

GENERAL TERMS AND CONDITIONS

NEWBOOKS Solutions

Date: 02.08.2021
Version: 1.0



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1. In General, Scope

1.1 These General Terms and Conditions (“GTC”) apply for all business relationships between NEWBOOKS Solutions GmbH, Am Malzbuechel 6-8, 50667 Cologne (“NEWBOOKS”) and businesses (“Customers”) insofar as these relate to the following business activities:

- Service performances (recurring performances on the basis of lasting contractual obligations and services), in particular the editorial preparation of data records and the provision of access to databases for scientific and specialist literature for the display and circulation of title data,
- Work performances and services, in particular the programming of websites and online systems (newsletter, approval plan system, format-converter, web services etc.).

also referred to hereinafter in brief as the “Services”.

1.2 NEWBOOKS provides all Services exclusively for business as defined by Section 14 BGB (German Civil Code) on the basis of these GTC. Differing, contradicting or supplementary customer terms and conditions will only then become an integral part of this Agreement in as much as NEWBOOKS has explicitly agreed to their validity. This requirement for consent applies at all times, for example even if NEWBOOKS commences provision of the Services despite being aware of the Customer’s terms and conditions.

1.3 These GTC shall also apply in their respective version for future agreements on Services provided by NEWBOOKS with the same Customer even if their validity has not been explicitly agreed again.

1.4 Legally relevant declarations and notifications which are to be made to NEWBOOKS by the Customer after conclusion of the Agreement (e.g. setting of deadlines, notification of defects, declaration of cancellation or reduction) shall only be valid if made in writing.

1.5 Individual agreements reached with the Customer, including ancillary agreements, supplements and amendments, shall have priority over these GTC under all circumstances. A written agreement or a written confirmation by NEWBOOKS shall be decisive for the content of such agreements.

1.6 In the case of recurring services (continuous obligations), NEWBOOKS shall be entitled to amend the GTC for good reason, particularly in cases where amendments to legislation, changes to jurisdiction or a loophole in these GTC require an amendment to the GTC and the amendment is not unreasonable for the Customer. The Customer may object in writing to the amendment within a period of six (6) weeks from receipt of the notification of amendment. If the Customer does not object within the afore-mentioned period, the amendment(s) to the GTC shall be deemed to be approved. If the Customer objects to the amendment within the set period, the Customer shall be entitled to terminate the Agreement without notice for just cause (außerordentlich kündigen).

1.7 References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such clarification insofar as they are not directly amended or explicitly excluded in these GTC.

2. Offer and Conclusion of Agreement

Upon request by the Customer, NEWBOOKS shall send the Customer an Offer. The Customer accepts the Offer by NEWBOOKS on the basis of the Offer made by issuing an order (acceptance). The Agreement is reached upon acceptance of the Offer by NEWBOOKS. Furthermore, an Agreement is reached if the order by the Customer is placed with NEWBOOKS verbally and NEWBOOKS commences with the provision of the contractually agreed performance with the knowledge of the Customer.

Insofar as the Customer is provided with specifications, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – in the course of the Offer, NEWBOOKS shall retain explicitly existing property rights and copyrights to the aforementioned documents.

3. Performance

- 3.1 Any specifications (hereinafter also referred to as “Specifications”) possibly contained in the written Offer documentation of NEWBOOKS, which were placed at the disposal of the Customer prior to placing an order or which have been included in the Agreement in the same way as these GTC, are the sole basis for the Services to be provided by NEWBOOKS. If the written Offer documents from NEWBOOKS do not include any Specifications, the scope of performance shall be indicated by the content of the Offer.
- 3.2 Technical or other standards shall only then be observed by NEWBOOKS insofar as they are explicitly mentioned in the Specifications and specifically in the valid version at the time of the Agreement being reached.
- 3.3 NEWBOOKS shall be entitled to employ third parties as sub-contractors and agents for the provision of the Services. NEWBOOKS shall notify the Customer insofar as sub-contractors and agents will be undertaking major parts of the provision of Services.

4. Amendments to Services in the Case of IT Services

- 4.1 NEWBOOKS reserves the right to decide on the acceptance or refusal of amendments or supplements requested by the Customer to existing Agreements on the provision of IT Services. If NEWBOOKS carries out any requested amendments, the agreed execution and acceptance deadlines shall become null and void if they have not been confirmed or newly stipulated by NEWBOOKS.
- 4.2 NEWBOOKS furthermore reserves the right to invoice the Customer for the costs of checking requested amendments and supplements as well as for the preparation of cost estimates and amendment quotes on the basis of the agreed and/or regular NEWBOOKS rates. NEWBOOKS shall continue the work on the basis of the concluded Agreement until written agreement has been reached on any amendments/supplements.

