

# Terms and Conditions of purchase

## Libri Terms and Conditions of purchase

### 1. Scope, Placing of Orders, Declarations

**1.1** These terms and conditions of purchase in its respective applicable version apply to all business relations between Libri and its suppliers (hereinafter referred to as the “**Contractor**” or “**Supplier**”). Libri reserves the right to change these terms and conditions of purchase also partly and shall inform the Contractor about any changes in due time.

**1.2** Terms and conditions of delivery and service as well as any other Terms and Conditions of the Contractor shall not be accepted by Libri and shall not be part of the contract unless Libri has approved their applicability in writing. These terms and conditions of purchase also apply if Libri accepts the delivery without objection with full knowledge of any conflicting or diverging terms and conditions of the Supplier.

**1.3** The Supplier may accept an order placed by Libri within a period of three working days after receipt of the order irrespective of the manner of communication (e.g. by remote data transfer (DFÜ) interface, e-mail/Internet, fax or letter). Libri shall no longer be bound by the order upon the expiry of this period.

**1.4** Legally relevant declarations and notifications made by that the Contractor towards Libri after the conclusion of the contract shall be in writing (e-mail and facsimile shall be sufficient) unless expressly agreed on otherwise by Libri and the Contractor.

**1.5** “**Goods**” for the purposes of these terms and conditions of purchase refer to any goods which are the subject of the business relation between the Supplier and Libri (i.e. books and/or non-book products).

### 2. Product Information / Metadata / Offers by the Supplier

**2.1** The Supplier shall notify Libri with regards to the Goods of all new releases, new editions, changes of titles/articles and changes in price (including a cancellation of any existing fixed book price), publication and delivery dates, recalls and sales campaigns as well as all relevant title-/article-related advertising measures. The transmission of the complete product information, content respectively product descriptions, as well as additional information (e.g. interior illustration, audio sequences) and metadata (i.e. (i) from the area of product data in particular: ISBN, EAN / EAN as barcode, Unique Identification Number (UIN), name of the manufacturer or publisher, publisher imprints (with an identification number, e.g. MVB number or standard address number (SAN)), name(s) of the author(s), title, manufacturer, binding type, price in € or – if applicable, any other contractually agreed – foreign currencies, price type, publication language, VAT rate (if applicable, different tax rates for different product components, e.g. in case of e-bundles), product group description according to the product group classification system of the books wholesaler’s, classification according to the keyword systematics THEME, BIC and BISAC, publication date, country of origin in accordance with Articles 22 to 26 of the Customs Code, customs tariff number from the Standard

International Trade Classification and (ii) from the area of annotations in particular: trademarks, logos, pictures (including cover pictures), interior illustration, photos, drawings, illustrations, texts on cover pages, blurbs, preface, epilogue, table of contents, index, bibliography and list of figures, text excerpts, reading samples, “look into the book” function, additional material – such as biographies, bibliographies, reviews, recommendations, further information, etc., reading or audio samples, video sequences) must be provided within a reasonable period, but no later than 14 days before the introduction of the product or the implementation of the measure to allow Libri sufficient response time; in any event, Libri shall be informed at the same time as any other customer of the Supplier. Each notification of change must be timely received by Libri so that Libri and its customers are given sufficient response time. This applies particularly to changes in price of Goods subject to a fixed book price.

**2.2** Libri receives a free sampled offer (specimen copy) of all new releases respectively the entire current range of Goods (books and non-book articles) including all prices and conditions. Samples shall be sent to the registered office of Libri GmbH in Hamburg.

**2.3** The Supplier shall transmit metadata notifications as set out in clause 2.1 to Libri in the required quality and the data format ONIX-XML via the FTP server. The use of another format shall be possible in consultation with Libri in a particular case. The metadata set out and defined in clause 2.1 shall be transmitted in particular. Information (images and additional texts) exceeding the mere meta data shall be provided by the Supplier on FTP servers under Libri’s control in accordance with the format-related requirements by Libri and the respective state of the art. A connection shall be determined in consultation for the transmission of reading samples as “look into the book” function and audio or video sequences

### 3. Delivery / Transport

**3.1** The delivery date indicated in the order placed by Libri shall be mandatorily complied with. The receipt of the Goods at the place of delivery provided in clause 3.2 shall be relevant. In case no delivery date is specified on the order or has otherwise been agreed upon, the Goods shall be dispatched within 3 working days after the placement of the order.

