

# Author's Agreement

between

**Books on Demand GmbH**,  
In de Tarpen 42, 22848 Norderstedt,

hereafter called: "**BoD**"

and

Name

Street address

Country, postcode, town

hereafter called: "**Author**".

## 1. Subject of this Agreement

1.1 The subject of this Agreement is the exploitation of works by the Author (hereafter: "**BoD titles**") by BoD, specifically through the production and sale of printed copies (hereafter "**printed works**") as well as by selling and making available the BoD titles in electronic form, e.g. as e-books (hereafter: "**electronic editions**"), specifically for individual retrieval on the Internet via download, supplied by BoD or trade partners of BoD. Electronic editions may also be multimedia works or audio books.

## 2. Scope of this Author's Agreement, replacement of previous author's agreements

- 2.1 This Agreement (hereafter: "**Author's Agreement**") shall be considered the master agreement for all individual agreements concluded between the Author and BoD in the future concerning individual BoD titles (hereafter: "**book contracts**").
- 2.2 If the Author and BoD have already signed an author's agreement or master agreement (hereafter summarily: "**previous author's agreement**") in the past, this Author's Agreement shall replace the previous author's agreement and be effective for the future. Any pecuniary claims of the Parties which may already exist from the previous author's agreement shall remain unaffected.
- 2.3 The Author's Agreement shall also apply to already existing book contracts and any already existing BoD titles. Inasmuch as this Author's Agreement deviates from the provisions of existing book contracts, the provisions of this Author's Agreement shall take precedence with effect for the future.

## 3. Delivery of the manuscript

Unless no other agreements have explicitly been made (in particular in the context of ordering additional services of BoD), the Author shall be obligated to provide the manuscript as camera-ready copy (including typesetting and corrections) at his or her own expense by way of an upload (to the database of BoD via the Internet).

## 4. Assignment of rights by the Author

4.1 The Author shall grant BoD the exploitation rights to the BoD titles for the term of the respective book contract for all known forms of use and without limitations as to territory and scope. The assignment of rights shall apply to the exploitation of the rights of use by BoD itself

as well as by the transfer of rights (including partial rights) to third parties, either for a fee or free of charge. It includes the following exclusive rights in particular:

- a) the **right to the book**, i.e. the right to the production of printed copies of the BoD titles, especially upon individual requests through single orders ("print on demand") including single orders by the Author;
- b) the **right to electronic utilization**, i.e. the right to supply the BoD titles or parts thereof to a limited or unlimited group of people by way of any digital or other storage and data transfer technology (e.g. databases, online services on the Internet, services for mobile telephones, subscription services, etc.) including all transfer protocols (e.g. TCP/IP, http, WAP, HTML, UMTS, etc.), with or without (interim) storage at times and places of those persons' choosing and in such a way that the BoD titles can be individually retrieved and received in order to be used, especially through online shops via download as e-books or as streams (i.e. the right of making them available to the public). This includes the production, reproduction and distribution of image/sound recording media on which the BoD titles are stored in such a way that they can only be displayed if additional pieces of data information (additional keys) are supplied.

Furthermore, it includes the right to electronic utilization, digitization and of entering the BoD titles into electronic databases and data networks as part of online services, etc., with the goal of making them publicly available through these services. This also includes the right to redesign and edit the BoD titles for these purposes inasmuch as this is required for technical reasons.

BoD shall be entitled to employ or have employed technical protection mechanisms for access and usage control (e.g. digital rights management, signatures, copy protection, watermarks, encoding technologies, etc.) for the various kinds of use of the BoD titles which are affected by this Agreement;

- c) the **right to reproduction and distribution**, i.e. the right to store, reproduce and distribute the BoD titles in the forms of use which are permissible according to this Author's Agreement;
- d) the **right to edit**, i.e. the right to abbreviate, editor or alter the BoD titles in other ways, e.g. for the generation of abstracts (brief summaries and descriptions) and for the production of enhanced e-books (e-books which also contain multimedia and interactive elements) while preserving the author's inalienable moral rights. The right to edit includes the right to alter the BoD titles for the production of electronic masters ("print masters") and electronic copy for electronic editions (in particular as e-books) inasmuch as this is required for technical reasons, especially to adjust the trim size and the layout of the BoD titles to electronic and other reading systems as well as to simplify, edit or replace elements of the BoD titles (e.g. special characters, illustrations, etc.).

