

# Order

## Journal Subscription

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De Gruyter Rechtswissenschaften Verlags-GmbH  
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## **JURA – Juristische Ausbildung**

ISSN 0170-1452 (Print)

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## General Terms and Conditions

### § 1 Scope/Subject Matter of the Contract

The General Terms and Conditions of

**de Gruyter Rechtswissenschaften Verlags GmbH**  
**represented by the Managing Director, Dr. Michael Schremmer,**  
**Lützowstraße 33, 10785 Berlin**  
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**E-mail: recht@degruyter.com**

regulate subscriptions relating to the journals offered by de Gruyter Rechtswissenschaften Verlags-GmbH (hereinafter referred to as the “publisher“) on the Internet as online versions and print versions. The prerequisite for the conclusion of a subscription agreement is that customers must accept these General Terms and Conditions in advance. Our General Terms and Conditions apply exclusively in the version accepted by the customer when making the order. Any differing or additional general terms and conditions of the customer will not be a component of the agreement. Customers may download our General Terms and Conditions on their computers, store them in reproducible form or print them. ([www.degruyter.de/downloads/agb\\_rw\\_e.pdf](http://www.degruyter.de/downloads/agb_rw_e.pdf))

### §2 Creation and Duration of the Subscription Agreement

1. The online representation of our range of journals does not represent a binding contractual offer. The subscription agreement for a journal is entered into, when the publisher has declared the acceptance of the customer’s order by e-mail or fax.

2. The subscription agreement is entered into for an unlimited period. **Both parties may terminate this agreement with a notice period of three months to the end of a contractual year. Termination can be made in writing or by e-mail. The notice of termination is to be sent to the address mentioned below in § 3. The right of either contractual party to terminate for important reasons shall not be affected.** An important reason on the part of the publisher is given, in particular, if the customer:

(a) defaults in making payment of the fee and fails to remedy such a default within 30 days of notification by the publisher;

(b) commits a material or persistent breach of essential provisions of this agreement, in particular of the regulations set out in §§ 4 and 7, and fails to remedy such breach despite a reminder from the publisher.

3. Trial subscriptions of journals are effective for the relevant given time. If the customer fails to notify the publisher in writing or by email two weeks prior to expiration of the trial subscription that he wishes to discontinue the contractual relationship, then the contract will be renewed as a subscription contract against payment. The regular subscription contract will then commence on the first day after expiration of the trial subscription.

### § 3 Right of Withdrawal

**Subject to the provision set forth in § 3 (2) sentence 1, customers who are consumers have the right to withdraw from the subscription agreement in writing (e.g. letter, fax, e-mail) within two weeks of receiving the e-mail or the fax, in which the publisher accepts the order, without stating the grounds. Timely dispatch of the withdrawal notice will suffice for compliance with the withdrawal deadline. The withdrawal notice is to be sent:**

**(a) in writing to de Gruyter Rechtswissenschaften Verlags-GmbH, Lützowstraße 33, 10785 Berlin or**

**(b) by fax to the number +49-(0)30/26005-222 - or**

**(c) by e-mail to Wahl@degruyter.com.**

**The withdrawal notice must include the name and e-mail address of the customer. In the case of an effective withdrawal, any services received by either party are to be returned.**

**The following limitations apply:**

**No right of withdrawal from agreements on journal print versions exist, if the fee to be paid by the customer by the earliest possible termination date for a journal subscription does not exceed €200 (gross, including delivery costs). As regards agreements on the online version of a journal, the customer's right of withdrawal expires prematurely, if the publisher has started delivering its services with the customer's express consent before the end of the withdrawal period or if the customer himself has initiated it. This is the case, in particular if the customer has accessed the online version of a journal using his access data and retrieved contents.**

#### **§ 4 Conditions of Use of Online Versions**

1. This agreement grants the customer the simple, non-transferable right for the term of the subscription to use the online version of a journal pursuant to the provisions of this agreement. The number of entitled users is based on the data entered by the customer upon registration. If a single-user license is purchased, only the customer himself is entitled to use the online version of the journal. If a multi-user license is purchased, the number of persons indicated in the order is entitled to use the online version of the journal. The publisher is entitled to review the number of persons indicated on the order form and compliance with the conditions of use. After a relevant request, the customer shall furnish the necessary documents and information to an acceptable degree to the publisher.