5. Delivery

- 5.1 Delivery dates and deadlines will be agreed individually in writing with the Customer. A written agreement is deemed to be the specification of delivery deadlines by NEWBOOKS upon acceptance of an order. Delivery deadlines commence with the receipt of the order confirmation by the Customer.
- 5.2 Insofar as NEWBOOKS is unable to comply with binding delivery deadlines on grounds for which NEWBOOKS shall not be held responsible (non-availability of the Services), NEWBOOKS shall notify the Customer thereof without delay and at the same time state the expected new delivery deadline. If it is also not possible to provide the Services by the new delivery deadline, the Customer shall be entitled to withdraw from the Agreement in part or whole; NEWBOOKS shall compensate without delay any counter-performance already provided by the Customer. Non-availability of the Services in this respect is deemed to be the unpunctual delivery to NEWBOOKS by one of its suppliers if NEWBOOKS has concluded a congruent hedging transaction. The statutory withdrawal and termination rights, as well as the statutory regulations on the execution of the Agreement in the event of the exclusion of the performance obligation (e.g. impossibility or unreasonableness of the Services and/or supplementary fulfilment) remain unaffected. The Customer's rights of withdrawal and termination shall also remain unaffected.
- 5.3 Other than this, the occurrence of default shall be determined by the legal regulations. A written reminder by the Customer, however, shall be required under all circumstances.

6. Customer's Cooperation Duties

- 6.1 The Customer shall place at the disposal of NEWBOOKS all documents, information, materials and data necessary for fulfilment of the Services. NEWBOOKS provides the Services on the basis of the data and information provided.
- 6.2 The Customer shall name a contact person for NEWBOOKS who shall be responsible for providing the information necessary for fulfilment of the Agreement and who shall either make decisions on own responsibility or have them made.
- 6.3 The Customer shall check its data for viruses before sending it to NEWBOOKS Solutions and shall use appropriate virus protection programs.
- 6.4 The Customer agrees not to use the Services of NEWBOOKS, in particular the data placed at its disposal, for racial, discriminating or pornographic purposes, purposes endangering the protection of minors, politically extreme or otherwise illegal purposes or other purposes in contravention of official regulations or requirements, or to store corresponding contents on the servers of NEWBOOKS. The Customer agrees to exempt NEWBOOKS from any rights of third parties in the event that any data and/or contents that it stores contravene the rights of third parties, in particular personal and/or industrial property rights.

7. Prices and Terms of Payment

- 7.1 Unless otherwise specifically agreed, the contractually agreed prices shall be deemed to be the prices named in the Offer documents of NEWBOOKS, plus value-added tax at the current applicable rate.
- 7.2 Remuneration is due immediately and is to be paid without deduction within fourteen (14) days of invoicing and provision of the Services. In as much as Services provided by NEWBOOKS require the payment of an installation fee by the Customer, such installation fee shall also be due for immediate payment.
- 7.3 The Customer shall reimburse NEWBOOKS for ancillary costs for necessary travel and any necessary overnight stays. NEWBOOKS shall notify the Customer of the respective valid rates and provisions.
- 7.4 The Customer shall be in default of payment upon expiry of the payment deadline pursuant to the preceding section 7.2. Interest shall be payable on remuneration at the respective current default interest rate for the period of default. The right to claim for further default damages is explicitly reserved. Our entitlement to commercial maturity interest (Section 353 HGB (German Commercial Code) shall remain unaffected in respect of merchants.
- 7.5 Insofar as NEWBOOKS has reached an agreement with the Customer on recurring services (continuing obligation) and the Customer is more than two (2) months in default with the payment of an invoice, NEWBOOKS shall be entitled to block access to the database. Under these circumstances, the Customer remains under obligation under all circumstances to pay the fixed monthly remuneration. If the Customer is more than two (2) months in default with the payment of an invoice, NEWBOOKS shall be entitled to terminate the Agreement without notice and to demand payment of lump sum compensation due immediately payable up to the end of the regular term of the Agreement.
- 7.6 NEWBOOKS is authorised to adjust the remuneration by written notice of four (4) weeks to compensate for unforeseeable increases in personnel costs and other costs influencing the provision of the Services which could not be calculated at the time of the Agreement being reached insofar as there is no decrease in other costs at the same time. Any such adjustment, however, is only permitted at the earliest twelve (12) months after conclusion of the Agreement and may not exceed the remuneration of the preceding 12-month period by more than 10 %. Insofar as there is an increase in remuneration of more than 7.5 % of the preceding 12-month period, the Customer may terminate the Agreement in writing with notice of six (6) weeks from receipt of the notice of increase.
- 7.7 If it becomes apparent after conclusion of an Agreement that entitlement to agreed remuneration is endangered by the Customer's lack of operative capability (e.g. through filing of a petition in insolvency), NEWBOOKS shall be entitled in accordance with statutory regulations to withhold performance and – if applicable after setting a deadline – to withdraw from the Agreement (Section 321 BGB), unless the Customer is able to prove that at the time of the Agreement being reached NEWBOOKS must already have been aware, under application of due care and attention, of the Customer's lack of operative capability.

