

## Status 07/2014

Terms and Conditions of Delivery and Payment of Brockhaus Kommissionsgeschäft mbH (referred to as Brocom in the text)

The terms of delivery and payment set out below apply to all orders placed directly with us or handed over by publishers for delivery, unless otherwise agreed in writing.

Terms and conditions of delivery and payment of the customer do not cancel the terms and conditions set out below, even if no objection is raised. In the case of orders placed directly, settlement shall take place on our own behalf and for our own account (proprietary trading).

Details can be found in the respective voucher.

### 1. Orders

- a) The orders shall be executed as quickly as possible. However, no obligation to meet a specific delivery date can be assumed.
- b) Operational disruptions, strikes, traffic and other obstacles for which we are not responsible shall release us from the fulfilment of the order. No claims can be made against us for any damage resulting from this.
- c) If Brocom is unable to deliver because what has been ordered has either not yet been published, is temporarily out of print or no longer available, or is subject to other delivery restrictions, this will be noted on the invoice in the form of message texts. Deadlines are the responsibility of the publishers involved in proprietary trading. We deliver advance notices without further inquiry when they appear.
- d) The cancellation of an order can only be taken into account if it is received by Brocom before this order is processed.
- e) Cancellation is not possible when ordering by remote data transmission (DFÜ).
- f) Telephone orders become legally valid upon delivery.

### 2. Prices

- a) The prices charged by Brocom are gross prices.
- b) For deliveries within the Federal Republic of Germany, these prices include the applicable value added tax.
- c) For deliveries to a country outside the European Union, the prices are final prices. The orderer/customer is responsible for the proper payment of the tax incurred in these countries.

### 3. Retention of title

- a) The delivered goods shall remain the property of Brocom (§ 449 BGB, current account reservation) until all claims against the customer have been settled in full. The customer may sell the delivered goods in the ordinary course of business. Pledging or transfer by way of security is not permitted. In the event of resale of goods subject to retention of title, the customer shall assign the claim arising from the resale to Brocom in advance as security. The customer is only entitled and authorised to resell the reserved goods on the condition that the purchase price claim is transferred to Brocom; the customer is not permitted to dispose of the reserved goods in any other way. Upon request, the customer shall inform Brocom of the claim arising from the resale of the reserved goods. The customer is entitled to collect the claims himself as long as Brocom does not instruct him otherwise.
- b) If the customer sells goods subject to retention of title to customers with whom he maintains a current account relationship, he shall assign his current account receivables to Brocom as security for all outstanding claims of Brocom. If the security interests selected in accordance with this agreement exceed Brocom's total claim by more than 10%, Brocom shall be obliged, at the customer's request, to transfer back to the customer the part exceeding this amount.
- c) If the customer includes claims from a resale of the goods subject to retention of title in a current account relationship existing with a third party, the respective recognised periodic balance or - if this is in turn included in the current account - the closing balance arising upon termination of the current account relationship shall be deemed assigned after the individual current account claims have been balanced. If claims of Brocom are included in an existing current account relationship with the customer, the agreed retention of title shall be deemed security for the balance claim of Brocom.
- d) If the customer carries out actions on the delivered goods in accordance with §§ 946-950 of the German Civil Code (combination, mixing, processing, etc.) which cause the retention of title regulated here to expire, the resulting claims of the customer shall be assigned to Brocom in advance in accordance with the above regulations in the amount of the claims to which Brocom is entitled at the customer.

#### **4. Transfer of risk and notification of defects**

- a) All shipments are for the account and risk of the customer, even if carriage paid delivery has been agreed, from the moment of dispatch, even if loss and deterioration are due to accident or force majeure. Brocom shall not pay compensation for shipments that are lost or damaged in transit. In order to protect its interests, the customer or recipient must therefore notify these bodies of the damage within the period given by the carrier (post office, parcel service, commission agent, freight forwarder, etc.) and order a replacement independently of this.
- b) The contents of a consignment shall be deemed to correspond to the invoice or delivery note and to be free of defects for which Brocom is responsible if the recipient does not notify Brocom of the discrepancy or lodge a complaint within one week of receipt of the consignment at the latest. Otherwise, § 377 of the German Commercial Code (HGB) shall apply to the notification of defects. In the event of complaints, the date, type of consignment, content and number of the invoice or delivery note as well as the packing slip must be indicated. In the event of a justified complaint and timely notification of defects, the customer shall have the right to subsequent delivery and, in the event of a failed subsequent delivery, to withdrawal from the purchase contract or reduction of the purchase price. Claims for damages are excluded insofar as Brocom is not at fault.