2. The customer may use the online version of the journal for his own purposes only; this includes usage in the context of his day-to-day professional activity. The customer is prohibited from

(a) displaying the contents publicly or of making them accessible to the public and/or

(b) selling, leasing, hiring or lending the contents to third parties or using them otherwise for commercial or industrial purposes and/or

(c) printing the contents or storing them on permanent data carriers and handing them over to third parties and/or

(d) using the contents for creating systematic collections or using them on local retrieval systems and/or

(e) converting the contents to other file formats and/or

(f) processing, editing or adapting the contents and/or

(g) storing the contents permanently, unless provided for by a function of the online version of the journal. The above-mentioned prohibitions shall also apply to individual components of the contents and for an initiation to have such activities performed by third parties. The customer's mandatorily existing usage rights pursuant to legal provisions shall not be affected.

3. The customer's usage rights are subject to the condition that due payments are made.

4. The customer may not remove, alter or suppress copyright notices, notes to signs (in particular marks, corporate names), logos or other means of identification or relevant to copyrights as they appear in the online versions of the journals. The same shall apply to other legal reservations contained in the online versions of the journals.

## **§ 5 Availability of Online Versions**

1. Access to online versions of the journals is available on working days (Monday to Friday) from 6 a.m. to 8 p.m. (operating hours). Outside this period, availability may be limited, e.g. due to maintenance activities.
2. The availability of online versions of the journals refers to the supply point to the Internet on the publisher's side. Technical problems that are beyond the publisher's control (such as functional disorders in public transmission lines) do not represent a defect in the online versions of the journals.
3. If the publisher becomes aware of an abuse of the customer's access data or if such abuse can be expected due to actual circumstances, the publisher may block such access until a suspicion has been cleared up. The same applies to actual or suspected abuse of access data of or by the authorized users in the event of multi-user licenses.

## **§ 6 Warranty**

### **1. Defects in a Print Version**

- a) We assume warranty for defects in a print version, at our option, by either remedying the defect or delivering a defect-free product ("subsequent fulfilment"). We must be provided with reasonable opportunity and time to perform subsequent fulfilment before any other defect claims are made.**
- b) If the subsequent fulfilment is unsuccessful, the customer may, at his option, either reduce the purchase price or rescind the contract.**
- c) No defect claims will exist, if the deviation from the agreed quality is only insignificant or the contractual or customary use is only insignificantly hampered.**
- d) Obvious defects must be notified to us within two weeks of receiving the journal; otherwise no warranty claims may be made. For compliance with this two-week period, the timely dispatch of the claim will suffice, the burden of proof for which will be borne by the customer. For merchants, the provisions of § 377 of the German Commercial Code (HGB) will apply.**
- e) The customer's claims for damages and reimbursement of expenses are regulated by § 9.**

### **2. Defects in an Online Version**

**If there are defects in the online version of a journal, the publisher will try to remedy such defects within an adequate period of receiving a notification from the customer. If this is not possible, the customer is entitled to reduce the fee proportionately. If material defects occur repeatedly, the customer is also entitled to terminate this agreement without notice. No defect claims will exist, if the usability of the online version of a journal is impaired to an insignificant degree only. The customer's claims for damages and reimbursement of expenses are regulated by § 9.**

- 3. The customer's defect claims will be statute-barred in accordance with statutory limitation periods.**

## **§ 7 Special Duties of the Customer for the Purchase of Online Versions**

1. The customer is obliged to provide true, up-to-date and complete data upon registration. He must always keep his user data up to date.
2. The customer must maintain secrecy regarding his access data (such as user name and password) for online versions of the journal. The customer is obliged to notify the publisher if he has lost its access data or suspects unauthorized use of his access data by third parties. The customer is liable for any abuse of his access data, if he is responsible for such abuse. The publisher is not liable for damage incurred by the

customer due to abuse or loss of his access data (e.g. user name, password), if not caused by the publisher.

