruptions to the availability of the service do not entitle the Licensee to terminate the agreement or claim compensation for damage or expense caused thereby if the disruptions are of a short temporary nature. Only if the disruptions exceed a tolerable extent to a considerable degree is the Licensee entitled to give extraordinary notice to terminate the agreement under Art. 8.2. – after expiry of a reasonable time-limit for the disruption to be removed set by the Licensee in writing. In this case, Art. 7 applies for possible claims for compensation for damage or the reimbursement of expenses; all further rights are excluded.

6.2

The Licensee is obliged to report any substantive or legal defects to WdG in writing without delay, to give an exact description of any such defect and to provide all information and documentation required to remedy the defect. In the event of such defects, the Licensee must first grant WdG an appropriate time-period for fulfilling their obligations. The Licensee is not entitled to require that unsubstantial substantive or legal defects be remedied.

6.3

The period of limitation for substantive and legal defects – except in the case of intent - is one year from the beginning of the statutory period of limitation. For consumers, the statutory regulations governing limitation apply.

6.4

Representations in marketing materials, service descriptions etc. do not constitute any guarantee. A guarantee is only given after explicit written confirmation by WdG.

7 Liability

7.1

WdG is only liable for compensation – regardless of the legal reason, especially as a result of failure to fulfil its obligations, of actions not permitted, of delay -

- a) to the full extent in cases of intent and gross negligence on the part of WdG, its representatives or agents;
- b) for typical and foreseeable damage in cases of simple negligence, if an essential obligation (known as a cardinal obligation) has been breached;
- c) to the full extent in the case of breach of guarantee.

WdG bears no other liability. Cardinal obligations are all obligations the breach of which endangers performance of the purpose of the agreement, together with all obligations the fulfilment of which allows the contract to be performed and on the fulfilment of which the Licensee can regularly depend. The provisions above do not involve a shift in the burden of proof to the Licensee's disadvantage.

7.2

WdG's liability for personal damage (injury to life, body, health) and its liability under the (German) Product Liability Law remain unaffected.

7.3

To the extent that WdG's liability is excluded or limited, this also applies for the personal liability of WdG's organs, representatives or agents.

7.4

WdG will exercise the normal care and diligence customary for its field of activity to compile, process and present the contents made available via Reference Global in line with the current state of knowledge. Despite due care being exercised in collecting, processing, checking and correcting contents, errors cannot be excluded. As far as is compatible with product liability legislation, in particular with the (German) Product Liability Law, WdG therefore assumes no guarantee or liability for the substantive accuracy or completeness of the contents of Reference Global and for damage incurred by the Licensee or the Authorised Users as a direct or indirect result of using the contents (in whole or in part) – except in the case of intent.

7.5

WdG is not responsible for technical problems (e.g. line disruptions, power cuts and other problems in the Internet and telecommunications infrastructures) or for other circumstances (e.g. war, strike, floods, restrictions imposed by the state) beyond WdG's control.

7.6

Insofar as the Licensee is responsible for defects in the subject of the Licence (e.g. errors in content, sense or typography when sending copies) he releases WdG from all guarantee and compensation claims which third parties – especially users – might bring against WdG.

8 Duration of Licence, Termination, Access after Termination of the Agreement

8.1

The licence agreement is valid for the period of subscription agreed, starting from the Licensee's receipt of the access data. It is renewed for a further year unless either party gives six weeks' notice to terminate the agreement at the end of the relevant subscription period.

8.2

Either party's right to terminate the agreement for important cause remains unaffected. WdG can in particular terminate the agreement if illicit use has been made or if the rights granted by these conditions have been exceeded. Termination for important cause assumes that adequate time has been given in writing for the cause to be remedied without remedy having been effected within that time.

8.3

To be valid, notice of termination of the agreement must be given in the form of a text. The notice of termination is to be sent by letter to Rhenus Medien Logistik GmbH & Co. KG, Justus-von-Liebig-Str. 1, 86899 Landsberg or by fax to + 49 (0) 8191-97000-594 or by e-Mail to degruyter@de.rhenus.com.

8.4

In the event of the agreement being terminated, WdG will at the Licensee's request continue to grant the Licensee access to PDF files of those parts of the subject of the licence which were published during the period of the agreement and which the Licensee subscribed to and paid for. At its own discretion WdG can allow access to the relevant PDF files by either

- permitting a systematic download of the PDF files into an electronic archive of the Licensee's, or
- nominating a third party to grant access as a trusted repository, or
- to provide the Licensee with an individual copy of the PDF files on a data medium (e.g. CD-ROM or DVD).

In such cases, all the Licensee's rights and obligations under these Licence Conditions apply.

9 Miscellaneous Provisions

9.1

WdG processes the Licensee's data electronically. For this, legal data protection regulations will be observed. Regarding personal data, attention is drawn to the Data Protection Statement (<http://www.reference-global.com/page/privacyPolicy>).

9.2

The use of Reference Global can involve the placing of cookies to check that access is authorised and to ensure smooth running of the service. If settings in the browser software used by the Licensee or the Authorised Users do not permit the use of cookies, registration and use of the service may not be possible or may be subjected to severe restrictions. In such cases, WdG gives no guarantee.

9.3

Reference Global contains links to third-party websites. WdG cannot constantly check these sites or influence their contents. WdG does not assume responsibility for these sites or for their technical quality or the quality of their contents.

10 Concluding Conditions

10.1

This Agreement is subject to the law of the Federal Republic of Germany, with the exception of the United Nations Convention on contracts for the International Sale of Goods. The German text of this Agreement shall form the basis for the settlement of any disputes arising from this Agreement.

10.2

If the client is a merchant, a corporate body under public law, constitutes special assets governed by public law or is without domestic legal domicile, the exclusive competent court of jurisdiction for all disputes arising out of or in connection with these licence conditions is Berlin.

10.3

Should individual provisions of these conditions or of the Licence Agreement be or become null or void or if there is an omission in the Agreement, the validity of the remaining provisions remains unaffected. Instead of the null or void provision, that effective provision is regarded as agreed which approximates most closely in actual, legal and economic terms to the purpose of the non-effective provision and of the agreement as a whole. This applies correspondingly in the event of an omission in the agreement.

Version: October 2008