#### **5. Liability**

Brocom shall be liable without limitation for damage to the goods up to the moment of dispatch, insofar as this is due to its own grossly negligent breach of duty or to intentional or grossly negligent breach of duty on the part of its legal representatives or vicarious agents. For other damage, Brocom shall be liable on the merits for any culpable breach of essential contractual obligations (cardinal obligations), unless Brocom can exempt itself from liability by virtue of commercial custom. In these cases, Brocom's liability is limited to compensation for damage that is typical and foreseeable at the time of conclusion of the contract. In all other cases, liability is excluded. Contributory negligence as a result of insufficient provision of cooperation services, delayed notification of damage or as a result of organisational errors shall be imputed to the customer. The customer is obligated to immediately notify Brocom in writing of any damage within the meaning of the above liability provisions or to have Brocom record the damage so that Brocom is informed as early as possible and, if necessary, can work with the customer to mitigate the damage. A breach of this duty to inform may lead to a reduction or exclusion of the claim for damages.

#### **6. Limitation**

Claims for defects, including claims for damages due to damage to the delivered goods, shall become statute-barred within one year from the statutory commencement of the limitation period. Any associated rights of rescission and reduction may also only be asserted within this period. The limitation period in the case of a delivery recourse according to §§ 478, 479 BGB remains unaffected.

#### **7 Shipping costs**

- a) For your orders, we generally ask you to specify the shipping method: DPD, DHL, book collection services (KNV, BOOXpress, Umbreit) or other carriers. This instruction then applies to all deliveries. Please note any exceptions clearly on the order.  
However, special shipping instructions can only refer to the shipping route and not to the denomination of an order. In the case of subsequent deliveries, the shipping route saved for you will always be adopted.
- b) In the absence of shipping instructions, we shall choose a cost-effective shipping route. Claims resulting from this regulation will not be recognised.
- c) Brocom shall charge shipping costs of all kinds, such as postage, freight, etc., in the amount incurred or at a corresponding flat rate - provided the shipment is not carriage forward - also for subsequent deliveries. The packaging shall be specified by Brocom, provided that there are no restrictions on the shipping carrier.
- d) Packaging and denomination of an order is the responsibility of Brocom. Packaging is generally not charged, except for special packaging material such as boxes, special containers, rolls for art prints, cardboard packaging if delivery on pallets is undesirable, etc. This will be charged at cost price.
- e) If no loading aids (e.g. ramp, lifting platform, forklift) are available at the customer's premises, the customer must already state in the order that delivery of pallets is only possible with a lifting platform. In the event of non-compliance, any additional costs incurred shall be borne by the customer.

## 8. Return

- a) Return documents  
Requests for returns must always be sent to Brocom, to the sales department of the publisher participating in proprietary trading or to its authorised book trade representatives, stating the purchase data. Based on this information, a return authorisation will be issued for firmly purchased goods in the given case, which must contain the purchase data (at least customer and invoice number). If return rights were granted when the goods were purchased, this proof must be enclosed with the return.
- b) Unauthorised remissions  
Returns without one of these proofs (return authorisation or proof of purchase with return rights) or with exceeded return deadlines will be collected according to their condition (stored or maculated) without Brocom being able to issue a credit note. The customer will be issued a receipt for the collection as a reference for a subsequent request for returns from the publisher.
- c) Credit note  
A prerequisite for the credit note is that the publishing works arrive with us in publisher-new, saleable condition. Entries and markings with merchandise management labels also mean that the goods are no longer new to the publisher. If return quotas have been agreed, credit will only be given up to their amount.
- d) Transport/ Transfer of risk  
Approved returns must be marked on the outside with the note "Remittenden" and addressed to: Brockhaus/Commission, - Remittendenstelle - Kreidlerstraße 9, 70806 Kornwestheim. The customer shall bear the risk and costs. -
- e) Payment obligation
- f) Returns do not release the customer from the obligation to pay. In the case of an approved return, the credit note from Brocom must be awaited.
- g) Exchange  
Misprinted, misbound items or items to be taken back by Brocom on the basis of a justified notice of defect will be exchanged at any time within the limitation period according to clause 5, with reimbursement of the necessary return costs. If the exchange is not possible, the amount will be credited.

