

# General and Licence Terms and Conditions (GTC)

## Of the De Gruyter group

Parts of the De Gruyter Group are Walter de Gruyter GmbH, Genthiner Straße 13, 10785 Berlin as well as its subsidiaries

- De Gruyter Open Ltd., Bogumila Zuga 32a, 01-811 Warsaw / Poland;
- Birkhäuser Verlag GmbH, Allschwilerstrasse 10, CH-4055 Basel, Switzerland,
- Walter De Gruyter Inc., Boston, 121 High Street, Third Floor, Boston, MA 02110, USA.

De Gruyter in these GTC means the company of the Group with which the client has entered into a contractual relationship.

### 1. Area of Application

- 1.1 These GTC shall apply to all contracts entered into by De Gruyter with clients on the subject of delivery of goods or provision of services such as usage of internet-based products. Contracts can be entered into with consumers, merchants or institutions such as universities or libraries. These GTC shall serve as a framework agreement also for future contracts between the parties even when not explicitly incorporated into such.
- 1.2 The client shall be deemed a private consumer unless the purpose of ordered products and services can be attributed mainly to commercial operations or free-lance activity. On the other hand, any natural or legal person or partnership with legal capacity acting in exercise of their commercial or free-lance activity shall be deemed a merchant. In case the client is a corporate body under public law or public special assets, the regulations on merchants of these GTC shall apply accordingly.
- 1.3 If any other conditions of De Gruyter apply to any specific services, these shall in doubt prevail over these GTC.
- 1.4 For merchant clients, the relevant last version of the German regulations of the bookselling trade "buchhändlerische Verkehrsordnung" shall apply additionally. In case of contradictions, they shall prevail over these GTC. Any client who is a retail trader must comply with the fixed price for sale to the end buyer. Wholesale traders must oblige their clients accordingly.
- 1.5 Deviating contrasting or supplementary GTC of the client shall not apply and shall be deemed as not incorporated into the contract, unless their application is agreed to explicitly and in writing. This shall apply also when De Gruyter unreservedly executes orders despite knowledge of deviating or supplementary GTC of the buyer.

### 2. Contract Conclusion

- 2.1 A contract between De Gruyter and a client can be concluded via De Gruyter's website or upon individual request of the client (e.g. via telephone, email, or fax).
- 2.2 Ordering from De Gruyter Online
- 2.2.1 Registration on De Gruyter Online
- The use of services of De Gruyter and purchase of goods on the website are subject to registration of the client on De Gruyter Online. De Gruyter Online enables the client to order published products, to access online databases, eBooks or eJournals as well as look at, download and print contents that De Gruyter offers on De Gruyter Online. Apart from free services, the client can also use services with costs of De Gruyter (e.g. eBooks, eJournals). To register on De Gruyter Online, the client has to enter his name and first name as well as a valid email address. A contract on the use of De Gruyter Online is concluded by the client confirming the registration by clicking on a validation sent to him by email from De Gruyter. Contracts on services with fees are concluded according to section 2.2.2 of these GTC.
- 2.2.2 A contract on services with fees such as the order of goods or usage of certain contents on De Gruyter Online is concluded by submission of a binding offer by the client and acceptance of the same by De Gruyter. The presentation of product lines or other services of De Gruyter on their website shall not represent a valid offer for the sake of contract conclusion. By the websites of De Gruyter, the client is given the opportunity to choose published products and put them into a shopping cart. After completion of the ordering process, the client shall give a binding offer to conclude a contract by clicking on the button "buy now". De Gruyter shall confirm receipt of the order and its details (order confirmation) via email. An order confirmation shall not mean acceptance of the offer to conclude a contract. De Gruyter can accept the client's offer by sending a separate email (contract confirmation), shipping of the order or granting of access to the online service requested. De Gruyter shall communicate any refusal of an offer to the client within two business days.
- 2.2.3 Contracts can be concluded in German or English language. These GTC are valid only in their German language version. The English language version of these GTC is not legally binding and only serves information purposes without De Gruyter vouching for the translation.

- 2.2.4 Type errors can be corrected before submission of the offer during the ordering process by clicking on the back and forward buttons on the respective websites of the ordering process. The contract text is not saved for every client individually and cannot be accessed after finalisation of the ordering process. The contents of the order however will be made available to the client via email in the order and contract confirmations and can also be accessed in the user account under "my orders". Additionally, there is an option to access the GTC in their respective valid version on the homepage of De Gruyter and to print or save them by using the browser functions.

