



DE GRUYTER

General License Agreement for the usage of De Gruyter databases, eBooks and eJournals

between

Walter de Gruyter GmbH
Genthiner Str. 13, 10785 Berlin

- hereinafter referred to as "De Gruyter" -

and

Institution
Masaryk University
Žerotínovo náměstí 617/9, 601 77 Brno, Czech Republic
represented by
Mgr. Marta Valešová, MBA, bursar

- hereinafter referred to as "Licensee" -

Preamble

De Gruyter offers the use of its own databases and eJournal contents on the basis of a time-limited option and/or perpetual option. In principle, the use of De Gruyter eBooks is offered on a perpetual basis. This license agreement regulates the rights and duties from De Gruyter as well as the Licensee for the use of databases as well as eJournals and eBooks. The details of the duration of the respective licenses as well as details concerning the licensee are defined in appendix 1.

In light of the foregoing, the parties agree to the following:

1. Key definitions:

Time-limited option: By paying an annual fee (hereinafter referred to as **annual license fee**), the Licensee can use the content of a database / an eJournal package for 12 months. After a specific number of years defined in the respective appendix of continuous payment of the, at that time, current annual license fee the Licensee acquires the right of perpetual access to the then published basic database content of such databases which are also offered in a perpetual option and/or the eJournal respectively. If it is a completed database or eJournal, no further payments are charged. For regularly expanded or updated databases the Licensee must then pay the, at that time, current annual update fee to access these versions. Renewal invoices are sent automatically to the Licensee, unless De Gruyter has received a written cancellation order at the latest two months prior to the end of the period of validity. Upon cancellation prior to the specific number of years defined in the respective appendix of continuous payment of the, at that time, current annual license fee, the right to use the database expires at the end of the period of validity.

Perpetual option: With a single payment (hereinafter referred to as **perpetual license fee**) the Licensee acquires a license for an unlimited period of time to the basic content of a database available at the date of payment and/or the eJournal respectively. If the content of the

database is complete at the time of payment, no further payments are charged. If the content of a database is regularly updated or expanded, the Licensee has to pay the, at that time, current annual update fee to access these versions. With payment of the update fee the Licensee acquires a license for an unlimited period of time to the then currently available updated or expanded basic database content. The annual update fee is automatically charged starting from January 1st of the year following the payment of the perpetual license fee. The client can cancel future automatic updates in writing at the latest until November 1 of a year.

eBooks: With payment of a one-time price the Licensee acquires a perpetual license for the eBook(s).

Basic database content: The content available of a database at a specific point of time.

Authorized Users: Authorized users are users of the Licensee which have a valid user authorization. Authorized users can only be natural persons. The Licensee is obliged to control the user authorization annually, here the authorized users must present their user authorization in person.

2. Subject Matter of the Agreement

2.1 This agreement regulates the perpetual and time-limited access to the basic database content as well as the licensing of eJournal content and eBooks from De Gruyter for the Licensee (hereinafter referred to as **service**).

2.2 The agreed terms of a service (time-limited or perpetual licenses, date, annual/perpetual license fee for eJournals or eBooks, number of years until entitlement to perpetual access, update regulations) are documented in an Appendix to this General License Agreement (Appendix 1). An Appendix will be part of this General License Agreement when it is issued by De Gruyter and accepted by the Licensee as a part of this General License Agreement.

2.3 De Gruyter grants the Licensee the non-exclusive, non-transferable right which may not be sub-let to access the services in accordance with this Agreement and the regulations in the respective Appendix and to enable access and allow the use for the Authorized Users (Appendix 1).

Access and use for the respective platform from De Gruyter have to be via an independent network or a virtual network via the internet which only allows access to the Authorized Users who are checked and supervised by the Licensee.

2.4 De Gruyter enables access for the Licensee to its services on a platform from De Gruyter. In case of a perpetual license for a service, access is granted for an unlimited period of time to the basic content available at the date of payment. In case of time-limited licensing the access is restricted to 12 months and prolonged for additional 12 months after payment of the, at that time, current annual license fee.

The details for access to an expanded or updated version of a database are given in Appendix 1 to the General License Agreement. Access via a time-limited license is granted for an unlimited period of time once the number of years of continuous payment of the, at that time, current annual license fee as defined in the respective Appendix has been reached.

2.5 Access is provided to the Licensee for an unlimited number of concurrent users.

2.6 De Gruyter does not recognise any of the Licensee's general terms and conditions which deviate from or extend these license conditions unless De Gruyter has agreed

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in writing that they should apply.