**3.2** Unless otherwise agreed upon in writing, the Goods shall be delivered “free domicile” to the place indicated on the order without packaging costs, postage etc. being charged. If the destination is not indicated and not agreed upon otherwise, the Goods shall be delivered to Libri, Europaallee 1, 36244 Bad Hersfeld. The provision set out in clause 2.2 sentence 2 remains unaffected. The respective destination shall also be the place of performance (obligation to be performed at the creditor’s place of business, “Bringschuld”). The Supplier must inform Libri about the delivery address or a change of the delivery address no later than 14 days prior to the first delivery from the respective delivery address. If Libri and the Supplier agree on a regular transport using a certain service provider, the Goods shall be delivered by this

# Terms and Conditions of purchase

company. The risk of accidental loss and accidental deterioration of the item shall pass to Libri upon its handover at the place of performance.

**3.3** The Supplier is not entitled to have the services owed by him rendered by third parties without Libri's prior written consent. The Supplier shall bear the procurement risk for the Goods according to and in line with the notifications set out in clause 2.1 unless otherwise agreed upon (e.g. sale of goods in stock).

**3.4** The Supplier is obliged to inform Libri immediately about any difficulties arising with regard to the timely rendering of services, the reasons and the expected duration of the delay.

**3.5** If the Supplier fails to perform or fails to perform on the agreed delivery date or is otherwise behind schedule, Libri is entitled to any statutory claims. Libri is particularly entitled to claim damages in lieu of performance and to rescind from the contract after the expiration of an appropriate grace period; in such case the Supplier is entitled to prove that he is not responsible for the breach of duty.

**3.6** Libri might accept Goods received in delay by virtue of an express statement to the Supplier. The acceptance of delayed delivery or performance does not constitute a waiver of damage claims, the enforcement of damages caused by delay remains reserved.

**3.7** Libri may decline to accept the Goods respectively return the Goods if there is reasonable suspicion that the distribution conflicts with legal grounds.

## 4. Returns

**4.1** The Supplier is obliged to take back the Goods affected by the termination/reduction of the fixed final price respectively the fixed list price, recalls (e.g. of old editions and out-of-print titles) by the Contractor or the respective publisher and announcement of new editions of affected Goods as well as Goods delivered in damaged condition, incorrect deliveries or deliveries in breach of contract (e.g. food, hazardous goods, soft respectively cuddly toys, goods rated FSK 18), partial deliveries and overdeliveries free of processing fees and to reimburse Libri or credit the purchase price for the affected Goods to Libri. At the same time, Libri reserves the right to refuse acceptance of the Goods in case of the above-mentioned deliveries in breach of contract. Libri shall be entitled to reduce the relevant or other invoices by the equivalent value of the corresponding Goods. Transport costs for these returns shall be borne by the Supplier. Libri reserves the right to invoice further costs and expenses incurred due to the returns (e.g. for the separation of the affected Goods) to the Supplier.

**4.2** It is stipulated in the condition agreement and/or in the particular order if and to which extent Libri is entitled to a right to return towards the Supplier beyond the right set out in clause 4.1.

**4.3** Replacement deliveries for returned Goods shall only be made in consultation and with prior written consent of Libri.

**4.4** Supplementary and unless otherwise provided for in these terms and conditions of purchase, the delivery and shipping instructions of Libri or the condition agreement, the rules and regulations for returns contained in the book trade regulations as amended shall apply.

**4.5** If a collection by a certain service provider is agreed between Libri and the Supplier (clause 3.2), the returns set out in this clause 4 shall also be carried out this way.

**4.6** See clause 5.2 below with regards to the right to return in case of re-negotiations of prices or discounts.

## 5. Conditions, Prices

**5.1** The price indicated on Libri's order on the basis of the condition agreement in connection with the metadata transmitted by the Supplier (for whose accuracy, particularly conformity with the German fixed book price law (*Buchpreisbindungsgesetz*), the Supplier vouches) shall be binding. To the extent that Goods are not subject to a fixed book price, the agreed purchase prices by Libri are fixed prices; they are net purchase prices after deduction of all agreed discounts.

