

# General Terms and Conditions NBD Biblion BV

1 April 2019

## A GENERAL PROVISIONS

This section always applies.

### Article 1 Definitions

**NBD Biblion:** the private company NBD Biblion B.V., with its registered office in Zoetermeer.

**Customer:** the natural person or legal entity that has concluded an agreement with NBD Biblion, either directly or through intermediate suppliers or through a shipping and debt collection company engaged by NBD Biblion, for the delivery of Products and/or the provision of Services, such in the broadest sense of the word.

**General Terms and Conditions:** the general delivery conditions, consisting of sections A, B, C and D, which may be changed by NBD Biblion from time to time.

**Certificate:** the electronic confirmation from the certificate service provider that links the data for verifying a signature to the Customer and confirms the identity of the natural person or legal entity;

**Certificate service provider:** the natural person or legal entity that issues Certificates in connection with Electronic Signatures;

**Service:** a service to be provided by NBD Biblion to Customer pursuant to the Agreement, including but not limited to selection service, shelf-ready linking (Plankklaar Koppelen) and Printing on Demand.

**Electronic signature:** electronic data that are attached to or logically associated with electronic data and that are used as a means for authentication;

**NBD Biblion Server:** the technical infrastructure operated by NBD Biblion for, among other things, the access to some of its Products, the placing of orders, the provision of some of its Services;

**Product:** a good to be delivered by NBD Biblion to Customer pursuant to the Agreement, consisting of, among other things, physical and digital products (such as books, DVDs, CD-ROMs, magazines, data, databases, audio-visual media and journals), promotional products and machines.

**Access Code:** the code that allows the Customer to gain access to the NBD Biblion Server and, where applicable, to the other Services of NBD Biblion.

**Access Software:** the computer programmes that are used in the functioning of the digital Products and that allow the Customer to gain access to information from the digital Products.

**Agreement:** an agreement, including changes and/or supplements thereto, for the delivery of Products and/or the provision of Services by NBD Biblion to the Customer.

The terms defined here can be used in singular and plural form. \*\*For the sake of readability, the pronouns used in relation to the Customer are always "it" and "its", even though the Customer can be a natural person.\*\*

### Article 2 Applicability General Terms and Conditions

1. The General Terms and Conditions apply to all offers and Agreements of NBD Biblion.
2. General (purchase) conditions of the Customer will not apply to the Agreement, unless with the written consent of NBD Biblion. The provisions of these General Terms and Conditions can be derogated from only with the prior written consent of NBD Biblion.
3. NBD Biblion has the right to change these General Terms and Conditions. Changes will also apply to agreements already concluded. NBD Biblion will announce such changes in a timely manner, in the manner chosen by it and stating the effective date of the change.

### Article 3 Agreement

1. All offers, quotations, communications and statements of NBD Biblion are without any obligation and subject to availability.
2. The agreement between NBD Biblion and the Customer is formed by the written (order) confirmation of NBD Biblion or by the actual execution of an order by NBD Biblion. The Customer accepts these general terms and conditions by its written or oral order.
3. NBD Biblion may prescribe the use of particular (online) order forms for placing an order. Oral promises or agreements with subordinates of NBD Biblion do not bind it.
4. If the Customer is a legal entity, NBD Biblion may require that it submits a recent extract from the registration in the trade register of the Chamber of Commerce. The Agreement shall be signed by an authorized representative of the legal entity.

#### Article 4 Prices and fees

1. The sale, delivery and making available of Products and/or Services take place at the fees used by NBD Biblion at the moment of formation of the agreement (inter alia described in the price list).
2. NBD Biblion reserves the right to change the prices and fees. Changed prices and fees apply from the moment they are introduced.
3. In so far as not stated otherwise in the Agreement, the aforementioned amounts, prices and/or fees are excluding taxes and levies. NBD Biblion is entitled to pass on any change in the VAT rate to the Customer.