3. Payment

- 3.1 The rights of use and access are granted on condition that payments due are met. The fee that the Licensee has to pay to De Gruyter for the particular service is specified in Appendix 1 to this agreement.
- 3.2 The specifics about the update or annual license fee for updated or expanded databases are defined in the respective Appendix. The amount of the update or annual license fee is based on the amount of additional content added to a database within a year and is defined on average one year in advance.
- 3.3 Absent an agreement by the parties to the contrary, all payments are due no later than 30 days following the invoice date.
- 3.4 The costs of hardware, software, telecommunication, etc. incurring in conjunction with the access are to be paid by the Licensee alone.
- 3.5 The Licensee can only set off such counter-claims or retentions as have been established by the courts or are uncontested.

4. Rights of use, Access rights

- 4.1 The contracting parties agree that the services are copyright-protected in De Gruyter's favour. This applies both to the platform/database, the works in the database and to the copyright-protected works contained therein and to any other protectable elements. For this, use and access are only allowed to the extent expressly permitted by this General License Agreement.
- 4.2 Access rights only apply to the Licensee's IP addresses registered with De Gruyter. Furthermore access rights can be obtained for additional authentication processes (e.g. Shibboleth) agreed upon by De Gruyter with the Licensee. Access rights apply to the Authorized Sites (Appendix 1) of the Licensee within a LAN (Local Access Network). Access for multiple sites (Multi Site Access) has to be agreed upon with De Gruyter and stated in the respective Appendix.
- 4.3 Walk-in library users are granted access to the services via computer work-stations within the Licensee's physical premises. All other Authorized Users are allowed to use the services via computer work-stations within the Licensee's physical premises or – if the Licensee allows this provision – through remote access via the Licensee's secure network. Beyond this, the Licensee is not permitted to reproduce the services or to make it available to the public.
- 4.4 Authorized Users are allowed access to the services for their private use or for purposes of research, to view it and search it and to make individual print-outs or electronic copies of individual articles or chapters which do not constitute more than a small proportion of a service.
- 4.5 The Licensee may generate temporary local copies of the services which are produced for a limited time as an integral and substantive part of a technological process (caching), the sole purpose of which is to allow Authorized Users use in accordance with the contractual conditions and which do not possess any independent economic value.
- 4.6 The Licensee and the Authorized Users may use appropriate parts of the services to



produce printed teaching materials for use by the Authorized Users within the Licensee's Authorized Sites; these materials are not permitted to be used for re-sale or any other commercial purpose.

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copyright purposes, together with liability exclusions, legal reservations etc. may not be removed, altered or suppressed.

- 4.16 The Licensee must in writing or on-line inform in due form the Authorized Users of these license conditions and oblige the Authorized Users to observe them. Furthermore the Licensee is required to make all appropriate efforts to ensure that
- only Authorized Users are granted access to the services;
 - the Authorized Users are appropriately informed of the importance of observing the copyright and other rights attached to the services;
 - the Conditions of this License are adhered to.

5 Availability, Maintenance, Technical Requirements, Security Measures

- 5.1 De Gruyter grants the Licensee access to the services via the internet. De Gruyter will make appropriate efforts to ensure that its servers maintain sufficient capacity and bandwidth to guarantee availability for the Licensee and the Authorized Users at a level comparable to that of the availability of information services of a comparable type and size via the internet. De Gruyter's responsibility for providing and transmitting data ends however at the point where De Gruyter's servers are linked to the internet ("handover point").
- 5.2 Maintenance and servicing work can lead to temporary restrictions in the availability of the services. De Gruyter will carry out the required work as speedily and smoothly as possible.
- 5.3 The Licensee bears sole responsibility for their connection to the internet and the maintenance of such connection and for the requisite hardware and software for communicating with the servers from De Gruyter together with any additional telecommunication equipment. The Licensee has to provide adequate state-of-the-art protection from viruses and unauthorised access for their deployed systems.
- 5.4 If there are grounds to suspect that third parties have made unauthorised use of provided access data, the Licensee is obliged to report this to De Gruyter without delay. The Licensee is liable for any misuse of their access data for which they are responsible. Provided no blame is attached to De Gruyter, De Gruyter is not liable for any damage caused to the Licensee by misuse or loss of their access data (especially IP address or username/password).
- 5.5 The Licensee is obliged to take all appropriate and suitable technical and legal steps to prevent use in contravention of the agreement or in excess of the rights granted, misuse and other disruptions. The Licensee is in addition obliged to inform De Gruyter without delay and in detail of all such incidents and to furnish De Gruyter with all the data and documentation relevant to the analysis and removal of such incidents. In each case of infringement of the provisions of this contract, the Licensee undertakes to cooperate with De Gruyter to immediately stop the contractual infringement.
- 5.6 To establish whether illicit use or misuse has occurred, De Gruyter is entitled to monitor access to the services and use of the platform.
- 5.7 If De Gruyter receives knowledge of illicit use or misuse of the Licensee's access data, or if there are objective grounds for fearing such an illicit use or misuse, De Gruyter will inform the Licensee without delay and set a time-limit for cessation. As a preventive measure De Gruyter is entitled to block access (for the Licensee as a whole or for individual IP addresses) until the suspicion of illicit use or misuse has been removed.