**5.2** If Libri and the Supplier upon Supplier's request enter into re-negotiations about the prices or discounts on the fixed retail price as set out in the condition agreement aiming to increase the prices to be paid by Libri or to reduce the discounts granted by the Supplier and fail to reach an agreement, Libri reserves the right to return all stock. In case of a return, the Supplier shall reimburse Libri the purchase price of the affected Goods without deduction of processing fees or shall credit them to Libri and shall bear the transport costs for such returns.

**5.3** Libri shall be fully reimbursed for the losses of stock value arising due to possible changes in prices (particularly in case of a reduction of the fixed retail price) at the date on which the change in prices takes effect unless Libri makes use of its right to return (see clause 4.1). The same shall apply if Libri pays an inventory value adjustment to its customers for this reason.

## 6. Contractor Information an Invoices

**6.1** In addition to the statutory information (e.g. date, invoice number, invoice amount, statement of value-added tax, VAT ID number), all invoices of the Supplier must contain the following information where relevant: Unique Identification Number (UIN), (ii) Libri's tax number, (iii) order references, (iv) article references, (v) EAN/ISBN, (vi) quantity, (vii) price code, (viii) fixed retail price or dealer selling price (in case of non-fixed retail price), (ix) price per unit as well as (x) the agreed rate of discount. VAT shall also be specified on any orders passed on internally by the Contractor with delivery from abroad. Contractors exempted from VAT have to indicate the exemption from value-added tax clearly and expressly on their invoice. The accompanying shipping documents must clearly show the currency used for invoicing.

**6.2** Delivery notes as well as invoices shall be attached to the shipment. In addition, invoices and delivery notes shall be transmitted electronically to Libri in accordance with Libri's specifications. A copy of the first invoice has to be sent by fax to +49 40-85398-7808 in advance.

**6.3** The Supplier shall be liable for any consequences arising from non-compliance with the obligations set out in this clause 6.

## 7. No Set-off, Non-Retention, Right to refuse Performance, Intercompany Charges

**7.1** The Supplier is not entitled to assign his claim against Libri or to have it collected by third parties without Libri's

# Terms and Conditions of purchase

prior written consent; section 354a of the German Commercial Code (*Handelsgesetzbuch, HGB*) remains unaffected with regards monetary claims. The Supplier may only offset against uncontested or legally established counterclaims. The same shall apply for the assertion of rights of retention or rights to refuse performance by the Supplier which can only be asserted if they are based on the same contractual relationships

**7.2** Libri shall be entitled to its rights of set-off and retention to the extent permitted by law. Libri is particularly entitled to retain due payments as long as Libri is entitled to claims against the Supplier arising from incomplete or defective performance.

**7.3** If Libri is not entitled to any offsettable claims against the Supplier in the amount of the latter's claim, Libri is entitled to set off against claims of other companies affiliated with Libri within the meaning of sections 15 et seqq. of the German Stock Corporation Act (*Aktiengesetz, AktG*). Such companies affiliated with Libri are likewise entitled to set off claims of Libri against claims of the Supplier.

## 8. Duties of Inspection and Complaints

**8.1** The commercial obligations to inspect and submit complaints are governed by the statutory provisions (sections 377, 381 of the German Commercial Code) whereby Libri's obligation to submit complaints shall be limited to defects that become apparent upon external examination at the incoming goods inspection including the delivery documents as well as sampling during quality control procedures (e.g. obvious transport damage, wrong and short deliveries).

**8.2** Libri is entitled to control and audit the production of the Goods at the Supplier or his subcontractor by itself or through agents at any time during normal business hours after having given timely notice to the Supplier. However, such an inspection shall not release the Supplier from his sole responsibility for the contractual delivery.

**8.3** The values determined by Libri in accordance with clause 8.1 upon receiving inspection shall be relevant and substantial for the condition, type and volume of a delivery. Libri is entitled to reject wrong deliveries, partial deliveries, overdeliveries and deliveries of damaged Goods or to return the Goods in accordance with clause 4.1. Alternatively, Libri may reduce payment (i) in proportion to the undervalue in case of wrong deliveries and (ii) by the invoice value of the non-delivered goods in case of partial deliveries.