## 9. . Payment

- a) Payments can only be booked if the customer number and invoice number are indicated.
- b) Payment by direct debit can be made if we have a corresponding power of attorney. The direct debit will be made taking into account the invoice due dates. Existing direct debit mandates will be converted into SEPA basic direct debit mandates as of 01.02.2014.
- c) By mutual agreement, we agree on an advance notice period of 1 day for SEPA direct debits, which will be printed on the invoice.
- d) The terms and conditions agreed separately with the customer shall apply to credit and due date. Invoices with the right of return (RR) are also due after expiry of the normal payment term, irrespective of the return period. If there is justified cause, Brocom may at any time restrict the credit agreements or change the mode of payment. In such a case, Brocom has the right to immediately demand security for the goods already delivered. If this demand is not met, Brocom shall be entitled to withdraw from the contract and to claim damages.
- e) The balance of an account can only be determined on the basis of Brocom's bookings.
- f) Customers with whom Brocom does not have an ongoing billing relationship or who have not settled their balances within the due dates shall be supplied against advance payment. Instead of an advance invoice, Brocom may also submit a limited delivery offer to the customer, which is accepted by the customer in the event of advance payment within the time limit and expires after the expiry of the time limit without receipt of payment.
- g) If there are claims which have not been settled within the due dates, the entire balance shall become due for immediate payment.
- h) General differences and expected credit notes do not entitle the customer to withhold invoice amounts due.
- i) Settlement via Buchhändler-Abrechnungs-Gesellschaft mbH (BAG) can be made up to the invoice value limit set by Brocom in each case, insofar as this does not conflict with any credit concerns. In the event of payment arrears, settlement via BAG shall be ruled out.

- j) In the event of payment arrears, all postage expenses, reminder and collection costs shall be borne by the customer.
- k) Interest on arrears shall be charged in the amount provided for by law in § 288 BGB (German Civil Code) from the due date, unless higher damages are proven in individual cases.

#### **10. Jurisdiction and place of performance**

The place of jurisdiction and performance for claims of Brocom arising from all deliveries shall be Kornwestheim.

#### **11. General**

- a) Brocom's customers will be notified of bookseller announcements about business transactions and changes of any kind directly by Brocom or by advertisement in the Börsenblatt für den Deutschen Buchhandel.
- b) Brocom reserves the right to revoke and amend its terms of delivery and payment as well as their supplements at any time. Revocation, amendments and supplements shall be announced in an appropriate form to make them binding.

#### **12. Applicable law**

The law of the Federal Republic of Germany shall apply to these Terms and Conditions of Delivery and Payment and to the entire legal relationship between Brocom and the Customer.

#### **13. Effectiveness (severability clause)**

Should individual provisions of these Terms and Conditions of Delivery and Payment be or become invalid, this shall not affect the validity of the remaining provisions or of the individual contracts concluded on the basis of these Terms and Conditions of Delivery and Payment.

The ineffective condition shall be replaced by the provision that comes closest to the economic purpose of the ineffective condition. The non-exercise of rights by Brocom - even for a longer period of time - shall not entitle the Customer to invoke the waiver of these rights by Brocom or forfeiture.

#### **14. Data protection**

Please see the separate Privacy Policy link on our website:

[http://www.brocom.de/fileadmin/user\\_upload/datenschutzerklaerung\\_brocom\\_eu.pdf](http://www.brocom.de/fileadmin/user_upload/datenschutzerklaerung_brocom_eu.pdf)

Supplemented due to EU Data Protection Regulation-Kornwestheim,  
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#### **Note on the text:**

The preceding text was translated by an online translation software. The German text of the Rules of Procedure is legally binding.