### 2.3 Contract conclusion via individual communication

In case of orders not made via De Gruyter online, contracts can be entered into between De Gruyter and the client by individual communication (e.g. Email or Fax). The special conditions of this section apply to merchants and corporate bodies under public law.

De Gruyter can particularly contact the client in case De Gruyter has to deny an order of the client (e.g. in case of unexpected unavailability)

If De Gruyter reacts to a client request with an individual offer on the delivery of goods then such an offer shall be deemed non-binding, unless explicitly stated otherwise. Oral offers made by De Gruyter shall become binding only after written confirmation by De Gruyter and such notification calling them binding. Statements of the client shall regularly be addressed to the contact person who has made the individual offer.

### 3. Right to withdraw

After conclusion of a contract with De Gruyter as a private consumer (section 1.2), the client has, according to legal requirements, a right to withdraw from the contract. The withdrawal instructions attached as annex apply. There is a standard withdrawal form also attached as annex.

### 4. Delivery and Shipping, Provision of digital services

- 4.1 De Gruyter ships internationally according to the following provisions.
- 4.2 Shipping costs are regularly borne by the client. Charges apply as named in the offer.
- 4.3 Digital content (e.g. eBooks, eJournals) are delivered to the client in the form agreed on, e.g. as a PDF file or EPUB. The method of provision is, according the client's choice, either by provision of the possibility to view and download (purchase) or to view only on De Gruyter Online (rent option).
- 4.4 In case of deliveries outside Germany, all costs beyond shipping that may be incurred, such as import fees, customs or taxes, are to be borne by the client on top of shipping fees
- 4.5 De Gruyter will inform about delivery dates for goods in the respective offer.
- 4.6 Before the release date of specific works, De Gruyter will publish an expected release date. Any order will be pre-booked for the client. Delivery will take place once De Gruyter is able to. In case the delivery of an unreleased work is late by more than 30 days from the day stated as expected release date when concluding the contract, the client may rescind from the contract.
- 4.7 Contract conclusion is subject to the reservation of correct and punctual supply by the suppliers of De Gruyter. This reservation however only applies in case De Gruyter has entered into a congruent hedging transaction with the supplier and is not at fault with possible wrong or non-deliveries. Contract conclusion is further subject to the presumption that the product desired by the client is available at the time of contract conclusion. In individual cases it may be possible that a work offered is out of stock and needs to be reproduced. Individual goods and contents may also be withdrawn, especially in case De Gruyter no longer hold the necessary distribution rights or there is reasonable doubt that individual goods or contents infringe third party rights or are in any other way unlawful. If in any of the cases stated a timely delivery of goods ordered to the client does not seem feasible, De Gruyter may rescind from the contract.
- 4.8 Reasonable partial deliveries to the client remain reserved. Any extra costs incurred by partial deliveries shall be borne by De Gruyter. Delivery dates stated vis-à-vis merchants are only binding if confirmed to be in writing by De Gruyter.
- 4.9 De Gruyter can insure shipments for transport risks upon request and at cost of the client. The client will observe any respite for possible claims against the carrier or the carrier's insurance independently.
- 4.10 In case the client is a merchant, the risk of destruction, loss or damage of the goods as well as the price risk shall transfer to the client with the delivery of goods to the person designated to execute the shipping. The same applies to the risk of late delivery or the risk of accidental loss in case the shipping of the order, its delivery or pick up is delayed for reasons caused by the client or in case the client is in default of acceptance.