## 9. Compliance with statutory Provisions / Social, Labour and Environmental Standards

**9.1** The Supplier must comply with all applicable laws, regulations and any other legal norms, particularly the rules set out in the German fixed book price law (*"Buchpreisbindungsgesetz"*), the German Product Liability Act (*Produkthaftungsgesetz*), the German Equipment and Product Safety Act (*Geräte- und Produktsicherheitsgesetz*), the German Food and Feed Code (*Lebensmittel- und Futtermittelgesetzbuch*), the German Electrical and Electronic Equipment Act (*Elektrogerätegesetz*), the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (*REACH*), the Toy Safety Order (*Spielzeugverordnung*) as well as all product identification provisions (e.g. age restrictions for DVDs), the German Packaging Regulation (*Verpackungsverordnung*) and

all other applicable statutory requirements under national or European level. The Supplier must ensure beyond the adherence to the statutory requirements valid and applicable at the time of delivery that future legislation, regulations and any other legal norms are taken into account timely before they take effect to ensure that the Goods delivered can be sold by Libri without a violation of any laws, rules, regulations and ordinances that enter into force after the delivery. If such information is required for national or cross-border sales, the Supplier shall immediately provide such information in electronic form in his Goods' metadata upon request. To the extent relevant and applicable, the Supplier shall also present a respective long-term supplier declaration.

**9.2** To the extent that the Supplier is aware of the country or countries of delivery for the Goods, the Supplier shall also comply with the statutory provisions applicable in the respective country or countries in accordance with clause 9.1 above.

**9.3** The Supplier must adhere to all relevant social, labour and environmental standards and ensure that any suppliers, subcontractors as well as any other persons involved in the supply and/or production chain comply with and/or correspondingly pass on such standards. The respective minimum standards are based on the conventions of the International Labour Organisation, the UN Declaration of Human Rights and the OECD Guidelines for Multinational Enterprises.

**9.4** The Supplier shall furnish appropriate proof of compliance with the requirements set out in clauses 9.1 to 9.3 above upon Libri's request. Libri may require the Supplier to furnish proof even prior to the delivery of the Goods.

## 10. Warranty

**10.1** Libri is entitled to statutory warranty claims. If the Supplier is in default, Libri may remove any defects at the Supplier's expense..

**10.2** Notwithstanding section 438 (1) no. 3 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), the usual limitation period for defects in quality and title is 36 months from the delivery and handover of the Goods unless the mandatory provisions set out in sections 478, 479 of the German Civil Code apply. The limitation period starts afresh for any parts that are replaced or repaired by the Supplier by way of a subsequent delivery unless the Supplier has not apparently acted out of goodwill.

**10.3** The Supplier warrants that the delivered Goods (i) comply with the sample and conform with the contractually agreed quality and condition; (ii) if no specific quality criteria have been agreed upon, are at least of customary quality; (iii) are free from defects and subject to unlimited marketability (particularly with regard to composition, construction and marking); further, that (iv) they do not conflict with any third-party rights and do not violate any laws; (v) the packaging is licenced in accordance with the German Packaging Regulation (*Verpackungsverordnung*); (vi) if relevant, the products are labelled in accordance with the FSK (age limit) not admitted to persons under 18; (vii) no products with an FSK admittance to persons over 18 are delivered; and (viii) all data material provided to Libri also satisfies the requirements pertaining to the protection of minors. The product descriptions transmitted in accordance with clause 2.1 above and the samples provided by the Supplier in accordance with

# Terms and Conditions of purchase

clause 2.2 above, which – particularly by way of specification or reference in Libri's order – are the subject matter of the contract, are considered as contractual agreed quality. Prior to the delivery, the Supplier shall carry out a final inspection of the conformity of the Goods with the samples delivered in accordance with clause 2.2 above.

**10.4** With regards to the Goods delivered by him, the Supplier guarantees consistent and complete traceability in accordance with the relevant applicable legal provisions. In addition to the Goods, the requirement of traceability also applies to the constituents (accessories, raw materials, additives and auxiliary materials), the production date and the course of the production process. The Supplier undertakes to provide Libri with all required information upon written request, if required.

