

Publisher Contract

between Books on Demand GmbH, In de Tarpen 42,
22848 Norderstedt – hereinafter referred to as **BoD** – and



Name

Street

Country, town, post code

– hereinafter referred to as **Publisher** –

The above parties enter into the following Contract:

§ 1 Sphere of Application

The rights and obligations laid down in this Publisher Contract apply to all subsequent book contracts (hereinafter collectively referred to as 'book contracts') entered into between the Publisher and BoD, unless otherwise agreed on in such contracts. The Publisher's works for which a book contract is concluded will hereinafter be referred to as BoD Titles.

§ 2 Rights of Use and Distribution

(1) The Publisher declares that it holds the rights set out below, and hereby exclusively grants BoD all rights necessary for the production and territorially unlimited distribution of the BoD Titles, specifically:

- a. the reproduction, marketing and distribution rights to printed versions of all BoD Titles,
- b. the right to record, store and transmit the BoD Titles in machine-readable, and in particular electronic form,
- c. the right to edit and process an electronic print master ("Print Master"),
- d. the right to adapt the BoD titles to present and future reading systems,
- e. the right to add the BoD Titles to the BoD database and to the catalogue databases of book wholesalers and other distributors during the term of this Contract,
- f. the right to distribute extracts from BoD Titles as reading samples,
- g. the assignment of rights (a)-(f) to BoD collaborators.

(2) If the Publisher's manuscripts contain special typefaces, illustrations and/or photographs to which no rights of use exist, the Publisher will at its own cost obtain from the copyright holder any permissions necessary for the execution of the Contract for the use of the special typefaces, illustrations and/or photographs by BoD and its collaborators.

(3) BoD reserves the right to reject manuscripts without giving any grounds.

(4) The Publisher hereby grants BoD the right to use the work as appropriate to advertise both the book itself and BoD.

§ 3 BoD's Services

(1) BoD undertakes towards the Publisher to supply the BoD Titles to book wholesalers and other dealers (trade orders) as well as

to the Publisher (personal orders) in response to orders and for drop-shipment orders from Publishers' distribution centers provided that orders are existent.

- (2) For the purposes set out in this Contract BoD will save the electronic Print Master throughout the contractual term and ensure that the Print Master for the printing of books is only used in accordance with the provisions of this Publisher Contract as well as those of the relevant BoD Titles book contract. The same applies to the use of any electronic version.
- (3) BoD provides the Publisher with quarterly statistics on the number of copies of each BoD Title printed in response to dealer orders, and submits a quarterly invoice for produced and delivered BoD Titles.
- (4) If the Publisher has received an ISBN via BoD then BoD will register titles on behalf of the Publisher with German Books in Print (*Verzeichnis Lieferbarer Bücher - VLB*). BoD must be notified in writing of any changes to title data. If the Publisher fails to report such changes, the title data will remain unchanged in future editions of VLB.
- (5) On termination of the Contract, the Print Master will be deleted from BoD systems on the next-available date, and at the latest within two months. The Publisher is not entitled to receive the Print Masters produced by BoD or copies thereof.

§ 4 Store Price, Trade Discounts

- (1) In the book contract the Publisher sets the fixed retail price for its printed works in Euros or Swiss Francs, plus the prevailing rate of VAT.
- (2) BoD sets the trade discounts and conditions for trade orders.

§ 5 Publisher's Margin, Remuneration

- (1) On sales of BoD Titles arising from trade orders BoD will pay the publisher's margin laid down in the corresponding book contract on a quarterly basis.
- (2) The publisher's margin on printed works is calculated on the basis of the store price set by the Publisher less the prevailing rate of VAT (currently 7%), the production costs as well as the trade discounts and conditions to be laid down by BoD.
- (3) Sums under 25 euros or 40 Swiss francs will be retained in the Publisher account and will not be disbursed until this sum is exceeded at the end of a given quarter or on termination of the Contract.
- (4) The Publisher will remunerate BoD for the data and system management for BoD Titles on the terms and conditions laid down in the book contract.
- (5) The Publisher will pay remuneration for personal orders on the terms and conditions laid down in the book contract. Personal orders are shipped for account of the Publisher and at the Publisher's own risk.
- (6) If the Publisher fails to report changes in title data to BoD as required under § 3 paragraph 4, BoD is entitled to charge to the Publisher any expenses incurred as a result of making late changes to the title data.

