

# General Licensing Conditions for Digital Content

## Preamble

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## 1 Scope of Application

**1.1** The General Licensing Conditions regulate the access to and use of contents for which the Licensee acquires rights.

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**1.3** EVA may on occasion modify these General Licensing Conditions. The Licensee will be informed of such modifications in writing or by e-mail or by the posting of a notice on the platform. The modifications shall be deemed accepted if the Licensee or the Approved Users (Sect. 2.2.) continue to access the Contents after being notified of the modifications. EVA will draw the Licensee's attention to this consequence when giving notification of the modification. If the Licensee is a consumer within the meaning of Section 13 of the German Civil Code (BGB), EVA will set a reasonable deadline for the consumer to declare his explicit acceptance.

## 2 Rights of Use

**2.1** For the period of the Licence, EVA grants the Licensee the non-exclusive, non-transferable right which may not be sub-let to access the Contents via the Website, to use the Website for this purpose and to allow the Approved Users such access and use in accordance with these General Licensing Conditions. Access and use have to be via an independent network or a virtual network via the Internet which only allows access to the Approved Users who are checked and supervised by the Licensee (secure network).

**2.2** Approved Users are natural persons who maintain an employment relationship or an academic training relationship or an apprenticeship with the Licensee or who, on the grounds of any other contractual relationship with the Licensee, are authorised to use the Licensee's facilities and who have access to the Licensee's network because of this authorization. This includes in particular:

- current members of the Licensee's teaching staff,
- library employees and other persons employed by the Licensee,
- persons currently registered as students at an institution of the Licensee's,
- visitors to the library (Walk-in users).

**2.3** Where a single-site license is acquired, only the Licensee is entitled to use the Contents.

### **3 Approved Access**

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**3.2** Access rights only apply to IP addresses or user names/passwords registered with EVA. Furthermore access rights can be obtained for additional authentication processes (e.g. Shibboleth) agreed upon by EVA with the Licensee.

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**3.4** Approved Users are allowed to access the Contents only for their own use or for purposes of research, to view them and search them and to make individual print-outs or electronic copies of individual articles or chapters which do not constitute more than a small proportion of the affected Contents.

**3.5** The Licensee may generate temporary local copies of the Contents 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 Approved Users use in accordance with the contractual conditions and which do not possess any independent economic value.

**3.6** The Licensee and the Approved Users may use appropriate parts of the Contents to produce printed teaching materials for use by the Approved Users within the Licensee's institutions; these materials are not permitted to be used for re-sale or any other commercial purpose.

**3.7** The Licensee and the Approved Users are not permitted to use or exploit the Contents in whole or in part by sale to third parties, rent, lease, loan or any other means for commercial or trade purposes.

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**3.10** The Licensee and the Approved Users are not permitted to deploy robots, spiders, crawlers or other automated download programs or other aids to search, index or download the Contents continuously and automatically (e.g. systematic download, deployment of retrieval software).

**3.11** The Licensee and the Approved Users may not process, operate on or in any other way alter the Contents (in whole or in part) unless this is necessary for the use in accordance with these contractual conditions.

**3.12** The Contents are only made available via the website. Archiving of the Contents (in whole or in parts) requires prior written approval from EVA. Any contents thus made available are subject to these present conditions for access.

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**3.16** The Licensee must inform in due form the Approved Users of these General License Conditions and oblige the Approved Users in writing or on-line to observe them. Furthermore the Licensee is required to make all appropriate efforts to ensure that

- only Approved Users are granted access to the Contents;
- the Approved Users are appropriately informed of the importance of observing the copyright and other rights attached to the Contents;
- the General License Conditions are adhered to.

## **4 Availability, Maintenance, Technical Requirements, Security Measures**

**4.1** EVA grants the Licensee access to the Contents via the Internet for the agreed duration of the licence. EVA will make appropriate efforts to ensure that its servers maintain sufficient capacity and bandwidth to guarantee availability for the Licensee and the Approved Users at a level comparable to that of the availability of information services of a comparable type and size via the Internet. EVA's responsibility for providing and transmitting data ends however at the point where EVA's servers are linked to the Internet ("handover point").

**4.2** Maintenance and servicing work can lead to temporary restrictions in the availability of the service. EVA will carry out the required work as speedily and smoothly as possible.