**10.5** The Supplier immediately informs Libri by e-mail and/or fax and electronically in the scope of the electronic exchange of metadata if a product loses its marketability, the sale might conflict with legal grounds (e.g. due to an injunction) or if there is an indication that the Goods are hazardous to the health or safety of persons or things or the Goods do not comply with the other requirements for an appropriate placing on the market. This information requirement also applies if a respective injunction is granted solely against the Supplier. If the Supplier is obliged to inform the authorities about the dangers emanating from the Goods due to any safety provisions, Libri shall immediately receive a copy of such letter.

**10.6** If the delivered Goods are defective and particularly not in accordance with the sample, the quality provisions, packaging and shipping instructions, provisions pertaining to material identification and care symbols, the Supplier must refund the costs incurred by Libri for the inspection of the Goods, detection of the defects, rejection, conversion and the like upon the provision of evidence. Any other statutory claims for damages on the part of Libri remain unaffected.

**10.7** The Supplier shall be liable to Libri if the official declarations / statements made in advertising materials or on the label are incomplete or incorrect. The same shall apply to any missing, incorrect or incomplete assembly instructions. The warranty rights on the part of Libri remain unaffected even if a manufacturer's warranty is available.

## 11. Intellectual Property Rights

**11.1** The Supplier expressly assures that the delivery and the use of the delivered Goods by Libri in accordance with the designated use (particularly making them available to the public etc.) does not injure any third-party rights (e.g. copyrights, patents, utility models or registered designs, trademarks, licences or claims arising from competition law) and does not infringe any statutory or official provisions.

**11.2** If royalties arise to third parties and/or fees are payable to any performing rights society (e.g. GEMA) from the Goods to be delivered, they shall duly be paid by the Supplier. If Libri is held liable - rightfully or without justification – due to or relating to the Goods by third parties and/or any performing rights society, the Supplier is obliged to indemnify Libri as well as the companies affiliated with Libri within the meaning of sections 15 et seqq. of the German Stock Corporation Act against any third-party claims for royalties and/or fees

on the part of the performing rights society upon first request.

**11.3** Libri might assert any claims against the Supplier also on behalf of companies affiliated with Libri within the meaning of sections 15 et seqq. of the German Stock Corporation Act.

## 12. Rights of Use

**12.1** The Supplier shall provide Libri or any entity designated by Libri with data material (e.g. product images, product descriptions etc.) of the Goods to be delivered in a format specified by Libri for purposes of promotional communication and use in the catalogues distributed by Libri. The Supplier grants Libri upon delivery the simple, non-exclusive rights of use and adaption rights to the data material unlimited in terms of content, space and time. The granting of rights also involves the authorisation to pass such material on to third parties for the purpose of promotional communication as well as in the scope of the (separate, if necessary) distribution of catalogue data.

**12.2** In addition, the grant of rights shall also apply to the use for promotional purposes or PR activities (also for the use of the contents as an integral part of online advertising, such as banners, videos screen shots, audio samples, teasers, newsletters, titles and names for the business activity, services or products of Libri).

**12.3** The grant of rights shall apply to the use of all solid advertising media (e.g. print media, press advertising, brochures, catalogues etc.) as well as for a use via fixed and mobile communication networks and means of communication, including all digital and analogue transmission and retrieval techniques, particularly via cable, radio, fixed and mobile satellite networks and microwaves, all known and future transmission procedures (particularly WAN, LAN, WLAN, broadband, VHF, GSM, GPRS, EDGE, UMTS, HSDPA, HSUPA and DVB-T and DVB-H), transmission protocols and languages (in particular TCP-IP, IP, HTTP, WAP, HTML, c-HTML and XML) and including reproduction on any receivers, such as stationary, mobile and ultra-mobile computers, TV-sets, set-top boxes, (hard-disk) video cassette recorders, mobile phones, mobile digital assistants (MDA), personal digital assistants (PDA) and mobile Internet devices (MID) and include the use as part of telecommunication, telemedia, news and wireless services (such as web and mobile portals, RSS-, SMS-, MMS-mail, e-mail, messenger), irrespective of whether they are arranged as push or pull services.