BoD shall have the right to furnish the BoD title with so-called meta data (in particular, information that is customary in the industry, such as copyright information, identification of the title and author as well as of BoD as the publisher, and the ISBN number) and to alter existing meta data for purposes of utilization in electronic form;

- e) the **database and archiving right**, i.e. the right to enter the BoD titles into the BoD databases and into catalogue databases of book wholesalers and retailers as well as other distributors during the term of this Author's Agreement; moreover, the right to include the print master and the master copies for electronic editions in the databases which are required for their utilization;

- f) The **right of recitation**, i.e. the right to recite the BoD titles any number of times in a form that is not suitable for the stage, including the right to record the recitation on any image carrier or other data carrier and to use these carriers in any way that is permissible within the provisions of this Agreement, e.g. as audio books;
  - g) the **right to print**, i.e. the right to make advance prints or to reprint the BoD titles in their entirety or partially, including as serialized prints, in periodicals (e.g. newspapers and magazines) and non-periodical media of any kind, specifically also including the Internet as well as collections of works of several authors. This includes the right to utilize the BoD titles for sample readers which are free of charge ("previews");
  - h) the **leasing and lending right**, i.e. the right to surrender the BoD titles for a limited period (e.g. in a type of lending library);
  - i) the **right to the title of the work**, i.e. the right to the utilization of the title of the work of the BoD titles to refer to the BoD titles. This includes the right to exploit the titles of the works to the same extent as the BoD titles themselves;
  - j) the **right to advertise**, i.e. the right to use the titles as well as the name of the author and bibliographic information for advertising activities of any kind in the advertising for BoD titles as well as in the advertising for BoD. The right to advertise also applies to portraits of and biographical information about the author if and inasmuch as the author has provided BoD with this information or has approved it.
- 4.2 BoD shall have the right to grant sublicenses (in whole or in part) to third parties, specifically operators of online shops and other trade partners at home and abroad, for the rights listed above, without obtaining the separate consent of the Author. BoD shall have the right also to give its trade partners the biographical information and portraits of the author to be used for advertising purposes to the extent permissible according to this Agreement.
- 4.3 The Author furthermore assigns to BoD the legal claims for remuneration according to art. 44a et seq. Copyright Act (UrhG) inasmuch as these are exercised on behalf of BoD by a collecting society which exercises the rights of both publishers and copyright holders (art. 63a cl. 2 UrhG). BoD accepts the assignments.
- 4.4 If the Author has selected the option in the pertinent book contract for one or more BoD titles to be solely produced for **orders by the Author for his or her own use** (that is to say, copies which are produced upon the Author's order for the Author) and not to be made available in BoD's own online shop, the Author, in deviation from para. 4.1 to 4.3, only grants the rights of use which are required for orders for the Author's own use.
- 4.5 If the camera-ready copy of the Author, or any form of manuscript or material, contains elements (such as texts, special fonts, illustrations and/or photographs) which the Author did not personally create and for which the Author does not personally hold the rights of use ("foreign material"), the Author shall be obliged to acquire, at his or her own expense, all necessary permissions from the pertinent rights holders for the use of the foreign material by BoD and/or its trade partners in connection with this Agreement.

## 5. Services by BoD

- 5.1 BoD shall make available printed works of the BoD titles, in particularly when they have been ordered (print on demand) and electronic editions of the BoD titles (e.g. e-books). BoD will cooperate with trade partners (wholesalers, online shops, etc.) concerning the distribution; moreover, the BoD title can be offered in BoD's own online shop.
- 5.2 Electronic editions (specifically e-books) may make it necessary to format the BoD title for the file format required by the individual trade partner. In this case the Author may request that BoD perform the conversion. The fee stated on the order form (which is available at [www.bod.com](http://www.bod.com)) at the time the order is placed shall apply. If the Author does

not place such a conversion order, BoD shall be entitled, but not obligated, to perform the conversion of the respective BoD title at its own expense.

