

General Licensing Conditions for Digital Content

1. Licensed Content, Authorized Users

1.1

Duncker & Humblot GmbH (hereinafter: »D&H«) grants the Licensee the non-exclusive, non-transferable right to access the paid for digital content (ebooks and ejournals) via Duncker & Humblot eLibrary (hereinafter: »Online Platform«). The license does not include the right to sub-let. All content is owned by D&H. The access to the Online Platform will be via the internet.

The General Licensing Conditions for Digital Content regulate the access to the content and their use. If different rights of use apply to certain licensed content that vary in the defined period of time, the agreed type of use or the agreed license fee, it will be arranged in a separate license agreement. Use and access will then be permitted as they are defined in the separate license agreement. The rights of use always apply to one site only (»single-site license«). »Multi-site licenses« (licenses for more than one site e.g. in different cities) have to be explicitly agreed upon.

1.2

In case the Licensee is a consumer within the meaning of Section 13 of the German Civil Code (BGB), he may acquire a single-user license. In this case, only the the Licensee is entitled to use the licensed content.

1.3

Authorized users for single-site licenses 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,
- visitors to the library (walk-in users).

1.4

The simultaneous use of the licensed content by authorized users is possible without limitation.

2. Conclusion of Contract, Right of Withdrawal

2.1

The online provision on the Online Platform does not constitute a binding contract offer. The legal offer comes about when an order is placed by the Licensee. The contract is concluded when the Licensee has received the notification of the activation of the Online Platform or after the Licensee has received the invoice.



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2.2

D&H reserves the right to modify the Licensing Conditions at any time. In this case, the Licensee will be informed in writing by post or e-mail. The modified Licensing Conditions will become effective if the Licensee does not object within 7 days.

2.3

If the Licensee is a consumer within the meaning of Section 13 of the German Civil Code (BGB), he may terminate the license agreement in accordance with the statutory provisions (currently within 14 days). The cancellation is to be made in writing to: Duncker & Humblot GmbH, Carl-Heinrich-Becker-Weg 9, 12165 Berlin or via e-mail: info@duncker-humblot.de. The right of withdrawal expires prematurely if the Licensee has already begun to use the content, i.e. with the access to licensed content on the Online Platform.

3. Scope of Services, Rights of Use

Upon activation of access to the Online Platform, the Licensee receives rights of use to the licensed content (ebooks and ejournals).

3.1

The contracting parties agree that the licensed content is copyright-protected by D&H or by a third party. This applies to the Online Platform and the content on the Online Platform as well as to any other elements that are eligible for protection. In particular, it is not permitted to remove, change or suppress author and publisher names, copyright notices, logos, trademarks and other identification features, liability disclaimers or legal reservations listed in the licensed content.

3.2

Access is only granted through IP addresses or IP address ranges registered with D&H. The use through remote access via the VPN (Virtual Private Network) of the Licensee or comparable technologies (i.e. EZProxy) is permitted. In this case, the Licensee has to take appropriate measures to ensure that only the authorized users listed at 1.3 have access to the licensed content.

3.3

Authorized users are granted access to the licensed content via computer workstations within the Licensee's physical premises and the Licensee's secure network. It is not permitted to reproduce the licensed content or make it publicly accessible (e.g. in the internet) beyond the framework of these Licensing Conditions.

3.4

The right of use of the licensed content entitles authorized users

- to read the content on screen;
- to download the content into the memory of the user's device (caching);
- to save the content to an extent corresponding with the user's individual academic work;



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- to make the content publicly accessible for teaching and research purposes within the meaning of Section 60 et seq. of the German Copyright Law (UrhG); this shall happen without prejudice to any obligations to register uses and pay duties to the collecting society »VG Wort« (a body for enforcing performing and artistic rights).

Insofar as this does not contradict the regulatory content of Section 60d of the German Copyright Law (UrhG), the following also applies:

- (a) Repeated and systematic downloading of substantial parts of the licensed content is not permitted. In particular, it is prohibited to create an archive of the platform content that can be accessed outside of the Online Platform.
- (b) The use of robots, spiders, crawlers or other automated download programs for continuous, automated searching, indexing or retrieval of the licensed content is not permitted or requires the explicit consent of D&H in writing.

3.5

Access to the licensed content is provided to the Licensee exclusively via the Online Platform. Archiving of the licensed content by the Licensee (storage of the electronic data on the Licensee's servers in whole or in parts) requires prior written approval from D&H. The Licensing Conditions apply to archived content as well.

3.6

Content, that is available for use but not an explicit part of the licensed content, may be removed from the Online Platform at any time.

3.7

The Licensee will inform the authorized users about these Licensing Conditions.

4. Security Measures, Technical Requirements, Availability

4.1

When placing an order or registering on the Online Platform, the Licensee is obliged to provide truthful, up-to-date and complete details needed for the full execution of these terms. The Licensee has to keep their user details up to date. In addition, the Licensee is obliged to treat their access data confidentially.

4.2

The Licensee will adopt reasonable technical measures to protect the licensed content against unauthorized access by third parties. In the event access data is lost or if there are grounds to suspect that third parties have made unauthorized use of access data or the IP recognition, the Licensee is obliged to report this circumstance to D&H without delay. In case of unauthorized use, abuse or well-founded suspicion of abuse, D&H may suspend access to the licensed content.



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In the event of an abuse, the Licensee has to furnish proof which computer/ user account was involved in the abuse.

4.3

D&H will make appropriate efforts to ensure that its servers maintain sufficient capacity and bandwidth to guarantee availability of the licensed content for the Licensee and the authorized users. D&H's responsibility for providing and transmitting data ends at the point where D&H's servers are linked to the internet (»handover point«).

