

47
48 for their members. Through Digital Library, a wide variety of contents can be borrowed digitally, e.g. language
49 works/courses, audiobooks, radio plays, digital media such as videos and software, etc. The performance of
50 technical, administrative and copyright contractual aspects of this innovative service shall be provided by
51 SBD.bibliotheksservice ag, Bern, (hereinafter called SBD) respectively, on behalf of SBD, by DiViBib GmbH,
52 Luisenstr. 19, 65185 Wiesbaden, on behalf of the above-named libraries. The accounting and invoicing of the
53 services performed by SBD for the registered Library users shall occur exclusively through and in relationship
54 with the Library enabling you to use the Digital Library. One may use Digital Library based on the prerequisite
55 that one has been registered with the Library and that the registration has been approved and activated by
56 the Library.

57
58 *§ 1 Scope of Validity*

59 (1) Through Digital Library, registered Library users can use and digitally borrow copyright protected language
60 works/courses, audiobooks, radio plays, digital media such as videos and software, etc. (hereinafter called
61 „Contents“).

62 (2) These Terms and Conditions of Use shall apply to all digital contents made available, be they on a payment
63 basis or free of charge. They shall apply to the users' digital borrowing of contents for the first time as well
64 as to each borrowing in the future, even if the Library user does not explicitly renew the confirmation of the
65 validity of these Terms and conditions of Use when visiting the Library and/or retrieving contents later on.
66 The terms and conditions are always accessible within the framework of the online holdings and can be
67 printed out at any time.

68 (3) Rules and regulations that deviate from these Terms and Conditions of Use shall not be recognized, unless
69 they are confirmed in writing.

70 *§ 2 Registration / Library User ID and Password*

71 The prerequisite for the digital borrowing of contents in the Digital Library system is that the Library Users be
72 registered with the Library. Registered Library Users (hereinafter called 'Library Users') can borrow digital
73 content by using the library user ID and password given to them by the Library.

74 *§ 3 Digital Loans / Granting of Rights / Copyrights / Technical Protective Measures*

75 (1) Digital borrowing shall be effected through the downloading and/or streaming of contents on the Internet
76 or any other digital network. The scope of use permissible for the contents in question within the framework
77 of a digital loan process shall be communicated to the Library Users in connection with the loan process; the
78 scope of use described therein shall spell out the respective rights being granted. After the expiration of the
79 borrowing period, the use of the contents, in particular any duplication, shall no longer be permitted.

80 Streamed content, which is understood as constituent parts of content that are continually received for
81 immediate use or playback of individual constituent parts, may not be recorded or in any way copied. If
82 Library Users return the digital content before the loan period has expired, they are responsible for ensuring
83 that the loaned digital material is deleted from all their mobile devices.

84 (2) The digital contents made available to Library Users are protected by copyright or otherwise. Library Users
85 herewith shall recognize explicitly the rights protected by copyright law and/or other rights and shall commit
86 themselves not to violate them.

87 (3) SBD shall grant the Library Users within the framework of a digital loan process a simple non-transferable
88 right that is limited in time to use the digitally borrowed content exclusively for personal purposes and within
89 the framework of the respective scope stated and permitted for digital borrowing. Library Users shall not
90 remove copyright notices, trademarks and other reservations of rights in the digitally borrowed contents.
91 They also shall not change or modify the digitally borrowed contents in substance and/or editorially in any
92 way or use their changed/modified versions, shall not copy them for third parties, make them available to

93 and/or transmit them to the public, put them on the Internet and/or on other networks on a payment basis or
94 free of charge, replicate them, resell them and/or use them for commercial purposes. Any reassigning and/or
95 sublicensing of the rights to third parties is explicitly prohibited. The granting of the rights shall be effected
96 with the completion of the download and/or is restricted to the enabling of the continual reception of
97 constituent parts for immediate use or playback of individual constituent parts (streaming) without granting
98 the right to record or in any way copy the streamed content. Furthermore the right to use the content ends
99 when the digitally loaned content is returned before the loan period has expired. The Library Users are not
100 entitled to use the content after the loan period has expired unless they have renewed the loan period.

101 (4) In order to prevent unauthorized duplications of the digitally loaned contents, SBD shall employ technical
102 protective measures and/or information required for the safeguarding of rights, such as DRM systems and
103 digital watermarks. Library Users are prohibited from circumventing the technical electronic protective
104 measures used and are forbidden from removing or altering the information required for the safeguarding of
105 rights.