- 5.3 BoD shall ensure that a stored print master and electronic editions, inasmuch as they are available, are only used in accordance with this Author's Agreement as well as the book contract concerning the respective BoD title. In order to distribute electronic editions through trade partners of BoD, BoD shall have the right to provide the respective trade partner a master copy for the electronic edition so the trade partner can store its own copy.
- 5.4 BoD shall submit the title to VLB (*Verzeichnis Lieferbarer Bücher*, the German *Books in Print*) if the Author has received an ISBN through BoD. Any changes in the title data shall be submitted to BoD in writing. If the Author does not report changes, the old title data will be transferred to subsequent editions of VLB without changes.
- 5.5 The Author may place orders of the BoD titles with BoD for his or her own use. BoD pledges to fulfil orders by the Author for his or her own use. Shipment of orders for the Author's own use shall be made at the Author's risk and on his or her account.
- 5.6 BoD shall provide the BoD titles to the domestic and foreign distribution channels with which it has made contractual agreements. With respect to printed works, these are typically the book wholesalers, through whom retailers can place book orders. With respect to electronic editions, these are trade partners (such as online shops on the Internet) and/or book wholesalers. If the pertinent trade distribution partner has included the BoD title in its inventory, BoD shall pledge to the Author that it will produce and ship the BoD title to the pertinent trade partner when an order is received ("**trade order**"). The Author acknowledges that the operators of the distribution channels (book wholesalers, online shops, etc.) have the right to reject BoD titles immediately or later on without stating any reasons and/or to halt distribution. BoD shall supply the Author with quarterly statistics concerning the number of copies produced of each BoD title based on trade orders, and shall render an account, once every three months, concerning the BoD titles produced and shipped. The provisions of this paragraph shall not apply if the Author has selected the option, for one or several BoD titles, of making this BoD title or these BoD titles only available for orders by the Author for his or her own use and not via BoD's own online shop.
- 5.7 The Author shall have no claim to the BoD titles being offered by specific trade partners. However, BoD shall offer the BoD titles on a regular basis to all distribution channels with which it has made contractual agreements if it may be expected that the BoD title is going to be accepted by the pertinent distribution partner.
- 5.8 BoD reserves the right to reject manuscripts without stating reasons.

## 6. Establishing the list prices

- 6.1 The Author shall personally establish the recommended list price (RLP) for **printed works** of the BoD title in the book contract for the respective BoD title or – if so stipulated by law – the fixed national list price including the applicable sales tax for distribution in countries where the euro is the legal tender. BoD shall determine the recommended list price (RLP) or – if so stipulated by law – the fixed national list price for the distribution in countries where the euro is not the legal tender, based on the retail price established by the Author and taking the respective country-specific situation (printing, distribution and logistics costs, taxes, etc.) into account.
- 6.2 BoD shall determine the fixed or the recommended retail price for the **electronic editions** of the BoD titles (e.g. e-books). When establishing the retail price (as well as in any subsequent adjustments of the retail price which may be necessary) for the electronic edition, BoD shall take the price that has been established by the Author for printed works (par. 6.1) in the euro zone, the price difference to the printed work of the same title that is customary in the respective market as well as the interests of the Author in a profitable exploitation of the electronic edition into account. The Author acknowledges that

electronic editions typically have a lower retail price compared to the respective printed works of the same title.

- 6.3 BoD and its trade partners shall have the right to give acquirers of electronic editions the opportunity, at no charge, to retrieve electronic editions from the personal library of the respective customer even after the first retrieval (several times if required; "re-download"). Free re-downloads shall be considered paid for with the payment for the first download (pursuant to para. 7.3). The right to offer re-downloads shall also continue after the termination of this Agreement and of the book contracts.
- 6.4 BoD shall determine the bookseller discounts and terms and conditions for trade orders.

## 7. Author's profit margin, accounting

- 7.1 The Author shall receive the following remuneration ("author's margin") for the sale of BoD titles in printed form as well as the sale of BoD titles in electronic form (in particular e-books) on the basis of trade orders:
- 7.2 The author's margin for printed works is determined in the book contract; it is calculated by the retail price minus the legally applicable sales tax (in the Federal Republic of Germany, currently 7%), the production costs agreed upon in the book contract as well as the bookseller discounts and terms established by BoD.
- 7.3 For electronic editions, the Author shall receive an author's margin in the amount of 25% of the net sales receipt (the list price recommended by BoD to the trade [RLP] or – if so stipulated by law – the fixed list price minus the legally applicable sales tax). Re-downloads shall not be remunerated again (cf. para. 6.3).<sup>1</sup>
- 7.4 An account statement for the author's margin shall be generated every three months. Payment of the author's margin shall be made by the 30th day following the three-month accounting period to the bank account indicated by the Author if the Author has provided BoD with bank account information. Amounts under EUR 25 shall remain on the Author's account and are only paid when this amount is exceeded according to clause 1 above or when the Agreement is terminated. If accounting provisions with trade partners apply in connection with cooperation agreements of BoD – especially regarding the sale and distribution of electronic editions – which deviate from this, BoD shall submit the author's accounting statement to the Author with the accounting statement following the accounting statement for the trade partner in accordance with above clause 1.
- 7.5 With the payment of the author's margin all financial claims of the Author towards BoD from this Agreement shall be considered paid for unless other agreements have expressly been made. Compelling legal claims of the Author shall remain unaffected.