**12.4** Libri is entitled to transfer all rights granted by the Supplier to affiliated companies within the meaning of sections 15 et seqq. of the German Stock Corporation Act and/or to allow such companies to use the rights granted by the Supplier. The group companies may exercise the rights in consideration of the requirements set out in the preceding clauses 12.1 to 12.4 at these purchasing conditions.

**12.5** The Supplier warrants that he holds the rights to the data material transmitted by him necessary for a transfer, particularly the rights to the images, texts, etc. Further, the Supplier warrants that the contents of the transmitted data material do not violate any third-party rights and/or any other statutory provisions. The Supplier immediately informs Libri by e-mail and/or fax and electronically in the scope of the electronic exchange of metadata if he forfeits and loses

# Terms and Conditions of purchase

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the rights necessary for a transfer of the data material transmitted to Libri.

## 13. Indemnification, Product Liability, Recall

**13.1** To the extent that Libri is held liable (e.g. assertion of damage claims) in connection with the delivery or supply of the goods delivered by the Supplier due to (i) a violation of relevant German or European laws and regulations (e.g. German fixed book price law, German Product Liability Act, German Equipment and Product Safety Act, German Food and Feed Act, German Electrical and Electronic Equipment Act, the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals or any other environmental regulations, (ii) a violation of intellectual property rights, (iii) an intervention into any other third-party right or (iv) the contractual use of transmitted data material by third parties (e.g. customers of Libri, tax authorities), the Supplier is obliged to indemnify Libri as well as the affiliated companies within the meaning of sections 15 et seqq. of the German Stock Corporation Act against all these claims upon first request as well as to compensate Libri or its affiliated company for any other resulting damages. This particularly comprises payment of damages for all expenses and damages including appropriate legal defence costs incurred by Libri due to or in connection with the assertion of claims by the third party.

**13.2** The Supplier is fully liable for any damage and consequential damage arising to the end users particularly under the provisions set out in the German Equipment and Product Safety Act, further national and international acts and regulations governing product safety and in accordance with producer's and product liability. The Supplier is obliged to furnish proof of compliance with the German Equipment and Product Safety Act upon request (certificate or test mark of a testing centre) and has to take back the Goods irrespective of any warranty periods in case of any prohibition orders under the German Equipment and Product Safety Act. With regards to non-book products, the Supplier is obliged to maintain a product liability insurance (recall cost insurance) with a general coverage level of at least EUR10m per personal injury/damage to property for the duration of the respective limitation periods applicable to the Goods delivered by him. If Libri is entitled to further damage claims, they remain unaffected.

**13.3** In the scope of his liability for claims, the Supplier is also obliged to refund any expenses incurred in accordance with sections 683, 670 or 830, 840, 426 of the German Civil Code arising from or in connection with a recall carried out by Libri. To the extent this is possible and reasonable, Libri shall inform the Supplier about the content and scope of the recall measures to be carried out and allow him the opportunity to comment. If a recall or a comparable measure is ordered by an authority or a court or if the product loses its marketability for other reasons or if the Supplier decides to call back the product without being ordered to do so by an authority or a court (or the like), the Supplier shall be liable to Libri for the damage thus caused including the costs incurred due to the recall of the product. Other statutory rights remain unaffected.

**13.4** Statutory and further contractual claims remain unaffected.

## 14. Retention of Title

Libri solely accepts a simple retention of title of the Supplier. The assignment of claims to the Supplier against customers of Libri to which Libri is entitled due to the resale of the Goods shall be excluded. A retention of title referring to all claims arising from the business relation with Libri shall be excluded as well.

## 15. Final Provisions

**15.1** These terms and conditions of purchase shall be exclusively governed by and construed in all respects in accordance with German law, excluding its conflicts of laws rules (Internationales Privatrecht, IPR) and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**15.2** The competent courts of Hamburg shall have exclusive jurisdiction, if the Supplier is a fully qualified merchant under the German Commercial Code (Vollkaufmann). The same shall apply if the Supplier has no general place of jurisdiction in Germany, transfers his domicile abroad after the conclusion of the contract or if his seat is unknown at the time of commencement of the action.