

General Licensing Conditions for Digital Content

OS-Platform of the EU-Commission for Online-Dispute-Resolution:

Online-Dispute-Resolution in line with sec. 14 subpara. 1: The European Commission provides a platform for Online-Dispute-Resolution, that is available under <http://ec.europa.eu/consumers/odr/> . Our email address is: info@duncker-humblot.de

1. Licensed material, Approved 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 via Duncker & Humblot eLibrary and Duncker & Humblot eJournals (hereinafter: »Online-Platforms«). The license does not include the rights to sub-let. All content is owned by the publisher. The access to the Online-Platforms 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

If the Licensee is a consumer within the meaning of Section 13 of the German Civil Code (BGB), D&H will set a reasonable deadline for the consumer to declare his explicit acceptance.

1.3

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,
- visitors to the library (Walk-in users).

1.4

The simultaneous use of the licensed content by Approved Users is permitted.

2. Conclusion of the Agreement, Right of Withdrawal



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2.1

The online provision for the Online-Platforms does not in itself constitute an offer of contract. The legal offer comes about when an order is placed by the Licensee. The contract is only fulfilled when the Licensee's access has been announced (e.g. e-mail) or after the Licensee has received the invoice.

2.2

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

3. Range of Services, Rights of Use

Upon activation of access to the Online-Platforms, the Licensee receives rights of use to the purchased content (e.g. eBooks). The rights of use include inter alia the right to read the full content as well as the right to print out and download parts of the content.

3.1

The contracting parties agree that the Licensed material is copyright-protected by D&H's or by a third party. This applies to the Online-Platforms and the content on the Online-Platforms as well as to any other elements that are eligible for protection.

3.2

Access is only granted through IP addresses or usernames/passwords 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 actions to assure, that only the listed Approved Users at 1.3 have access. If the Licensee does not have a static IP-address, the use through remote access will be agreed upon separately.

3.3

Walk-in library users are only granted access to the Licensed material via computer workstations within the Licensee's physical premises. It is not permitted to reproduce the Licensed material or make it publicly accessible (e.g. in the internet) beyond the framework of these Licensing Conditions.

3.4

Approved Users are allowed access to the Licensed material for research and private purposes, allowing to view and search the content and to make individual printouts or electronic copies of individual articles or chapters which do not constitute more than a small portion of a book. Approved Users are also allowed to use small portions of a book to produce printed or electronic teaching materials. Beyond this, it is not permitted to edit, process or alter the content in any way or to convert the Licensed material in whole or in parts into another data format.



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3.5

The Licensee may generate temporary local copies of the Licensed material 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.

3.6

Neither the Licensee nor the Approved Users are permitted to use or exploit the Licensed material in whole or in part by any means for commercial or trade purposes. It is not permitted to sell, rent, lease or loan it to third parties. Also it is not permitted to dispatch the Licensed material via commercial, electronic interlibrary loan services or to include it in paid documentation services. As exception to this, it is allowed to respond to a request by another library to generate a print-out of part of the Licensed material (e.g. an article or a book chapter) and to send it via noncommercial inter-library loan services. The use of the "Ariel Interlibrary Loan Software" for the transmission of a small portion of the Licensed material to a printer/fax of another library is allowed, a transmission to e-mail addresses is not permitted.

3.7

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

3.8

Access to the content is provided to the Licensee exclusively via the Online-Platforms. Archiving of the Licensed material 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 also to archived content.

3.9

Content, that is available for use but not an explicit part of the Licensee's order, may be removed anytime from the Online-Platforms.

3.10

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

4. Security Measures, Technical Requirements, Availability

4.1

When placing an order or registering, the Licensee is obliged to provide truthful, up-to-date and complete details. The Licensee has to keep their user details up to date. In addition, the Licensee is obliged not to share their access data.

4.2



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The Licensee will take measures to protect the Licensed material against unauthorized access of third parties. In the event of the loss of access data or if there are grounds to suspect that third parties have made unauthorized use of these data, the Licensee is obliged to report this to D&H without delay. In case of unauthorized use, abuse or well-grounded suspicion of abuse, D&H is allowed to deny access to the Licensed material. Also, 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 for the Licensee and the Approved Users. D&Hs responsibility for providing and transmitting data ends at the point where D&Hs servers are linked to the Internet (“handover point”).

4.4

The Licensee bears sole responsibility for the technical requirements to use the Licensed material 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 material appropriately against viruses and hacker attacks – so does the Licensee with his systems. D&H is not liable for damage 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-Platforms, the Licensee is responsible to adjust his systems to the new conditions. The Licensee will be given sufficient notice of the required adjustments.

4.8

To ensure a smooth running of the Online-Platforms the placing of cookies as well as the use of the software applications Adobe Flash and JavaScript are necessary. The Licensee has to assure that the employed browser software accepts cookies and Adobe Flash and JavaScript are installed.

5. Data Protection, Liability

5.1



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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 in purpose of encashment and credit assessment.

5.2

The Licensee shall take every suitable and arguable measures to grant the terms and conditions under which access to the Licensed material is granted under this Agreement and shall make reasonable efforts to provide Approved 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.

5.3

D&H agrees to compile, process and present the content made available via the Online-Platforms 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 5.3) 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.

5.4

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.

5.5

If the Licensee is not a consumer within the meaning of Section 13 of the German Civil Code, 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.

5.6

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



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6. Duration of License, Termination

6.1

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.

6.2

If not agreed otherwise, the Licensee holds the perpetual right to use the purchased content of the Online-Platforms.

6.3

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 Licensed material 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).

6.4

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 purchased content as described in 6.2 will be void.

6.5

To be valid, notice of termination of the agreement must be in writing. The notice of termination is to be sent by letter to:

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

6.6

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.

6.7



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If any provision of these Licensing Conditions or of the License agreement held to be invalid by a court of competent jurisdiction, you agree 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.

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