#### Article 5 Payment

1. Payment shall be made within fourteen days after the invoice date in the manner specified by NBD Biblion and in the currency stated in the invoice. NBD Biblion may require that payment of (periodic) fees is effected by means of direct debit.
2. If the Customer believes it has any claims against NBD Biblion in respect of the performance of the Agreement or otherwise, the Customer will not be entitled to any setoff and this will not release it from its payment obligations.
3. If the Customer has not paid in a timely manner, it will be warned by NBD Biblion to still proceed to payment within the period set in the warning. If the Customer also fails to pay within this set period, it will be in default by operation of law without further notice being required. The Customer will then owe the statutory interest from the moment of default until the day of full payment, for the calculation of which a part of a month will be counted as a whole month.
4. All reasonably incurred judicial and extrajudicial costs, including costs of legal assistance, resulting from the Customer's non-compliance or late or incomplete compliance with its payment obligations, amount to fifteen percent of the principal, with a minimum of €40, and are charged to the Customer.
5. In the event of non-payment or late payment by the Customer or non-compliance or improper compliance with any obligation resting on the Customer, NBD Biblion will be entitled to terminate the agreement out of court and cease further deliveries or the carrying out of work and/or the provision of services, without prejudice to NBD Biblion's right to claim performance or compensation for the damage suffered as a result of the termination of the agreement against the Customer.

#### Article 6 Delivery

1. All delivery periods stated by NBD Biblion or agreed between the parties have been set to the best of knowledge on the basis of the information available to NBD Biblion when entering into the Agreement, and will as much as possible be observed.
2. NBD Biblion is in no way bound to (delivery) periods that can no longer be observed due to circumstances that have occurred after commencement of the Agreement. If any (delivery) period threatens to be exceeded, NBD Biblion will notify the Customer as quickly as possible. The mere exceeding of a delivery period will not constitute an attributable failure of NBD Biblion and never lead to any liability for compensation.
3. Unless the parties have agreed otherwise in writing, the dispatch and transport costs will be charged to the Customer.
4. The goods delivered by NBD Biblion Goods shall be inspected immediately after delivery.

#### Article 7 Access NBD Biblion Infrastructure

1. Where applicable, the Customer is given access to the NBD Biblion Server, if the Customer can prove its identity by means of the Certificate in combination with the Access Code and the IP address.
2. The Access Code provided to the Customer:
  - is strikt vertrouwelijk;
  - is strictly confidential;
  - is non-transferable;
  - serves as proof of access to purchased Products on the NBD Biblion Server and has a period of validity of up to one (1) year;
  - can be revoked unconditionally by NBD Biblion in the event of abuse or a justified suspicion of abuse.
3. The Customer shall take measures to prevent that unauthorized persons can take note of the Access Codes provided to the Customer. If NBD Biblion finds or reasonably suspects that unauthorized third parties make use or can make use of the Access Codes, or if the Customer notifies NBD Biblion of such use by telephone, in writing or in any other way, NBD Biblion will immediately block the access to the Products by means of the relevant Access Codes. NBD Biblion will notify the Customer as quickly as possible of the unauthorized use and the blocking. If it is established that the unauthorized use is not attributable to the Customer, NBD Biblion will provide the Customer with replacement Access Codes as quickly after the blocking as reasonably possible.
4. If the unauthorized use of the Access Codes is attributable to the Customer, the Customer shall reimburse the costs associated with the blocking and the replacement as well as compensate any damage resulting from this. NBD Biblion will then also be authorized to terminate the agreement with immediate effect by written notice.

5. The Customer shall refrain from hindering other customers or internet users and/or causing damage to the NBD Biblion Server or other computer systems. The Customer is prohibited from starting processes or programmes, through the system or otherwise, of which the Customer knows or can reasonably suspect that they will hinder or cause damage to NBD Biblion, other customers and/or other internet users. The Customer is only allowed to start processes or programmes that belong to the functionality of the Access Software, if there is a direct connection with the NBD Biblion Server that is permitted by NBD Biblion.
6. The Customer is aware that the Access Software that is made available, contains confidential information and trade secrets of NBD Biblion or third parties. The Customer undertakes to keep this information confidential, not to disclose it to third parties, not to operate it for commercial purposes and to use it only for the purpose for which it was made available to it.

#### **Article 8 Issue Certificate**

1. The Customer guarantees the accuracy of all data prescribed for a Certificate that it shall provide for inclusion in the Certificate.
2. The Customer shall communicate a change in the data that it has provided for inclusion in the Certificate to NBD Biblion and the Certificate Service Provider, as quickly as possible and in any case within fourteen (14) days.
3. The Customer shall comply during the term with the conditions set by the Certificate Service Provider for the issue of Certificates. If the Customer fails to comply with the conditions set by the Certificate Service Provider, NBD Biblion may suspend the access to the Products and the right to use the Access Software.