**4.3** 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 EVA. On request, EVA will provide the Licensee with details of the minimum standards required or desirable. The Licensee has to provide adequate state-of-the-art protection from viruses and unauthorised access for their deployed systems. EVA shall not be liable for virus damage which could have been prevented by corresponding technical measures.

**4.4** When placing an order or registering, the Licensee is obliged to provide truthful, up-to-date and complete details. They have to keep their user data up to date. In addition, the Licensee is obliged to keep access data secret. In the event of loss of the access data or if there are grounds to suspect that third parties have made unauthorised use of these data, the Licensee is obliged to report this to EVA without delay. The Licensee is liable for any misuse of their access data for which they are responsible. Provided no blame is attached to EVA, EVA is not

liable for any damage caused to the Licensee by misuse or loss of their access data (especially IP address or user name/password).

**4.5** 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 and to prevent any repetition of such incidents. The Licensee is in addition obliged to inform EVA without delay and in detail of all such incidents and to furnish EVA with all the data and documentation relevant to the analysis and removal of such incidents.

**4.6** To establish whether illicit use or misuse has occurred, EVA is entitled to monitor access to the Contents and use of the platform.

**4.7** If EVA 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, EVA will inform the Licensee without delay and set a time-limit for cessation. On expiry of the time-limit, EVA 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. The same applies where there is knowledge or suspicion of abuse of access data of or by the Approved Users in the case of multiple user licences.

**4.8** The Licensee is obliged to compensate EVA for all damage caused by illicit or careless use by Approved Users or by third parties which gain unauthorised access to the Contents via the Licensee's network and which the Licensee could have prevented by fulfilling their obligations under sect. 4.5.

## **5 Payment, Price Adjustment**

**5.1** The Licensee's and the Approved Users' rights of use and access are granted on condition that payments due are met.

**5.2** In the case of justified reasons that will be disclosed to the Licensee, in particular in the case of exceptional technical or economical changes affecting cost calculations, EVA is entitled to adjust the prices for the Contents with future effect. Notification to the Licensee will be made in writing with the invoice or by e-mail. In the event of prices being increased, the Licensee has the right to terminate the agreement extraordinarily within four weeks after the receipt of the notification. The Licensee's notice can be made in writing (Evangelische Verlagsanstalt GmbH, Blumenstraße 76, 04155 Leipzig, Deutschland), or by e-mail (vertrieb@eva-leipzig.de). The notice takes effect on the date of the price increase announced; the old price applies up to this point. The ordinary right to

terminate the agreement remains unaffected by this.

**5.3** The Licensee can only set off such counter-claims as have been established by the courts, are uncontested or have been recognised by EVA.

## **6 Disruption of Service, Guarantee**

**6.1** Disruptions to the availability of the website 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 is the Licensee is entitled to give extraordinary notice to terminate the agreement under Art. 8.2. – 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 EVA 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 EVA an appropriate time-period for fulfilling their obligations. The Licensee is not entitled to require that unsubstantial substantive or legal defects be remedied. Technical problems which are outside the sphere of influence of EVA (such as functional disruptions to the public transmission lines) do not constitute a defect.

**6.3** If the Licensee is not a consumer within the meaning of Section 13 of the German Civil Code, the period of limitation for substantive and legal defects – except in the case of intent - is one year from the beginning of the statutory period of limitation. 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 EVA..

## **7 Liability**

**7.1** The Licensee's claims for damages and reimbursement of expenditures (hereinafter: "damages claims") - regardless of their legal basis, in particular due to a breach of duties arising from the contractual relationship on our part, by our legal representatives, employees or vicarious agents or due to tort - are excluded.

**7.2** The above exclusion of liability does not apply to liability arising from the

breach of material contractual duties ("cardinal duties"). If the breach of the cardinal duties was merely due to slight negligence, however, the amount of our liability will be limited to the typical foreseeable damage.

**7.3** The above limitations of liability pursuant to sect. 7.1 and 7.2 will not apply to cases of liability pursuant to the German Product Liability Act, of intent or gross negligence, liability for damage resulting from injury to life, limb or health, the assumption of a guarantee by us.

**7.4** To the extent that our liability is restricted or excluded by the above provisions, this will also apply to our legal representatives, employees and vicarious agents.

**7.5** The above provisions are not linked to a change in the burden of proof to the detriment of the Licensee.

**7.6** Any statutory liability privileges to our advantage, e.g. pursuant to §§ 7-10 of the German Telemedia Act (TMG) remain unaffected.