4.4

The Licensee bears sole responsibility for the technical requirements to use the licensed content within the Licensee's network, especially the connection to the internet, the maintenance of such connection and the required hardware and software (browser/ operating system).

4.5

D&H protects the licensed content appropriately against viruses and hacker attacks – and so does the Licensee with his systems. D&H is not liable for damages caused by viruses that could have been prevented technically.

4.6

In order to ensure a reliable service, occasional maintenance work – in exceptional cases also a server restart – might be necessary. This might lead to a temporary unavailability of the service, which shall be no cause for customer complaints.

4.7

In case of technical innovations or change of technical components of the Online Platform, the Licensee is responsible to adjust his systems to the new conditions. The Licensee will be given sufficient notice of the required adjustments.

5. Long-term archiving

Purchasing from D&H guarantees permanent use of the licensed content. Should the data no longer be available via the Online Platform or should D&H no longer offer the licensed content on the Online Platform, access to the licensed content will be given through an archive.

D&H has commissioned the archive service provider Portico – a service of the non-profit organization ITHAKA, New York, NY, USA – with the long-term archiving of the digital content made available via the Online Platform. Licensees and authorized users can access the D&H content via the Portico archive if the trigger events defined by Portico occur. This access is subject to Portico's terms of use. All digital content provided by D&H via the Online Platform will be delivered regularly to Portico after publication.



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6. Data Protection, Liability

6.1

D&H has the right to collect personalized inventory and usage data, to convert and use it in a machine-readable form. Any personal data will be treated confidentially. This data will only be given to third parties on purpose of encashment and credit assessment.

6.2

The Licensee shall take suitable and reasonable measures to grant the terms and conditions under which access to the licensed content is granted under this agreement and shall make reasonable efforts to provide authorized users with appropriate notice of the terms and conditions of these Licensing Conditions. If any violations of these terms occur, the Licensee and D&H will inform each other and cooperate in eliminating further abuse. The Licensee shall not be liable for violations of these terms by any users, provided that the Licensee did not intentionally assist in or encourage such abusive use or permit such abusive use to continue taking notice thereof.

6.3

D&H agrees to compile, process and present the content made available via the Online Platform with care and diligence within reasonable standards. Despite due care being exercised in checking and correcting content, errors might occur.

D&H is only liable for compensation – regardless of the legal reason including breach of duty, tort and default –

- (a) to the full extent in cases of intent and gross negligence on the part of D&H, 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.

D&H bears no other liability. Cardinal obligations (in terms of this section 6.3) are all obligations the breach of which endanger performance of the purpose of the agreement, together with all obligations the fulfillment of which allows the contract to be performed and on the fulfillment 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.

6.4

D&H shall not be liable for technical problems (e.g. line disruptions, power cuts and other problems in the internet and telecommunications infrastructures) or for problems caused by conditions beyond control, including wars, strikes, floods, or restrictions imposed by the state.

6.5

If the Licensee is not a consumer within the meaning of Section 13 of the German Civil Code (BGB), the period of limitation for substantive and legal defects – except in the case of intent – is one year from the



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beginning of the statutory period of limitation. For consumers, the statutory regulations governing limitation apply.

6.6

No guarantee is given for representations in marketing materials, service descriptions etc., except when a formally written confirmation by D&H is given.

7. Duration of License, Termination

7.1

Subscription contracts for journals (ejournals) shall run for a fixed term of 12 months, based on a calendar year. In case the initial delivery takes place during a running calendar year, the subscription contract becomes retroactively effective as of the beginning of the current year. Each contractual party has the right to terminate the subscription contract after the fixed term with a notice period of six weeks prior to the end of a calendar year. The subscription contract is extended for a further year, if it is not terminated within the notice period of six weeks prior to the end of the respective calendar year by either contracting party.

7.2

If not agreed otherwise, the Licensee holds the perpetual right to use the licensed content of the Online Platform.

7.3

Either party's right to terminate the license agreement for important causes remains unaffected. Should the agreement be terminated, D&H will – at the Licensee's request – continue to grant the Licensee access to those parts of the digital content which the Licensee subscribed to and paid for (e.g. by enabling the systematic download of PDF files including the archive rights).

Explicitly excluded from this regulation are all offers that permit time-limited access to content (rental/ loan options).

7.4

If D&H terminates the contract for reasons of continuous violation of the terms of the license (e.g. the systematic download or the unauthorized transfer of content), the Licensee's rights to the licensed content as described in 7.2 will be void.

7.5

To be valid, notice of termination of the agreement must be in writing and addressed to:

Duncker & Humblot GmbH
Carl-Heinrich-Becker-Weg 9
12165 Berlin, Germany
Fax: +49 30 790 006-31



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7.6

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. The exclusive competent court of jurisdiction for all disputes arising out of or in connection with this license agreement is Berlin.

7.7

If any provision of these Licensing Conditions or of the license agreement are held to be invalid by a court of competent jurisdiction, the Licensee agrees that such provision will be replaced with a new provision that accomplishes the original purpose, and the other provisions of these Licensing Conditions or of the license agreement will remain in full force and effect.

8. Consumer-Dispute-Resolution

OS-Platform of the EU-Commission for Online-Dispute-Resolution in line with Section 14 subpara. 1: The European Commission provides a platform for Online-Dispute-Resolution, that is available under <<http://ec.europa.eu/consumers/odr/>>. D&H's e-mail address is: info@duncker-humblot.de. D&H does not take part in a dispute settlement procedure before a consumer arbitration board.

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