106 (5) In particular, Library Users are prohibited to use Robots, Spiders, Crawlers and/or other automatized
107 programs for the purpose of ongoing or timely limited browsing, indicating and/or digital borrowing/
108 retrieving/ downloading/ streaming of the contents (misuse). Digital borrowing and returning of the contents
109 shall be initiated/conducted by the individual Library User as natural person in each single case. A misuse in
110 the sense of sentence 1 also is given if the Library User digitally borrows the contents with the intent of
111 damaging. This is in particular the case, if the digital borrowing exceeds the purpose of the exclusive
112 personal use in the authorized scope that is communicated to the Library User in the course of each digital
113 borrowing process, or if the digital borrowing is intently effectuated for the purpose of damaging (in
114 particular but not limited to a financial damage) SBD and/or divibib and/or the Library User's library.
115 It is regularly checked whether there are facts that give rise to suspicion of misuse, in particular whether
116 individual Library Users have borrowed, downloaded and/or streamed content to such an extent that it can be
117 concluded that online lending is not, or is not solely, being used for personal use. If this is the case, SBD
118 and/or divibib is entitled to block access to the Onleihe for the future. For technical implementation, divibib
119 will block your user account for borrowings and reservations. SBD and/or divibib is also entitled to report the
120 incident to the Library User's library, providing your data. These processes are carried out based on our
121 legitimate interest in detecting and preventing misuse of the Onleihe.
122

123 *§ 4 Technical Requirements*

124 In order to be able to use Digital Library, Library Users shall have appropriate online technology tools at their
125 disposal and obtain access to electronic services and media, in particular to the Internet, at their own
126 expense and risk. They shall adapt themselves to the changing technical standards on the Internet and Digital
127 Library at their own expense.

128 *§ 5 Right of Revocation*

130 There shall be no right of revocation with respect to the digital borrowing of digital contents (downloading or
131 streaming of digital contents), as these are inherently not suitable for returns.

132 *§ 6 Warranty Limitation*

133 (1) Library Users shall be responsible for the selection of digitally borrowed contents. The use of Digital
134 Library, in particular the downloaded, streamed and/or otherwise obtained contents in connection with the
135 Library holdings, shall take place at the Library Users' own risk. Library Users shall be liable for any damage
136 to their computer system and/or other technical devices employed for using Digital Library, and also Library

137 Users shall solely be liable for any loss of data and/or for other damages due to the download and/or other
138 transactions in connection with the holdings.

139 (2) The Library holdings shall be presented as deemed appropriate in each respective case and with the
140 proviso of availability. All specifications, reproductions, technical data, and descriptions of size and
141 performance that are to be found on the website shall be purely informal. SBD shall strive for accuracy in the
142 representations, but shall accept no responsibility for them. Neither shall SBD warrant that the holdings fulfill
143 the demands of the Library Users and that they shall be available without interruption at all times in a timely
144 and secure way free of errors. SBD shall not warrant that the hardware and/or software used for the holdings
145 -- including, if necessary, the download software offered in Digital Library -- work free of any error at all
146 times and/or that any error that occurs shall be corrected on the website or in the hardware or software.

147 (3) The liability of SBD, should such liability exist on whatever legal grounds notwithstanding the above stated
148 rules/provisions, shall be limited in each case to damages caused by intentional or grossly negligent behavior
149 or due to the violation of a principal obligation essential for the contractual relationship. In case of damages
150 due to a negligent violation of essential contractual obligations, liability for indirect damages and atypical
151 consequential damages shall be excluded, and as for the rest, liability shall be limited to the average
152 damages, depending on the level or extent of the damages typical for the contract. Any mandatory liability
153 according to the law on product liability shall remain unaffected.

154 (4) Library Users bear liability toward SBD for damages, costs and expenses which arise from any intentional
155 or negligent violation by Library User of the contractual relationship between SBD and themselves, in
156 particular in relation to the responsibilities outlined in § 3, SBD is indemnified from all third party claims
157 arising from such violations.

158
159 § 7 *Final clause*

160 (1) Swiss substantial law shall apply exclusively.

161 (2) Should individual provisions of the Terms and Conditions of Use be or become entirely or partially invalid,
162 the validity of the remaining provisions shall hereby not be affected. The rule that is entirely or partially
163 invalid shall be replaced with a rule the economic outcome of which shall be as close as possible to the
164 invalid one.

165