8. Acceptance of IT Services

- 8.1 The following shall apply insofar as the work results to be provided by NEWBOOKS as part of IT Services are the object of a works contractual acceptance as defined by Section 640 BGB and no deviating agreement has been reached between the contracting parties:
- 8.2 In the event of the work results to be produced by NEWBOOKS relating to work performances such as the production or modification of websites and software implementations, adaptations or developments, the Customer shall provide test data in the agreed quantity and in machine-readable form, as well as the test results expected from the Customer in good time prior to commencement of the test and function trials in the formats specified by NEWBOOKS. NEWBOOKS is entitled to participate in the test and function trials. If a work result has passed an acceptance test, the Customer is obliged to provide a written declaration of acceptance within ten (10) working days from completion of the acceptance test. Acceptance is deemed to have been granted if the Customer has not asserted conclusively in writing the grounds for refusal of acceptance within ten (10) working days from completion of the term agreed for the acceptance period or uses in production a work result for a period in total of more than three (3) months. NEWBOOKS shall notify the Customer explicitly at the commencement of these periods of the intended significance of this behaviour.
- 8.3 NEWBOOKS is entitled to demand acceptance of part-performances and interim results. If, among other things, the preparation of a technical rough or fine concept or performance specifications has been agreed, NEWBOOKS can demand acceptance of these interim results by the Customer. Furthermore, NEWBOOKS can also demand the inspection and confirmation of such performances that are not work performances. The respective last accepted document replaces the formerly agreed specifications. If all part-performances have been accepted, the last part-acceptance is simultaneously the final acceptance.

9. Warranty

- 9.1 Insofar as NEWBOOKS provides the Customer with access to databases and storage space, the statutory warranty regulations of rent law (Sections 536 to 541 BGB) shall apply accordingly in the event of any occurrence of faults insofar as no other agreement has been reached in this respect below.
- 9.2 The Customer can only then assert its statutory rights pursuant to Sections 536, 536a BGB if an attempt to rectify the fault has failed. The failure of rectification or replacement delivery can only then be assumed if NEWBOOKS has had adequate opportunity to undertake rectification or replacement delivery without the desired result being achieved, if the rectification or replacement delivery is impossible, if NEWBOOKS refuses or unreasonably delays such delivery or if unreasonableness exists for any other reason.
- 9.3 Strict liability by NEWBOOKS for compensation (Section 536a BGB) for defects existing at the time of the Agreement being reached shall be excluded.

- 9.4 Termination by the Customer pursuant to Section 543 BGB for deprivation of contractual use shall only then be permitted if NEWBOOKS has had adequate opportunity to rectify the fault and such attempt has failed.

10. Liability

- 10.1 Unless otherwise specified in these GTC including the following provisions, NEWBOOKS shall be liable in the event of an infringement of contractual and non-contractual obligations according to the corresponding statutory regulations.
- 10.2 NEWBOOKS shall be liable for damages – irrespective of legal justification – for premeditation and gross negligence. In addition, NEWBOOKS shall also be liable in cases of simple negligence, damages from injury to life, limb and health, and damages from a breach of material contractual obligations (obligation, the proper fulfilment of which is essential for the orderly execution of the Agreement and in the fulfilment of which the contractual partner trusts and may regularly trust and infringement of which is a danger to achievement of the contractual purpose); under these circumstances, however, the liability of NEWBOOKS shall be restricted to compensation for the foreseeable, typically occurring damage. This limitation of liability, however, shall not apply if NEWBOOKS has maliciously concealed a defect or provided a guarantee of the quality of the Services (Beschaffenhheitsgarantie). The same shall apply for Customer claims under the Product Liability Act.
- 10.3 Insofar as the liability of NEWBOOKS pursuant to the preceding section 10.2 shall only be limited to the foreseeable, typical damage, the liability of NEWBOOKS per case of damage shall be limited to 25% and, irrespective of the number of claim occurrences, over a period of twelve months to a maximum of 50 % of the respective total amount of the order. Insofar as continuing obligations are concerned, the order total is calculated from the remuneration that the Customer has paid to NEWBOOKS over the last twelve (12) months prior to occurrence of the respective loss event (“annual remuneration”); for all loss events that have occurred within the first twelve (12) months since the respective agreement coming into force, the annual remuneration shall be calculated on the basis of the average monthly remuneration (average monthly remuneration x 12). In the case of predictability of a significantly higher liability risk, NEWBOOKS shall offer the Customer a higher liability sum, in which case NEWBOOKS retains the right under such circumstances to adjust the respective remuneration accordingly.
- 10.4 NEWBOOKS shall only be liable for the loss of data insofar as the Customer undertakes a backup thereof in machine readable form in adequate intervals according to application, however at least once a day, and in doing so guarantees that this data can be retrieved with acceptable cost or effort. In the event of the Customer failing to carry out such data backup procedures, the liability of NEWBOOKS shall be limited to those costs and efforts which would have been necessary for the retrieval of the data from a due and proper data backup, as well as those damages caused by the loss of current data which would also have been lost in the event of a daily data backup.
- 10.5 The title information is based upon announcements by the associated publishing houses. NEWBOOKS provides no guarantee for the correctness, completeness and availability for delivery of the featured title. NEWBOOKS is neither provider as defined by Section 2 No. 1 TMG