5.8 The Licensee is obliged to compensate De Gruyter for all damage caused by illicit or careless use by Authorised Users or by third parties which gain unauthorised access to the services via the Licensee's network and which the Licensee could have prevented by fulfilling their obligations under art. 5.5.

6 Disruption of Service, Guarantee

6.1 Disruptions to the availability of the service do not entitle the Licensee to terminate the agreement or claim compensation for damage or expense caused thereby if the disruptions are of a short temporary nature. Only if the disruptions exceed a tolerable extent to a considerable degree the Licensee is entitled to give extraordinary notice to terminate the agreement under art. 10.1. – after expiry of a reasonable time-limit for the disruption to be removed set by the Licensee in writing. In this case, art. 7 applies for possible claims for compensation for damage or the reimbursement of expenses; all further rights are excluded.

6.2 The Licensee is obliged to report any substantive or legal defects to De Gruyter in writing without delay, to give an exact description of any such defect and to provide all information and documentation required to remedy the defect. In the event of such defects, the Licensee must first grant De Gruyter an appropriate time-period for fulfilling their obligations. The Licensee is not entitled to require that unsubstantial substantive or legal defects be remedied.

6.3 The period of limitation for substantive and legal defects is one year beginning from the transfer/licensing of the service to the Licensee. However, this does not apply to warranty claims for defects by consumers or claims for damages resulting from injuries to life, body or health and/or claims for damages resulting from gross negligence or intent caused by De Gruyter. For consumers, the statutory regulations governing limitation apply.

6.4 Representations in marketing materials, service descriptions etc. do not constitute any guarantee. A guarantee is only given after explicit written confirmation by De Gruyter.

7 Liabilities

7.1 De Gruyter is only liable for compensation – regardless of the legal reason, especially as a result of failure to fulfil its obligations, of actions not permitted, of delay -
(a) to the full extent in cases of intent and gross negligence on the part of De Gruyter, its representatives or agents;
(b) for typical and foreseeable damage in cases of simple negligence, if an essential obligation (known as a cardinal obligation) has been breached;
(c) to the full extent in the case of breach of guarantee.

De Gruyter bears no other liability. In the sense of art. 7.1, cardinal obligations are all obligations the breach of which endangers performance of the purpose of the agreement, together with all obligations the fulfilment of which allows the contract to be performed and on the fulfilment of which the Licensee can regularly depend. The provisions above do not involve a shift in the burden of proof to the Licensee's disadvantage.

7.2 De Gruyter's liability for personal damage (injury to life, body, health) and its liability under the (German) Product Liability Law remain unaffected.

7.3 To the extent that De Gruyter's liability is excluded or limited, this also applies for the

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7.4 De Gruyter will exercise the normal care and diligence customary for its field of activity to compile, process and present the contents made available via the respective platform in line with the current state of knowledge. Despite due care being exercised in collecting, processing, checking and correcting contents, errors cannot be excluded. As far as is compatible with product liability legislation, in particular with the (German) Product Liability Law, De Gruyter therefore assumes no guarantee or liability for the substantive accuracy or completeness of the contents and for damage incurred by the Licensee or the Authorised Users as a direct or indirect result of using the contents (in whole or in part) - except in the case of intent.

7.5 De Gruyter is not responsible for technical problems (e.g. line disruptions, power cuts and other problems in the internet and telecommunications infrastructures) or for other circumstances (e.g. war, strike, floods, restrictions imposed by the state) beyond De Gruyter's control.

7.6 Insofar as the Licensee is responsible for defects in the licensed databases, eJournal contents and eBooks (e.g. errors in content, sense or typography when sending copies) they release De Gruyter from all guarantee and compensation claims which third parties - especially users - might bring against De Gruyter.