§ 6 Payment Terms and Conditions, Retention of Title to Personal Orders

- (1) The Publisher must settle invoices within 14 days of receipt. If the Publisher fails to pay within the above period, it falls into arrears. The Publisher will be required to pay the statutory rate of penal interest as laid down in Article 288 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*) as from the beginning of such default.
- (2) Deliveries in response to the Publisher’s personal orders are made subject to retention of title. In the event of the onward disposal of the BoD Titles prior to payment, the Publisher’s claim against the recipient substitutes for ownership of the book, and the Publisher hereby assigns said claim in advance to BoD.

§ 7 Warranty

- (1) If the final product is not up to the standard of the cleared reference copies (“Manufacturing Error”), BoD may at its own choice either remedy the defects or produce replacements, free of charge. If, after two attempts to remedy the defects, the final product still fails to meet the contractual requirements the Publisher is entitled either to demand a reduced payment or cancel the Contract.
- (2) The Publisher must submit a written complaint about defects in the delivered merchandise within two weeks of receipt where the defects are obvious or within six months in other cases.
- (3) Any other warranty rights are hereby excluded.

§ 8 Delivery Periods

- (1) BoD undertakes to deliver trade orders within a reasonable period.
- (2) Deliveries of personal orders will be arranged on an individual basis.
- (3) In the event of force majeure, strikes, lockouts or circumstances beyond BoD’s control such as mechanical breakdowns, power or water supply cuts through no fault of BoD, the delivery time will be increased by the duration of the hindrance.

§ 9 Contract Duration, Termination

- (1) The Publisher Contract enters into force on its signing by both Contracting Parties. Its term is determined by the term of the book contract between the Publisher and BoD. If BoD and the Publisher conclude more than one book contract under the present Publisher Contract the Publisher Contract will terminate on termination on the book contract with the longest term.
- (2) The above is without prejudice to either party’s right to terminate the Contract for a compelling reason.
- (3) BoD reserves the right to terminate the Contract without notice in the event of the publication of content that could cause public offence or which expresses extremist positions, is libellous towards individuals or in breach of international law (Extraordinary Termination).
- (4) Notice of termination must be given in writing.
- (5) Should the Publisher wish to prematurely terminate one or more of the book contracts this is possible on payment of the fee laid down in the corresponding book contracts (Annulment of Contract).

§ 10 Liability

- (1) BoD is dependent on the information provided by the Publisher with regard to the existence of the proprietary rights set out in § 2. If [the Publisher’s] failure to provide the necessary information leads to BoD executing an order which violates third-party rights, in particular copyright, the Publisher alone is liable for said violation. The Publisher must indemnify BoD and any collaborators immediately on request against third-party claims as well as reimbursing any associated legal costs incurred by BoD. This also applies to proprietary rights to typefaces, illustrations and photographs.
- (2) BoD is not responsible for the published content and is not liable for the consequences of publishing unlawful content. The Publisher shall release BoD and any cooperation partners from the claims of third parties upon first request, as well as compensate BoD for any necessary legal expenses and legal defence costs arising from these claims.
- (3) BoD, its vicarious agents and their assistants are only liable in the event of wilful action or gross negligence. This liability disclaimer does not apply in the case of the breach of a guarantee or a material contractual quality or violation of the German Product Liability Act (*Produkthaftungsgesetz*). In the case of breach of a material contractual obligation liability is limited to the typical foreseeable loss or damage suffered.
- (4) The above disclaimer and limitation of liability do not apply in the event of loss of life, physical injury or harm to health.

§ 11 Miscellaneous Provisions

- (1) Should a provision of this Contract prove invalid or contain loopholes, the Contract as a whole shall remain valid. The relevant clause must be replaced by a valid one matching the commercial purpose and legal sense of the original wording as closely as possible.
- (2) In the event of unforeseen developments the Parties agree that the principles of commercial loyalty shall be applied concerning the interpretation of and any necessary supplements to the Contract.
- (3) The place of jurisdiction is Hamburg.
- (4) Amendments or supplements to this Contract must be made in writing, and this also applies to any amendment of this written-form clause.

[Signature line]

Place, date, BoD

[Signature line]

Signature, BoD

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Place, date, Publisher

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Signature, Publisher