### 5. Subscription contracts for journals

- 5.1 Subscription contracts for journals shall regularly be entered into for a fixed term of calendar years. Unless agreed on otherwise, the contract shall then include all issues of the calendar year

- in which it was concluded. The client receives all issues already published within the usual delivery period of at the latest together with the next published issue.
- 5.2 Subscription contracts can be terminated in writing with a notice period of six weeks towards the end of the contract period. If no termination is declared the subscription contract is prolonged for the further period of equal length as the initial period.
- 5.3 Trial subscriptions for journals can be terminated 14 days before the expiry of the trial subscription in writing and shall otherwise be renewed as a paid subscription contract. The starting date for the regular subscription contract with fees (Section 5.1) shall then be the first day following the expiry of the trial subscription.
- 6. De Gruyter Online - Rights of Use**
- 6.1 This section governs the use of De Gruyter Online by the client and the use of contents available to the client via De Gruyter Online. Contents within the scope of this section shall mean any and all documents, files and other digital information and parts or elements of databases offered for use of the client (e.g. eBooks, eJournal contents, articles or chapters, databases or databank entries within De Gruyter Online).
- 6.2 De Gruyter grants the client the non-exclusive, non-transferable right which may not be sub-let to use the Contents via De Gruyter Online in accordance with these General Licensing Conditions and within the scope of the technical functions offered to Approved Users (section 6.3) there to the extent of the licence model agreed on and in accordance with the regulations contained in these GTC and any additional licence agreements. As far as specific content with special licence conditions are offered (for example Creative Commons Licences), these special licence agreements shall take precedence over these GTC.
- 6.3 The duration of the right granted depends on the option of duration offered in the product description and chosen by the client (e.g. single use or specific periods determined by weeks, months or years). Access to and use of the Contents are permitted to the extent expressly stated in these conditions only.
- 6.4 Approved Users are natural persons who maintain an employment relationship or an academic training relationship or an apprenticeship with the client or who, on the grounds of any other contractual relationship are authorised to use the client's facilities and who have access to the client's network because of this authorization. This includes in particular:
- current members of the client's teaching staff,
  - Library staff and other persons employed by the client, including freelancers,
  - Persons currently enrolled as students at an institution of the client,
  - Visitors to the library (walk-in users).
- Approved Users must have a valid user authorization and their permanent residence in the city where the client is located. The client is obliged to control the user authorization annually, here the approved users must present their user authorization in person.
- 6.5 License models
- Unless agreed otherwise, the client will acquire single-site licenses of the scope agreed on. These entitle one Approved User respectively to access De Gruyter Online.
- Multi-site license: When using a multi-site license, the client is permitted to make the contents available to third parties by central user accounts within his network. The scope of the right to use of a multi-site license will be individually agreed on with the client.
- 6.6 Restrictions of use for contents and De Gruyter Online
- 6.6.1 Access to De Gruyter Online depends on technical means of authentication of the user, e.g. specific IP addresses registered with De Gruyter or combinations of user name(s) and password(s). The parties can agree on other authentication processes (e.g. Shibboleth).
- 6.6.2 Approved Users are allowed to use the Contents via computer workstations within the client's physical premises or – if the client allows this provision – by remote access via the client's secure network.
- 6.6.3 Walk-in users of a library are only granted access to the Contents in the physical premises of the client via computer workstations. These users must not be granted remote access to De Gruyter Online or the Contents.
- 6.6.4 Approved Users are allowed to access the Contents only for their own use or for purposes of the client (e.g. research), to view them and search them and to make individual print-outs or electronic copies of individual pages, articles or chapters which do not constitute more than a small proportion of the work and of the Contents available.
- 6.6.5 The client may generate temporary local copies of the Contents 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 or the client to use them in accordance with the contractual conditions and which do not possess any independent economic value.