8. Assignment / Transfer

8.1 The Licensee is not entitled to assign or transfer to third parties any rights or claims arising from this general license agreement without the prior, expressly written consent of De Gruyter. The Licensee is not entitled to pledge the transfer or license.

8.2 De Gruyter is entitled to assign or transfer to third parties any and all claims or rights arising from this general license agreement without having to obtain the consent of the Licensee.

9. Relationship between the Parties

9.1 This Agreement and all of its Appendixes do not create any partnership, joint venture, and/or any similar relationship between the parties.

9.2 Furthermore, this Agreement and all of its Appendixes do not create any kind of agency relationship between the parties and/or any authorizations/powers of attorney in favour of the respective other party.

10. Miscellaneous Provisions

10.1 Either party's right to terminate the agreement for important cause remains unaffected. De Gruyter can in particular terminate the agreement if illicit use has been made or if the rights granted by these conditions have been exceeded. Termination for important cause assumes that adequate time has been given in writing for the cause to be remedied without remedy having been effected within that time.

10.2 De Gruyter processes the Licensee's data electronically. For this, legal data protection regulations will be observed. The Institution accepts the privacy statement of the Publisher which can be found under <https://www.degruyter.com/dg/page/privacy/datenschutzerklrung>.

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11. Concluding Conditions

11.1 This Agreement is subject to the law of the Federal Republic of Germany, with the exception of the United Nations Convention on contracts for the International Sale of Goods.

11.2 If the client is a businessperson, a corporate body under public law, constitutes special assets governed by public law or is without domestic legal domicile, the exclusive competent court of jurisdiction for all disputes arising out of or in connection with these license conditions is Berlin.

11.3 Modifications and supplementations to this contract must be made in writing. The same applies to the contracting away of this written-form clause.

11.4 The rights and duties arising from this agreement are also binding for legal successors of any of the parties.

11.5 Should individual provisions of these conditions or of the license agreement be or become null or void or if there is an omission in the agreement, the validity of the remaining provisions remains unaffected. Instead of the null or void provision, that effective provision is regarded as agreed which approximates most closely in actual, legal and economic terms to the purpose of the non-effective provision and of the agreement as a whole. This applies correspondingly in the event of an omission in the agreement.

11.6 Appendix 1 as well further Appendixes issued by De Gruyter and accepted by the Licensee as a part of this General License Agreement in their entirety constitute an integral part of this contract.

11.7 De Gruyter agrees that Licensee can publish this General License Agreement including Appendix 1 as well in the Czech Register of Contracts pursuant to Act of the Czech Republic No. 340/2015 Coll. - <https://smlouvy.gov.cz/>.

Berlin, 22/10/2020

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Appendix 1 of the general license agreement

Time-limited terms (annual license terms)

Service	EBA - All SSH eBooks
Billing address	Masaryk University Žerotínovo náměstí 617/9, 601 77 Brno, Czech Republic VAT: CZ00216224
Subject of payment	Perpetual licence to the selected eBooks, the total price of which corresponds to the agreed payment for the service
Price	7,000 EUR (VAT not incl.)
Service conditions	The Licensee hereby requests 10 months EBA phase - period of unlimited access to the Service (All SSH eBooks) and consecutive perpetual access to titles purchased using the upfront EBA fee (7,000 EUR). Enhanced usage report with title prices will be provided to the Licensee after the full 10 months' usage. The Licensee shall select titles to keep in perpetual access in the value of the EBA fee (7000 EUR). Title selections will be made within 90 days after the end of the EBA phase.
If applicable Perpetual license rights	After 10 months of continuous payment of the current annual license fee the Licensee acquires a license for perpetual access to the titles purchased using the upfront EBA fee (7,000 EUR)
Start date of EBA phase for 10 months	November 1, 2020
Authorized sites of the Licensee	University License for Masaryk University IP-address range: [REDACTED] IP-range can be subject of change in the future
Authorized Users at the Authorized Sites	Employees of the Client This part for university libraries only: Students and employees of the University: all currently enrolled full or part-time students of the client (incl. visiting students); currently employed faculty (whether on a permanent, temporary, contract or visiting basis); teaching staff, administrators and staff (permanent or temporary) as well as contractors of the client. Library Users: any person who is not a member of the authorized users mentioned above and who holds a current, valid library card from the client as well as walk-in-users.
2 persons who need to have access to library administration Comments	[REDACTED]