## 8. Fee to be paid by the Author

- 8.1 The Author shall pay BoD for the data and system management for BoD titles at the terms and conditions set forth in the book contract ("data management fee").
- 8.2 For orders for his or her own use, the Author shall pay the fee that has been stipulated in the book contract.
- 8.3 If the Author requests changes in the title data according to art. 5.4 of this Agreement from BoD, BoD shall have the right to charge the Author for the expenses and labour incurred through the later changes of the title data.

## 9. Payment terms, retention of title for orders for the Author's own use

- 9.1 The Author shall pay invoices within 14 days of their receipt. If the Author does not pay within this period, he or she will be in default of

<sup>1</sup> Note on the terminology: The legal transaction which is subject to the law of obligations and on which the granting of usage rights in an e-book download is based is a legal transaction of a special kind which may also be subject to the sale of goods law. In this Author's Agreement some of the terminology from sale of goods laws is used for purposes of linguistic simplification.

payment. The Author shall pay late interest in the amount stipulated by law from the moment he or she is in arrears (art. 288 German Civil Code [BGB]).

- 9.2 Shipments of orders of printed works for the Author's own use shall be made subject to retention of title. If the Author resells the BoD titles which have been shipped before the agreed fee has been paid, ownership of the book shall be replaced by the Author's claim towards the respective buyer, which the Author herewith assigns to BoD as an assignment in advance; BoD accepts this assignment.
- 9.3 BoD shall be entitled to offset outstanding claims towards the Author against author's margins due on the customer's account if the Author does not settle the invoice even though it is payable.
- 9.4 The Author may set off only with uncontested claims or claims which have been established by final court decision.

## 10. Agreements on quality

- 10.1 If the manufacture and release of a reference copy has been agreed, the printed work shall be considered flawed if and inasmuch as a copy of the printed work does not match the reference copy of the printed work released by the Author ("production flaw").
- 10.2 If within the context of the production of the camera-ready copies, e.g. in the conversion of the camera-ready copy into a format suitable for electronic distribution (e.g. EPUB), specific elements of the BoD title (e.g. special characters, illustrations, etc.) are modified, replaced or edited by BoD in a way that is permissible according to this Agreement, these measures do not constitute a flaw in the electronic edition.

## 11. Terms of delivery

- 11.1 BoD pledges to ship bookstore orders within an appropriate delivery period.
- 11.2 Delivery periods for orders for the Author's own use shall be agreed separately.
- 11.3 In case of force majeure the delivery period shall be extended by the duration of the obstruction. This also includes strikes, lockouts as well as other obstructions for which BoD does not bear responsibility, in particular non-culpable machine breakdown, electricity and water outage.

## 12. Warranty, indemnity for violations of law

- 12.1 With respect to the rights specified in para. 4.1 and para. 4.5, BoD must rely on information provided by the Author. The Author guarantees, irrespective of culpability, that he or she can exercise all rights which are subject of this Agreement without impinging on the rights of third parties and that he or she will acquire all rights of third parties with respect to foreign material (para. 4.5) in to the necessary extent prior to submitting his or her manuscript to BoD.
- 12.2 The Author guarantees, irrespective of culpability, that, in connection with the BoD titles, he or she
- has not included any contents of third parties (texts, illustrations, fonts, logos, etc.) without first obtaining the necessary permission of the respective copyright owner to the extent that is required for executing this Agreement and the respective book contract,
  - does not state any untrue facts,
  - does not libel any persons or spread information about their personal and private life and
  - does not spread any contents that may cause public offence, contain politically extremist (e.g. national socialist) positions and/or violate laws.
- 12.3 In the relationship between the Author and BoD, the Author shall be responsible for the published contents and be solely liable for the consequences which may result from the publication and/or use of BoD titles; para. 13 shall remain unaffected.
- 12.4 If the Author violates one of the guarantees specified above and if BoD violates laws, court orders, and/or the rights of third parties (in

particular copyrights, personal rights, title copyrights or trademark rights) during the execution of this Agreement and/or the respective book contract, the Author shall exempt BoD and the affected trade partners of BoD from all claims of third parties based on such a violation of rights and compensate the damages resulting from this.

### 13. Liability

- 13.1 BoD shall be liable for damage claims – regardless of the legal grounds – only in cases of intent and gross negligence. In cases of ordinary negligence BoD shall be liable only
  - a) for damages resulting from the violation of life, the body or health,
  - b) for damages resulting from the violation of an essential provision of the Agreement (an obligation whose fulfilment makes the proper execution of the Agreement possible to begin with and on the adherence to which the contractual partner relies and may rely on a regular basis); in this case, however, the liability of BoD shall be limited to the replacement of the resulting damage that can typically be predicted.
- 13.2 The above liability limitations shall not apply if BoD has acted in bad faith or issued a guarantee. Furthermore, liability pursuant to the Product Liability Act remains unaffected.
- 13.3 Nor does BoD have to reimburse futile expenses of the Author (if the remaining criteria for a reimbursement claim are met) in excess of the amount stipulated in para. 13.1.