- 6.6.6 The client and the Approved Users may use appropriate parts of the Contents to produce printed seminar or course material for use without fee by the Approved Users within the client's institutions. It is not permitted to use these materials for re-sale or distribution or to pass them on in any other way, especially against fee or for any other commercial purpose. Such materials shall include the author or other creator, the source, the restrictions of use and a notification of copy right for the publisher.
- 6.6.7 The client and the Approved Users are not permitted to use or exploit the Contents in whole or in part by sale, rent, lease, loan or any other means of making available to third parties for commercial or trade purposes.
- 6.6.8 The client and the Approved User are not permitted to be a commercial party to paid data, information or documentation services and to make the Contents available in whole or in part for this purpose. In exception to this, however, the client is allowed to respond to a request by another library to generate a printout of part of the Contents (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 printouts; electronic copies may not be made. The use of „Ariel Interlibrary Loan Software“ for the transmission of a small proportion of the Contents to a printer/fax of another library is allowed, a transmission to e-mail addresses is not permitted.
- 6.6.9 The Client and the Approved Users are not allowed to make the Contents or parts thereof available to third parties or publicly. It is especially not permitted to make available any of the Contents to third parties via open data networks, in particular the World Wide Web, for the purpose of downloading, saving or any other form of multiplication.
- 6.6.10 The client and the Approved User are also prohibited from reproducing the Contents (in whole or in parts) on permanent data processing media and passing them on to third parties and/or from using the Contents in whole or in parts to develop systematic compilations or in a local retrieval system and/or from translating the Contents to other data formats and/or from saving the Contents permanently unless this is provided by a function that is made available by De Gruyter.
- 6.6.11 The Client and the Approved Users may not process, operate on or in any other way alter the Contents (in whole or in part) unless this is necessary for the contractual use.
- 6.6.12 The above prohibitions also apply to the instigation of corresponding actions by third parties.
- 6.6.13 The Contents are only made available via De Gruyter Online. Archiving of the Contents (in whole or in parts) requires prior written approval from De Gruyter. Any contents thus made available are subject to these present conditions for access.
- 6.6.14 If access to previous volumes is granted within a subscription, this shall be deemed not a contractual duty of De Gruyter, but voluntary added value that can be terminated by De Gruyter at any time. This shall be limited to such previous volumes that are available on De Gruyter Online and at a maximum back to the volumes of the year 1995. Such access shall end automatically at the latest at the same time as the contractual access of the current year's volume.
- 6.7 The Client and the Approved Users are prohibited from removing, altering or suppressing Authors' names, copyright notices, references to registered marks (esp. brands and company names), logos, other references serving identification or relevant for copyright purposes, as well as liability exclusions, legal reservations etc. Any distribution of the Contents allowed under these GTC requires an indication of source.
- 6.8 Any mandatory rights of use of the client under statutory provisions remain unaffected.
- 7. Special obligations of the Client and the User**
- 7.1 When ordering or registering, the Client is obliged give truthful, up-to-date and complete information. He shall keep his user details updated. The Client shall further keep his user details confidential. In the event of loss of access data or reason to believe that third parties are making unauthorized use of the access details, the Client shall inform De Gruyter without delay. The Client shall be liable for any misuse of his access data, unless he is not at fault for such misuse. De Gruyter is not liable for any damage caused to the Client by misuse or loss of their access data (especially IP address or user name/password), except caused by De Gruyter's own at least grossly negligent behaviour.
- 7.2 In case of a multi-site licence, the Client shall ensure by appropriate technical means that only Approved Users can access the Contents and that adherence to the licence conditions can be controlled (“Secure Network”).
- 7.3 The Client must ensure in due form that his Approved Users are informed of the conditions applicable to the use of De Gruyter Online and that they oblige themselves in writing or on-line to observe them. Furthermore the Client is required to make all appropriate efforts to ensure that
- Only current Approved Users are granted access to the Contents;
  - The Approved Users are appropriately informed of the importance of observing the copy-right and other rights attached to the Contents;