#### **Article 9 Delivery and Security NBD Biblion Infrastructure**

1. If the Access Software contains reproducible errors that significantly affect the access to the NBD Biblion Server, NBD Biblion will endeavour to repair these errors. An error means that the Access Software does not conform to the written specifications of NBD Biblion.
2. If the Customer makes use of its own automation and/or telecommunication facilities when using the Access Software, the Customer is responsible for making the right choice and the timely availability thereof. The Customer is responsible for the use and the application of the Access Software within its organization, as well as for monitoring and security procedures and adequate system management.
3. If data required for the performance of the agreement are not available to NBD Biblion, or not in a timely manner or not as agreed, or if the Customer fails to comply with its obligations in any other way, NBD Biblion will in any case be entitled to suspend the performance of the agreement and NBD Biblion will be entitled to charge the resulting costs on the basis of its usual fees.
4. NBD Biblion is at all times entitled to make changes in the login procedures, in the account and in its e-mail and internet addresses, without this giving the Customer any right to compensation against NBD Biblion. NBD Biblion will in such cases inform the Customer in advance of the changes.
5. NBD Biblion is entitled to take the system on which the Data are made available (temporarily) out of use, or restrict its use, without prior notice, in so far as this is required for reasonably necessary maintenance, limitation of damage or necessary adjustments to or improvements in the system to be made by NBD Biblion, without giving the Customer any right to compensation against NBD Biblion.

#### **Article 10 Complaints and returns**

1. The Customer shall communicate any complaint about the Products delivered and/or the Services provided to NBD Biblion within ten business days after the invoice date or after the performance of the Services has started, in writing and clearly describing the complaint. In the absence of such a communication, any claim against NBD Biblion in respect of defects in the Products delivered or the Services provided lapses.
2. Unless otherwise has been agreed with NBD Biblion, the Customer is only entitled to return Products to NBD Biblion, if other Products than ordered have been delivered to the Customer.
3. The Customer is obliged to return the Products in proper packaging, stating the reason for the return in writing. After receipt of the return, NBD Biblion will, if it considers the return well-founded, still deliver as quickly as possible the Products ordered by the Customer. If the wrongly delivered Products were not based on an order of the Customer, these returned Products will be credited in full.

#### **Article 11 Support and use**

1. At the request of the Customer, NBD Biblion can arrange for a one-time general user instruction. The exact date for this is to be agreed.
2. The Customer can ask NBD Biblion questions about the Products and/or Services via the usual channels, including mobile phone, e-mail and chat. Questions are handled during office hours on normal business days. Questions are handled in order of receipt. Questions are always answered as quickly as possible.

## **Article 12 Retention of title, ownership, passing of the risk**

1. All Products delivered to the Customer remain the property of NBD Biblion until all amounts that the Customer owes for the Products delivered pursuant to the Agreement have been fully paid to NBD Biblion. Rights are always granted to the Customer or, where appropriate, transferred to the Customer, subject to the condition that the Customer pays the agreed fees in a timely manner and in full.
2. In the event of late payment by the Customer, NBD Biblion will be authorized to repossess the Products for the account and risk of the Customer.
3. The risk in the Products passes to the Customer at the moment of receipt by the Customer.

## **Article 13 Intellectual property rights**

1. All intellectual property rights, including copyrights, trademark rights, patents, neighbouring rights, database rights and/or other rights for the protection of performances, in and relating to the Products and/or Services, are vested exclusively in NBD Biblion and/or its licensors. Also any intellectual property rights still to be filed, registered, requested and/or established in any other way by NBD Biblion, are vested exclusively in NBD Biblion.
2. Unless with the explicit consent of NBD Biblion, the Customer is not allowed to reproduce (parts of) the Products and/or Services of NBD Biblion, make them public or make them or their use in any way available to third parties (including, but not limited to, by lending, letting, leasing or selling them or giving them on loan).
3. The Customer shall immediately notify NBD Biblion if any direct or indirect infringement of rights occurs, as referred to in paragraph 1 of this article, or if any claim is brought or any proceedings are instituted in relation to those rights. Without the written consent of NBD Biblion, the Customer shall in no way, in or out of court, take action itself against such an infringement. If NBD Biblion decides to take action against infringing third parties, in or out of court, the Customer shall render every assistance requested by NBD Biblion.