3. The customer is solely responsible for his Internet connection and its maintenance as well as hardware and software and other data communication devices necessary for communication with the server of the online version of the journal. The publisher will provide the customer with details about necessary or appropriate minimum standards on request. The customer shall ensure sufficient protection of the systems used by him from viruses and unauthorized access in accordance with state-of-the-art technology. The publisher is not liable for damage caused by viruses, which could have been prevented by adequate technical measures.

4. If a usage right for multi-user licenses is purchased, the customer shall impose the duty to comply with the provisions of use in this agreement on the other authorized users. If he becomes aware of an abuse, he shall stop such abuse immediately and notify the publisher thereof.

## **§ 8 Fees, Payment Terms and Conditions**

1. The prices for the subscription of a journal are indicated in the order form. The total price for print versions is the price for the journal plus delivery costs indicated in the order form. As regards online versions, the customer bears the costs for his connection to the Internet and the transmission of data to his computer.

2. The publisher is entitled to adjust the prices of the journal or the online database as per a future effective date. Notification to the ordering party can be given in writing with the invoice or by email. In the event of a price increase, and within two weeks of receipt of the written notification, the ordering party is entitled to extraordinary termination of the contract with the publisher. Termination can be made in writing or by e-mail. The termination becomes effective as of the date of the price increase announced; the old price shall be valid to that date. The publisher will inform the customer in the adjustment letter expressly about his right of termination and the notice period. The right of contractual notice of termination shall not be affected.

3. We accept only the forms of payment indicated on the relevant order form. Payments must be made within 2 weeks of delivery of the invoice to the customer. The publisher may prepare the invoices in advance.

4. If the customer is in default of payment, the publisher will be entitled to invoice interest on arrears of 5 (five) percent above the base rate as damages pursuant to § 247 of the German Civil Code (BGB). If the customer is an entrepreneur, the interest on arrears amounts to 8 (eight) percent above the base rate. The publisher may give evidence about higher damage caused by delayed payment. The customer may prove that no damage has occurred or that it is essentially lower than that asserted.

5. The customer may only set off against counterclaims which have been bindingly determined by a court of law, are undisputed or have been acknowledged by the publisher.

## **§ 9 The Publisher's Liability for Damages or Reimbursement of Expenses**

1. The publisher is liable for intent, gross negligence, claims based on strict liability, claims based on the Product Liability Act, the assumption of a warranty for the journals' quality, damage resulting from injury to life, limb or health and in any other cases where liability is legally mandatory.

2. In addition, the publisher is liable for the breach of material contractual duties ("cardinal duties") pursuant to the legal provisions. If the breach of the cardinal duties was due to negligence, however, the publisher's amount of liability will be limited to the typical foreseeable damage.

3. Unless otherwise regulated above in § 9, numbers 1 - 2, the publisher's liability for damages and reimbursement of expenses - regardless of their legal basis, in particular due to a breach of duties, tort or § 311a (2) BGB - are excluded. The same applies to the personal liability of the publisher's legal

representatives, employees or vicarious agents. With respect to online versions of the journals, the publisher is not liable either for faults in the application or the user software on the Internet or for the customer's interpretation errors of online version data; in addition, the publisher is not liable for unauthorized use of data by third parties.

4. The above provisions are not linked to a change in the burden of proof.

5. Any statutory liability regulations shall not be affected.

6. The customer's claims for damages and reimbursement of expenses will be statute-barred upon expiration of the statutory warranty periods, which commence as provided by statute.

#### **§ 10 Applicable Law and Venue / Miscellaneous Provisions**

1. The law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply. If the customer is a merchant or a separate fund under public law, the place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with this agreement, except for collection proceedings, is Berlin. At its option, the publisher is entitled to sue the customer at his general legal venue.

2. Should individual provisions of this agreement be or become invalid or unenforceable, this will not affect the validity and enforceability of the remaining provisions.