- These GTC and all other conditions applicable to the usage of De Gruyter Online are adhered to by the Approved Users.
- 7.4 The Client is obliged to take all appropriate and suitable technical and legal steps to detect and prevent any use in contravention of the agreement or in excess of the rights granted, misuse and other disruptions. The Client is in addition obliged to inform De Gruyter without delay and in detail of all such incidents and to furnish De Gruyter with all the data and documentation relevant to the analysis and removal of such incidents.
- 7.5 Prerequisite for the use of De Gruyter Online by the Client is sufficient connection to the Internet and fulfilment of the respective current minimum standards of requisite hardware and software systems as stated by De Gruyter. The installation and maintenance of these prerequisites are not part of De Gruyter's contractual obligations but an obligation to cooperate of the client. The client has to provide adequate state-of-the-art protection from viruses and unauthorised access for their deployed systems.
- 7.6 The Client and the Approved Users are not permitted to deploy any technical means or programs (such as robots, spiders, crawlers or other automated download programs or retrieval software) to search, index or download the Contents systematically, automatically or without a specific cause. In particular, it is not permitted to access information of online databases in a repeated and systematic manner when it does not serve the agreed purpose of use.
- 7.7 The Client and Approved Users are must not undertake any measures that might harm the IT safety and system stability of De Gruyter. In particular, it is prohibited to access without authorization any information or data or interfere with any programs run by De Gruyter or their processes or illegally enter any data networks of De Gruyter or promote such entering or cause network load, unless such action is part of the contractual use of the agreed service.
- 7.8 De Gruyter is not responsible for any damage that would not have been caused if the Client had adhered to his duties and obligations under this section 7.
- 8. Availability and Maintenance of De Gruyter Online**
- 8.1 De Gruyter grants the Client access to the Contents via the Internet for the agreed duration. De Gruyter will make appropriate efforts to ensure that its servers maintain sufficient capacity and bandwidth to guarantee availability for the Client and the Approved Users at an appropriate level via the Internet at the expected usage. De Gruyter's responsibility for providing and transmitting data ends however at the point where De Gruyter's hardware servers are linked to the Internet ("handover point"). Any specific availability of De Gruyter Online shall only be deemed a contractual obligation by explicit separate agreement.
- 8.2 Maintenance and servicing work can lead to temporary restrictions in the availability of the service. De Gruyter will carry out the required work as speedily and smoothly as possible and will announce any foreseeable restrictions of availability of the service of longer duration on De Gruyter Online.
- 9. Duration and Termination of De Gruyter Online Use, Provision of data at end of contract**
- 9.1 The license agreement is valid for the period of subscription agreed, starting from the Client'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.
- 9.2 If the Client has chosen a purchase option, De Gruyter will at the Client's request grant the Client access to PDF files of Contents which were published during the period of the agreement and which the Client subscribed to and paid for. At its own discretion De Gruyter can allow access to the relevant PDF files by either
- Permitting a one-time download of the PDF files into an electronic archive of the Client,
  - Nominating a third party to grant access as a trusted repository, or
  - Providing the Client with an individual copy of the PDF files on a data medium (e.g. CD-ROM or DVD).
- In such cases, all the Client's rights and obligations under these GTC apply for the entire duration of saving or using the Contents.
- All other price models (rental option, end user offering) are explicitly excluded from this clause.
- 10. Right to Audit**
- If the Client is a merchant, he shall enable De Gruyter upon request to review the contractual use of De Gruyter Online, especially to check whether the client uses De Gruyter Online within the scope of the license, both qualitatively and quantitatively. To this end, the Client will provide information and grant access to documentation as well as enable an audit, either by De Gruyter or by an audit firm named by De Gruyter and acceptable to the client, of the hardware and software environment used. De Gruyter is permitted to execute such audit in the physical premises of the client during his regular office hours or to engage third parties that are obliged to maintain confidentiality. De Gruyter will make every effort that the usual business of the Client in this locality is affected as little as possible by this procedure. If the audit results show an