(German Telemedia Act) nor is it responsible for the contents of websites which are referred to in the title descriptions.

- 10.6 Insofar as the Customer reprocesses and makes available to its end customers the title information provided by NEWBOOKS, the Customer itself shall be responsible for fault-free processing and fault-free presentation of the title information to its end customers.

11. Rights of use

- 11.1 The Customer shall be provided with the non-exclusive, non-transferable and non-sublicensable right, restricted to the respective term of the Agreement, to use the bibliographical information and data (e.g. the contents of the databases such as title and catalogue data or editorially compiled additional information such as system keys) provided by NEWBOOKS, as well as to access the databases of NEWBOOKS by means of telecommunications and use the functionalities of the databases by means of a browser.
- 11.2 The afore-mentioned right of use also includes in this respect the right of the Customer to use the bibliographical information and data provided by NEWBOOKS as part of an own offer developed by the Customer which, in turn, the Customer places at the disposal of its end customers as search and order instrument. The Customer does not receive any further rights in excess hereof.
- 11.3 With the exception of the right of use stipulated in section 12.1, the Customer is not permitted to reproduce, sell or allow the temporary use of, and above all not to lease or lend, the bibliographical information and data or parts thereof provided by NEWBOOKS.
- 11.4 The Customer shall use the databases exclusively within its own company. The Company is not permitted to allow third parties to use the databases or make them accessible to third parties.
- 11.5 The Customer agrees to draw attention in its own offers to the source of the bibliographical information and data provided by NEWBOOKS. Positioning and style and manner of the notification shall be at the Customer's discretion.

12. Duration and Termination

- 12.1 The duration stipulated in the respective agreement shall apply for the use of the Services provided by NEWBOOKS.
- 12.2 The right of termination for just cause (Kündigung aus wichtigem Grund) remains unaffected. Just cause for NEWBOOKS to terminate the Agreement exists if the Customer is more than two months in arrears with payment of the agreed remuneration and/or the Customer continues to violate or repeatedly or blatantly contravene material obligations from the contractual relationship despite corresponding admonishment by NEWBOOKS, the Customer is responsible for such circumstances and NEWBOOKS cannot reasonably be expected to continue the contractual relationship.
- 12.3 Any terminations shall only be valid if in written form.

13. Data Protection

Both contracting parties shall observe the respective valid data protection regulations applicable in Germany and place their staff employed in connection with the Agreement and its implementation under obligation to observe data confidentiality pursuant to Section 5 BDSG (Federal Data Protection Act) insofar as they are not already generally under a corresponding obligation.

14. Force Majeure

Each contractual party shall be exempted from the obligation to perform if and insofar as non- fulfilment of Services is due to the occurrence of circumstances of force majeure after conclusion of the Agreement. Examples of circumstances of force majeure are deemed to include war, strikes, unrest, expropriation, substantial changes to legislation, storms, floods and other natural catastrophes, as well as other circumstances for which NEWBOOKS is not to be held responsible, in particular technical problems with the Internet or interruptions to or destruction of data-carrying lines. Each contracting party shall notify in writing and without delay the other contracting party about any occurrence of an event of force majeure.

15. Final Provisions

- 15.1 The contractual relationship shall be subject exclusively to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 15.2 The place of fulfilment for all performances and deliveries and the exclusive court of jurisdiction shall be Cologne insofar as no other court of jurisdiction is stipulated by another regulation.
- 15.3 The assignment of Customer rights from the respective contractual relationships without prior approval by NEWBOOKS shall be excluded; the assignment of monetary claims under the terms of Section 354a HGB shall remain unaffected by this.
- 15.4 NEWBOOKS shall be authorised to use the Customer's name and brands as reference for marketing purposes.
- 15.5 In case of doubt the original German version of this GTC shall prevail.

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