## **Article 14 Right to Use Access Software Digital Products**

1. Where applicable, NBD Biblion grants a non-exclusive and non-transferable right to use the Access Software for the duration of the Agreement. The right to use the Access Software includes the normal use of the Access Software on the computer equipment at the address of the Customer in combination with the Database(s).
2. NBD Biblion can at its own discretion make new versions of the Access Software available to the Customer. NBD Biblion is only obliged to provide support for the most recent version of the Access Software.

## **Article 15 Liability**

1. NBD Biblion is not liable for damage that the Customer suffers as a result of failures in the performance of the Agreement, except if and in so far as this is derogated from in these General Terms and Conditions or in the Agreement.
2. NBD Biblion is not liable for damage that the Customer suffers as a result of the use of the Products and/or Services, except if and in so far as this is derogated from in these General Terms and Conditions or in the Agreement. More in particular, NBD Biblion, its authors and licensors accept no liability for damage, of whatever nature, that is the result of acts and/or decisions that are based on the content of the Products delivered or Services provided by it. Although NBD Biblion exercises the greatest care with regard to the content of the Products delivered and Services provided, it cannot guarantee the accuracy and completeness thereof.
3. Under no circumstances will NBD Biblion be liable to the Customer for any indirect damage, including but not limited to consequential damage, immaterial damage, operating loss and loss of profit.
4. An obligation of NBD Biblion to pay compensation is in all cases limited to the amount of the fees paid by the Customer to Biblion NBD during the three months preceding the damaging event.
5. The limitation or exclusion of liability stipulated in this article does not apply in so far as damage is due to intent, gross negligence or wilful misconduct of NBD Biblion and/or its subordinate and other managers.
6. Damage that is eligible for compensation by NBD Biblion pursuant to the General Terms and Conditions or the Agreement shall be reported to NBD Biblion in writing, immediately but in any case within thirty days after the arising of the damage. Damage that has not been reported to NBD Biblion within this period is not eligible for compensation, unless the Customer makes plausible that it could not have reported the damage earlier.
7. The Customer is liable for all damage that NBD Biblion suffers as a result of an act or omission in breach of these General Terms and Conditions and the Agreement, including but not limited to damage to and/or loss of the goods, infringement of intellectual property rights and loss of fees.
8. The Customer shall indemnify NBD Biblion against claims from third parties in connection with the use or the inability to use the Products delivered and/or Services provided by NBD Biblion. This indemnification does not apply to damage and/or costs that are explicitly for the account of NBD Biblion pursuant to these General Terms and Conditions and the Agreement.

## Article 16 Force Majeure

1. Force majeure means any failure in the performance of the agreement that cannot be attributed to NBD Biblion, because it is not NBD Biblion's fault, nor shall be attributed to NBD Biblion pursuant to the law, a legal act or generally accepted standards.
2. In the event of a temporary force majeure, including the situation that Products and/or Services ordered by the Customer are temporarily out of stock, NBD Biblion is entitled to extend the intended delivery period by the period during which the temporary force majeure continues. NBD Biblion will then notify the Customer in writing.
3. After receipt of the notification referred to in paragraph 2 of this article, the Customer will be entitled to unilaterally declare the agreement terminated, free of charge, if, as a result of the delay, the Customer cannot reasonably be required to still accept the goods.

## Article 17 Duration and termination

1. The Agreement is entered into for the duration as agreed in the Agreement. If no duration is agreed, the Agreement is deemed entered into for a period of one year.
2. Unless otherwise agreed, the Agreement will on expiry be tacitly renewed, each time by a period of one year, on the then applicable conditions, while each Party can always give notice of termination of the Agreement with effect from the running period, in writing and with due observance of a notice period of three months.
3. NBD Biblion is authorized to terminate the Agreement in whole or in part by registered letter to the Customer, without prior judicial intervention being required and with immediate effect, if:
  - i. the Customer has applied for a suspension of payments or bankruptcy, or is granted a suspension of payments, or is declared bankrupt, or offers a composition;
  - ii. the Customer ceases its activities, its business is fully or partially shut down or liquidated, or it transfers or merges its business;
  - iii. the Customer fails to comply with its obligations under this Agreement, also after a written demand stating a reasonable period for compliance;
  - iv. the Customer is unable to comply or fails in the compliance with its obligations under this Agreement for a period of more than three months, due to force majeure, or as soon as it is certain that this situation will last more than three months.
  - v. NBD Biblion discontinues the publication of the relevant Product or the provision of the relevant Service.