overuse of more than 5% (five percent) of the licence's worth in relation to the ongoing contractual month or any other significant breach of the conditions of use, the client shall have to bear the costs of the audit.

## **11. Blocking, Liability of the Client in case of illicit use of De Gruyter Online**

- 11.1 In the event that the Client is in default with a payment equivalent to the average sum of the contractual fee of two months, De Gruyter is permitted to block the Client's access to De Gruyter Online.
- 11.2 If De Gruyter obtains knowledge of illicit use or misuse of the Client's access data, or if there are objective grounds for fearing such an illicit use or misuse, De Gruyter will inform the Client without delay and set a deadline for cessation. On expiry of the deadline, De Gruyter is entitled to block access (for the Client as a whole, for individual IP addresses or for Approved Users) until the suspicion is cleared. If there is danger of substantial economic damage, the blocking can be enacted before the end of the deadline.
- 11.3 The Client is obliged to compensate De Gruyter for all damage caused by illicit or careless use by Approved Users or by third parties which gain unauthorised access to the Contents via the Client's network or otherwise and which the Client could have prevented by fulfilling their obligations under section 7.

## **12. Prices and Payment**

- 12.1 All services of De Gruyter are subject to the prices stated in the respective product offer. The prices are inclusive of VAT, unless net prices have been stated to merchants. The total price of products ordered by the Client is the sum of the price of the service (e.g. products or digital content) plus, if applicable, shipping costs and, in case of deliveries to foreign countries, any additional taxes, customs duties or import charges to be borne by the Client.
- 12.2 Payment for journal subscriptions is due in advance for the following 12 months, starting with the month of the first delivery of that calendar year, irrespective of the relevant frequency of publication.
- 12.3 De Gruyter accepts payment by invoice, credit card or advance payment. For individual services, restrictions apply as stated in the offer.
- 12.3.1 When paying by invoice, payment must be made without deducting a cash discount within the payment period indicated on the invoice by transfer to the bank account designated in the invoice.
- 12.3.2 When paying in advance, the client will receive an invoice with the contract confirmation. The invoice sum is payable within 10 days of receipt of the invoice to the bank account designated in the invoice.
- 12.3.3 When paying by credit card, the card will be charged once the item has shipped or the service has been provided.
- 12.3.4 All payments, especially if made from foreign countries, must be effected free of charge to Germany. Any banking charges are to be borne by the Client.
- 12.4 In the case of justified reasons that will be disclosed to the Client, in particular in the case of exceptional technical or economical changes affecting cost calculations, De Gruyter is entitled to adjust the prices for the Contents with future effect. Notification to the Client will be made in writing with the invoice or by e-mail. In the event of prices being increased, the Client has the right to terminate the agreement extraordinarily within four weeks after the receipt of the notification. The Client's notice can be made in writing (Walter de Gruyter, Genthiner Str. 13, 10785 Berlin) or by e-mail (service@degruyter.com). 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.
- 12.5 In the event of default of payment by the Client, statutory provisions shall apply.

## **13. Subcontractors**

De Gruyter is permitted to engage subcontractors unless there is an important reason against it that is recognizable for De Gruyter. This permission is valid especially for the accepting and processing of orders, reclamations and debtor management. This service is currently provided by HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwiesenstraße 2, 72127 Kusterdingen, Deutschland.

## **14. Reservation of Title**

- 14.1 In contracts with consumers within the meaning of Section 13 of the German Civil Code, De Gruyter reserves title to the delivered goods until the purchase price for the respective products has been received in full. As long as the reservation of title remains in force, the Client will be obligated to notify De Gruyter of any court seizure of, damage to or loss of the goods without delay.

- 14.2 In the case of contracts with business clients, this reservation of title will apply until all payments owed in the business relationship with the business client have been received. The Client is authorised to resell the reserved goods in the ordinary course of business. The Client assigns to De Gruyter in full extent all claims arising from the resale of the reserved goods to a third party, including all account balance claims, as security. The Client is authorised to collect the claims assigned. The authorisation to collect such claims may be revoked by De Gruyter if the Client does not properly meet its payment obligations. Insofar as the realisable value of the security rights to which De Gruyter is entitled exceeds the amount of all secured claims by more than 10%, De Gruyter shall release a corresponding part of the secured rights at the Client's request. For the duration of the retention of title, the Client may not pledge the reserved goods or use them as security. In the case of attachments, confiscations or other interference by third parties the Client must file an objection referring to De Gruyter ownership and inform De Gruyter immediately.
15. **Remissions**
- 15.1 If the Client is a trader who resides in Germany and who is subject to the statutory and contractual rules relating to fixed book prices, he is authorised to return goods (remissions) subject to the following rules: in the case of returns, previous consent of De Gruyter or of or the consent of HGV Hanseatische Gesellschaft für Verlagsservice mbH on behalf of De Gruyter must be obtained. The purchase details must be stated along with the remission. De Gruyter reserves the right to reject unapproved returns. Returns must be sent carriage paid. The following may not be returned: a) titles the fixed retail price of which has been suspended for more than 6 weeks by means of notification 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 invoiced more than 18 months before the return.
- 15.2 Approved and undamaged remissions are credited in full to the Client based on the original purchase price. Damaged but resalable remissions are credited at 25 % of the fixed retail price, unless otherwise specifically agreed. In the case of damaged copies that by De Gruyter's reasonable judgment cannot be resold, De Gruyter reserves the right not to give a credit. Each calendar year, De Gruyter accepts remissions of up to a total value corresponding to 5% of the annual turnover of the respective trader. Electronic products can only be remitted in the original packaging (sealed).
- 15.3 Remissions must, unless otherwise expressly agreed, be sent to: Sigloch Distribution GmbH & Co. KG, Tor 6-10, Am Buchberg 8, 74572 Blaufen, Germany.
16. **Duty to inspect and notify, limitation of claims for defects**
- In case of defects, statutory provisions shall apply. As an exception to this, merchant clients shall have an obligation to report a defect corresponding to §377 HGB Handelsgesetzbuch, German Trade Law applicable to all contracts on the provision of published products, whether for a determined or undetermined duration. All claims of Client resulting from substantive or legal defects shall be limited to one year beginning from the receipt of the product. This does not apply to any damage or cost reimbursement claims resulting from a defect.
17. **Liability**
- 17.1 The following regulations regarding De Gruyter's liability shall apply to all damage claims of the Client or substitute claims in lieu of such stemming from this contract or in relation to the execution of this contract as well as to all cases of liability regardless of their cause (e.g. warranty, default, impossibility, breach of duty, hindrance, unlawful act), except all claims of the Client
- Which result from damages arising from injury to life, limb or health
  - Which result from fraudulent concealment of a defect by De Gruyter or the lack of a characteristic which has been guaranteed by De Gruyter,
  - Which result from wilful or grossly negligent behaviour of De Gruyter, its organs or leading employees as well as
  - Based in the German Product Liability Act (Produkthaftungsgesetz).
- In case of such claims, the statutory obligations shall apply.
- 17.2 De Gruyter and its agents are only liable for negligently caused material and financial damages in case of breach of a material contractual duty ("cardinal duty"), i.e. a duty, fulfilment of which enables the proper execution of the contract and on which the Client may regularly rely, however limited to compensation for the damage that is both typical and was foreseeable at the time of contract conclusion.
- 17.3 All further liability of De Gruyter because of slight or simple negligence is excluded.
- 17.4 Any liability of De Gruyter regardless of fault in context with rental or similar user relations for defects already existent at the time of contract conclusion are excluded explicitly.
- 17.5 In case of service obligations, any Client who is not a merchant does not have a right to self-performance as stipulated in §637 BGB; any warranty rights stemming from a service contract