**7.7** The Licensee's damages claims will be statute barred upon expiration of the statutory warranty periods, which commence as provided by statute.

**7.8** EVA will exercise the normal care and diligence customary for its field of activity to compile, process and present the contents made available via the website 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, EVA therefore assumes no guarantee or liability for the substantive accuracy or completeness of these contents and for damage incurred by the Licensee or the Approved Users as a direct or indirect result of using the contents (in whole or in part) – except in the case of intent.

**7.9** EVA 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 EVA's control. Insofar as the Licensee is responsible for defects in the Contents (e.g. errors in content, sense or typography when sending copies) he releases EVA from all guarantee and compensation claims which third parties – especially users – might bring against EVA.

## **8 Duration of Licence, Termination, Access after Termination**

## of the Agreement

**8.1** The license agreement is valid for the period of subscription agreed, starting from the Licensee's receipt of the access data. It is renewed for a further year unless either party gives one month's notice to terminate the agreement at the end of the relevant subscription period. Subscription contracts for journals like Theologische Literaturzeitung and Praxis Gemeindepädagogik are, which contain both printed issues and digital access shall be entered into for at least 12 months.. Each contractual party has the right to terminate the subscription contract after the at least term with a notice period of one month towards the end of a calendar year. The subscription contract is prolonged for a further year, if it is not terminated with a notice period of one month towards the end of the respective calendar year by a contracting party. Trial subscriptions for eJournals shall only be valid for the time stated in each case.

**8.2** Either party's right to terminate the agreement for important cause remains unaffected. EVA 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.

**8.3** To be valid, Licensee's notice of termination of the agreement must be given in the form of a text. The notice of termination is to be sent by letter to Evangelische Verlagsanstalt, Vertrieb, Blumenstraße 76, 04155 Leipzig, Germany or by fax to + 49 (0) 341-71141-50 or by e-Mail to [vertrieb@eva-leipzig.de](mailto:vertrieb@eva-leipzig.de). In case of Theologische Literaturzeitung or Praxis Gemeindepädagogik to Evangelisches Medienhaus, Abo-Service, Blumenstraße 76, 04155 Leipzig, Germany or by fax to +49 (0)341-71141-50 or by e-Mail to [aboservice@emh-leipzig.de](mailto:aboservice@emh-leipzig.de).

**8.4** In the event of the agreement being terminated, EVA will at the Licensee's request only on the extent of the respective offering (purchase model) continue to grant the Licensee access to PDF files of those parts of the subject of the licence which were published during the period of the agreement and which the Licensee subscribed to and paid for. At its own discretion EVA can allow access to the relevant PDF files by either

- permitting a systematic download of the PDF files into an electronic archive of the Licensee's, or
  
- nominating a third party to grant access as a trusted repository, or

- to provide the Licensee with an individual copy of the PDF files on a data medium (e.g. CD-ROM or DVD).

In such cases, all the Licensee's rights and obligations under these Licence Conditions apply. All other offerings (rental option, enduser offering) are explicitly excluded from this regulation. This means especially the subscriptions of the journals Theologische Literaturzeitung and Praxis Gemeindepädagogik. Their accesses to digital content will be cancelled after three months of cancellation date which is end of calendar year, so access is cancelled to end of March of the following year.

## **9 Miscellaneous Provisions**

**9.1** EVA processes the Licensee's data electronically. For this, legal data protection regulations will be observed. Regarding personal data, attention is drawn to the Data Protection Statement.

**9.2** The use of the website can involve the placing of cookies to check that access is authorised and to ensure smooth running of the service. If settings in the browser software used by the Licensee or the Approved Users do not permit the use of cookies, registration and use of the service may not be possible or may be subjected to severe restrictions. In such cases, EVA does not assume any liability or guarantee.

**9.3** EVA's website contains links to third-party websites. EVA cannot constantly check these sites or influence their contents. EVA does not assume responsibility for these sites or for their technical quality or the quality of their contents

## **10 Closing Provisions**

**10.1** 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. The German text of this Agreement shall form the basis for the settlement of any disputes arising from this Agreement.

**10.2** If the client is a merchant, 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 licence conditions is Leipzig.

**10.3** Should individual provisions of these conditions or of the Licence 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.

Leipzig, September 2014