## Article 18 Consequences termination

1. Except in the event that the ownership of the Products has been transferred by NBD Biblion to the Customer, the Customer shall immediately after termination of the Agreement cease the use of the Products and/or Services and immediately return these, including all copies and back-ups, to NBD Biblion for its own account and risk. The Customer is always obliged to ensure that the Products are in the same state on return as they were on commencement of the Agreement. The Customer is obliged to render every assistance to any inspection carried out by or on behalf of NBD Biblion to verify whether all obligations described in the previous provision have been complied with.
2. By termination of the Agreement, all claims against the Customer become immediately due and payable. The Customer undertakes to pay all claims to NBD Biblion within seven days after the end of the Agreement.
3. NBD Biblion will never be liable to the Customer for any compensation or payment on account of the aforementioned termination of the Agreement, without prejudice to NBD Biblion's right to claim full compensation for non-compliance by the Customer with its obligations as referred to above, and without prejudice to NBD Biblion's other rights in this respect.
4. Obligations that by their nature are intended to remain in force after the end of the Agreement, remain in full force and continue to rest on the Customer and its legal successors after the expiry or termination of the Agreement or any further agreement arising from it.

## Article 19 Provision of information and confidentiality

1. For the purpose of the performance of the Agreement, the Customer shall provide NBD Biblion in a timely manner with all the information and other materials that are needed for the delivery of the Products and/or the performance of the Services. The Customer guarantees the accuracy and completeness of the information and materials provided.
2. The Customer undertakes to treat all confidential information it has received or will receive from NBD Biblion within the framework of the Agreement, to which it has access or will have access, or about which NBD Biblion has informed it or will inform it, strictly confidentially and keep it secret and in no way disclose it and/or reproduce it. Confidential information includes in any case, but is not limited to, details of the Agreement, as well as all information, in whatever form provided or generated, about the methods, pricing models, procedures, systems, plans, (financial) figures, customers, documents, software and know-how of NBD Biblion, as well as all information of which the Customer should reasonably assume that it is confidential or secret.

3. The Customer shall impose the same confidentiality obligation regarding the confidential information described in this article on its employees and on third parties that carry out work for or on behalf of the Customer.
4. The Customer shall immediately notify NBD Biblion in writing of any non-compliance with the obligation in this article. The Customer will render every assistance to the taking of measures aimed at maintaining and protecting the rights of NBD Biblion.

#### **Article 20 Data protection**

1. In so far as, within the framework of the delivery of its Products and the provision of its Services, NBD Biblion processes personal data within the meaning of the General Data Protection Regulation (GDPR), in the capacity of processor within the meaning of the GDPR, for the Customer as controller within the meaning of the GDPR, the parties will conclude a processing agreement. Such a processing agreement then forms an integral part of the Agreement.
2. Within the framework of the relationship with its Customer, NBD Biblion may process personal data of employees or other persons under the direct authority of the Customer. This processing is described in the Privacy Statement of NBD Biblion, which is available on the website of NBD Biblion. The Customer shall ensure that the persons concerned are informed about this use.

#### **Article 21 Transfer of the agreement**

1. NBD Biblion is entitled to transfer its rights and/or obligations under the Agreement to legal successors, as a result of which transfer NBD Biblion will be discharged from its obligations to the Customer. On demand of NBD Biblion, the Customer shall render any assistance considered necessary to such a transfer.
2. The Customer is not authorized to transfer to a third party, or dispose in any other way of, its rights and/or obligations under the Agreement, or the Agreement as a whole or partially, unless with the written consent of NBD Biblion.

#### **Article 22 Miscellaneous**

1. This Agreement is governed by Dutch law. All disputes arising between the parties from the formation, interpretation, performance or termination of this Agreement will be submitted to the competent court in The Hague.
2. NBD Biblion's failure to exercise any right or have recourse to any legal remedy does not constitute a waiver of such a right or legal remedy.
3. In the event of invalidity of one or more of the provisions of this Agreement, the other provisions remain in force. The parties will in that event act as much as possible in accordance with the intention of the parties, thus preserving, in so far as possible, the purport of this Agreement and the invalid provisions.