are limited to a period of 12 months from the time of acceptance of the service. Damage claims remain unaffected.

- 17.6 De Gruyter 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 De Gruyter's control.
- 17.7 Insofar as the Client is responsible for defects in the Contents (e.g. errors in content, sense or typography when sending copies) he releases De Gruyter from all warranty and damage claims which third parties – especially users – might bring against De Gruyter.
18. **Final provisions**
- 18.1 The Client can only set off such counter-claims that have been established by a court, are uncontested or have been recognised by De Gruyter. The Client may only assert a right of retention on the basis of counterclaims that are based on the same contractual relationship and are undisputed, have been bindingly determined by a court of law or are ready for decision by a court.
- 18.2 De Gruyter reserves the right to modify these GTC. The Client will be informed of such modifications at the latest 60 calendar days before coming into effect of such in writing or by e-mail. The modifications shall be deemed accepted if the Client does not object within 30 calendar days from the receipt of the notification of modification by email or in writing. De Gruyter will inform the Client about this effect in the notification of modification. If the Client objects, the contractual relationship shall be continued with application of the previous contractual agreement.
- 18.3 All legal relationships governed by these GTC are 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 (CISG) and any other regulation that would lead to the application of any foreign law.
- 18.4 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 venue for all disputes arising out of or in connection with this contractual relationship shall be the domicile of De Gruyter. The right of De Gruyter to sue the Client at his place of general jurisdiction remains unaffected.
- 18.5 Consumers living in other EU Member states can opt to enforce claims resulting from any consumer protection laws before a court either in the Federal Republic of Germany or in the EU member state of their residence.

## **Annex Instructions for Withdrawal**

### **A) Right to Withdrawal applicable to products ordered (except subscription services)**

#### **Withdrawal Instructions**

##### **Right of Withdrawal**

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day on which you, or any third party indicated by you other than the carrier acquires physical possession of the last good.

To exercise the right of withdrawal, you must inform us (The withdrawal is to be sent to our subcontractor HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwassenstraße 2, 72127 Kusterdingen, Deutschland Tel: +49 (0) 7071/ 9353-55, Fax: +49 (0) 7071/9353-93, E-Mail: service [at] degruyter.com) of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but that is not obligatory.

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

##### **Effects of withdrawal**

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.

We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.

You shall send back the goods or hand them over to us to HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwiesenstraße 2, 72127 Kusterdingen, Deutschland, without undue delay and no later than 14 days from the day on which you communicate your withdrawal from this contract to us, The deadline is met if you send back the goods before the period of 14 days has expired.