### 14. Conclusion of the Agreement, term of the Agreement, cancellation, termination of the Agreement

- 14.1 The Author's Agreement shall come into force upon signing by both Parties.
- 14.2 The Author's Agreement is made for an unlimited term. The term of the Author's Agreement shall depend on the term of the book contract between the Author and BoD. If BoD and the Publisher conclude more than one book contract under this Author's Agreement, the Author's Agreement shall automatically end with the termination of the book contract which has the longest term.
- 14.3 The right of both parties to extraordinary termination of the Author's Agreement without notice for important reasons shall remain unaffected.
- 14.4 An important reason which gives BoD the right to extraordinary termination exists in particular if the Author publishes contents in the context of this Author's Agreement which may cause public offence, assume politically extremist positions, libel persons or violate laws. The termination shall refer to the respective book contract, unless BoD expressly declares in connection with the termination that the termination refers to this Author's Agreement and all of the book contracts.
- 14.5 Any termination requires the written form to become effective.
- 14.6 Book contracts can only be terminated or cancelled in their totality, but not for individual forms of use (e.g. only for printed works or only for electronic editions).
- 14.7 The term of the respective book contracts is stipulated in the pertinent book contract. Inasmuch as an already existing book contract is amended and modified by the conclusion of this Author's Agreement, this does not change the term of the respective book contract; thus the respective book contract shall be valid in the amended and modified version until the agreed end of the contract term. If the Author wishes to terminate individual or all book contracts early, he or she can do so if he or she pays the respective fee stipulated in the book contract (termination of contract).
- 14.8 Upon termination of this Author's Agreement any existing print masters and masters for electronic editions shall be deleted from the systems of BoD by the next possible date, but no later than two months after the termination of the Agreement. In deviation from this, BoD and its trade partners shall be entitled to keep masters even after the termination of the Agreement inasmuch as this is required for customer service, e.g. for re-downloads (cf. para. 6.3). The right to release the print master produced by BoD or a copy of the master for the electronic version does not exist.

### 15. Right of withdrawal

BoD instructs the Author that he or she does not have any right of withdrawal from this Author's Agreement and from the book contracts concluded on the basis of this Author's Agreement, since this is not a distance selling act and the BoD titles are products which are manufactured individually according to the Author's requests.

### 16. Other Provisions

- 16.1 BoD shall have the right to modify this Author's Agreement unilaterally inasmuch as this is necessary for the comprehensive utilization of the BoD titles and the economic and copyright concerns of the Author are maintained. In this case BoD shall announce the alteration by giving at least six (6) weeks' advance notice and submitting the new draft. The Author shall have the right to terminate this Author's Agreement within four (4) weeks after receiving the new draft effective the coming into force of the alteration if he or she does not agree to the alteration (right to extraordinary termination); this termination shall apply to all book contracts. If the Author does not terminate the Agreement, the new draft shall come into force at the time that has been properly announced.
- 16.2 To become effective, alterations of and amendments to the Author's Agreement require the written form (in particular also via e-mail and online form). The same applies to additional agreements as well as a waiver of this requirement of the written form.
- 16.3 BoD shall have the right to employ subcontractors to provide services and to confer the rights and obligations of this Agreement (including the rights according to para. 4.1) to companies which are affiliated with it according to art. 15 Companies Act.
- 16.4 In connection with this Author's Agreement the Author may assign claims against BoD which have arisen or are yet to arise in connection with this Author's Agreement only if BoD has given its prior consent in writing.
- 16.5 The law of the Federal Republic of Germany shall apply to this Agreement to the exclusion of the UN Convention on the International Sale of Goods. If the Author is a merchant, the sole place of jurisdiction for all claims in connection with this Author's Agreement shall be Hamburg; art. 23 para. 5 European Jurisdiction and Enforcement Regulation and art. 40 para. 2 Code of Civil Procedure remain unaffected.
- 16.6 If a provision of this Author's Agreement is or becomes void or unfeasible (in whole or in part), the remaining provisions of the Author's Agreement (or the part of the provision in question which can be separated from it) shall remain effective. The Parties shall endeavour to replace the void or unfeasible clause by a valid clause which comes closest to the business purpose and the legal meaning of the original provision.

Norderstedt,

Place, date BoD

Signature BoD

Place, date Author

Signature Author