Any direct costs of returning the goods shall be borne by you.

You shall only be liable for any diminished value of the goods if such diminished value results from handling the goods in another way than what is necessary to examine the nature, characteristics and functionality of the goods.

## **B) Instructions for withdrawal from continuous delivery of goods for a definite period (subscription contracts)**

### **Withdrawal Instructions**

#### **Right of Withdrawal**

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day on which you, or any third party indicated by you other than the carrier acquires physical possession of the first good.

To exercise the right of withdrawal, you must inform us (The withdrawal is to be sent to our subcontractor HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwiesenstraße 2, 72127 Kusterdingen, Deutschland Tel: +49 (0) 7071/ 9353-55, Fax: +49 (0) 7071/9353-93, E-Mail: service [ at ] degruyter.com) of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but that is not obligatory.

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

#### **Effects of withdrawal**

If you withdraw from this contract, we shall reimburse all payments received from you, including the costs of delivery (except any supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and no later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless another means has been expressly agreed on; in any event, you will not incur any fees as a result of such reimbursement.

We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.

You shall send back the goods or hand them over to us to HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwiesenstraße 2, 72127 Kusterdingen, Deutschland, without undue delay and no later than 14 days from the day on which you communicate your withdrawal from this contract to us, The deadline is met if you send back the goods before the period of 14 days has expired.

Any direct costs of returning the goods shall be borne by you.

You shall only be liable for any diminished value of the goods if such diminished value results from handling the goods in another way than what is necessary to examine the nature, characteristics and functionality of the goods.

## **C) Instructions for withdrawal from De Gruyter Online**

### **Withdrawal Instructions**

#### **Right of Withdrawal**

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day of contract conclusion.

To exercise the right of withdrawal, you must inform us (The withdrawal is to be sent to our subcontractor HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwiesenstraße 2, 72127 Kusterdingen, Deutschland Tel: +49 (0) 7071/ 9353-55, Fax: +49 (0) 7071/9353-93, E-Mail: service [ at ] degruyter.com) of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but that is not obligatory.

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

#### **Effects of withdrawal**

If you withdraw from this contract, we shall reimburse all payments received from you, including the costs of delivery (except any supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and no later than 14 days from the day on which we are informed about your decision to withdraw

from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless another means has been expressly agreed on; in any event, you will not incur any fees as a result of such reimbursement.

If you had requested for service provision to begin during the withdrawal period, you shall pay us an appropriate amount which reflects the amount of services already rendered up to the point in time in which you inform us about the exercise of your right of withdrawal in relation to the full scope of services intended with the contract.

## **D) Additional information regarding the right of withdrawal**

A right of withdrawal does not apply to any contracts on the delivery of sound or video recordings or computer software delivered in a sealed package if and when the seal has been removed after delivery, as well as to contracts on the delivery of newspapers, journals and magazines except subscription services.

In case of a contract on the provision of services, the right of withdrawal expires once the merchant has fully rendered the services and has only started rendering the service after the private consumer has explicitly agreed hereto and confirmed that he is aware that his right of withdrawal expires with complete fulfilment of contract by the merchant.

In case of a contract on the provision of digital content, the right of withdrawal expires early once the merchant has fully rendered the service and has only started rendering the service after the private consumer has explicitly agreed hereto and confirmed that he is aware that his right of withdrawal expires with complete fulfilment of contract by the merchant.

## **E) Standard withdrawal form**

Clients may use the standard withdrawal form below for communicating the exercise of their right of withdrawal.

### **Standard withdrawal form**

(If you would like to withdraw from the contract, please fill in this form and send it back to us)

To HGV Hanseatische Gesellschaft für Verlagsservice mbH, Holzwiesenstraße 2, 72127 Kusterdingen, Deutschland Tel: +49 (0) 7071/ 9353-55, Fax: +49 (0) 7071/9353-93, E-Mail: service [ at ] degruyter.com

I/We (\*) hereby give notice that I/we (\*) withdraw from my/our (\*) contract on the sale of the following goods (\*) / on the provision of the following service (\*),

Ordered on (\*) / received on (\*),

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

(\*) Delete as appropriate

End of GTC, Version January 2015