

BOOKTYPE

everything a book can be

General Terms and Conditions of contract (Terms and Conditions)

of Booktype GmbH, Prinzessinnenstrasse 20, 10969 Berlin, Germany
Registered at Charlottenburg Local Court, Commercial Register no. HRB 166441B
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Preamble

Booktype GmbH (hereinafter: "Booktype"), Prinzessinnenstraße 20, Aufgang A, 10969 Berlin (Germany), offers IT services in the publishing field. These primarily include web-hosting of relevant software along with support, as well as customized developments and adaptations. The customer (hereinafter: "you") wishes to make use of some or all of these services covered by the following Terms and Conditions.

A. General

1. Contract Closure, Scope of Application

- 1.1 The content of the specific performance/services owed by Booktype shall ensue from a separate quotation sheet. All services shall be governed by the applicable provisions laid down in this contractual document.
- 1.2 A contract shall be brought about when you either by email or by signing the quotation sheet accept the proposal submitted by Booktype.
- 1.3 These Terms and Conditions shall apply to the contractual relationship between Booktype and you exclusively. Your general terms and conditions of business shall not apply. Counter-confirmations from you referring to your own terms and conditions of business are expressly refuted, insofar as such terms and conditions diverge from these Terms and Conditions or contain provisions conflicting with those laid down hereunder.

2. Open-Source Software

- 2.1 The software provided is licensed under open-source licence terms. The source code shall be made available to you for downloading at <http://www.Booktype.org> together with the relevant copyright notices, disclaimers and any further information. Further rights of use in the code of the software licensed on an open-source basis may be acquired by you from the respective rights holders by concluding licence agreements with the latter on the terms and conditions of the respective open-source licences.
- 2.2 Booktype warrants that the components licensed on an open-source basis may be used by you for the contractual purposes.

3. General Support

- 3.1 A case of support shall be deemed to exist whenever you have general questions relating to use of the software, or if servers or software do not fulfil the functions agreed upon in the contract. At any time, Booktype shall provide support only for the last three major releases of the software.

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- 3.2 Cases of support shall be reported via a ticket system in your account, via email (help@sourcefabric.org) or via Live Chat, to ensure rapid support.
- 3.3 Booktype shall provide support services only from Mondays until Fridays between 9 am and 9 pm CET ("Service Hours") excluding German and Canadian bank holidays. As a general rule, Booktype shall react within a maximum of 48 hours.
- 3.4 In each case of support, the user reporting the case shall provide a description of the respective issue in as much detail as possible, to enable Booktype the elimination of the fault as efficiently as possible.
- 3.5 On request, Booktype shall render further support services beyond the support measures provided for herein.

4. Support in the Event of Installation and/or Configuration Issues

- 4.1 On request, Booktype will support you, free of charge, with installation and configuration issues, insofar as these do not take up more than one hour of work ("Minor Changes").
- 4.2 Minor installation and configuration issues are to be addressed to Booktype directly via help@sourcefabric.org. Such requests shall be received within the agreed Service Hours.
- 4.3 Installation and configuration requests other than the minor installation and configuration requests defined above shall be subject to a fee, and shall be specced and billed depending on the time and cost involved. Please see 1.1.

5. Third-Party Property Rights

- 5.1 Booktype's software is clear of third-party rights that restrict or exclude the scope of usage that is laid down in the contract.
- 5.2 You shall not remove any existing labelling, notices of property rights or ownership notices.
- 5.3 If a third party asserts claims against you on account of any infringement of property rights by the software, and if use of the software is impaired or prohibited as a result thereof, Booktype shall be liable as follows:
 - 5.3.1 Booktype shall, at its own option and expense, alter or replace the software to such an extent that it does not infringe the property right concerned, but still meets the agreed functional and performance features in a manner that is reasonable for you.
 - 5.3.2 If Booktype is unsuccessful in doing so on reasonable terms, Booktype shall notify you to this effect, and shall have the right to rescind this agreement. Booktype shall refund to you the remuneration paid by the latter, minus an amount to take account of

the time the software has been used.

- 5.4 You shall give Booktype prompt notification of any claim brought by a third party. Booktype's liability under Item 5.3 shall not apply, if you acknowledge the alleged property right infringement and/or conducts disputes concerning property right infringements without consulting Booktype. If you cease to use the standard software in order to minimize losses or for other important reasons, you shall notify the third party that such cessation of use does not entail any acknowledgement of the alleged property right infringement.
- 5.5 Claims on account of property right infringements shall be excluded, if you yourself are responsible for the property right infringement.

6. Your Duties to Co-operate

- 6.1 In relation to Booktype, you hereby undertake to carry out the acts of co-operation necessary for rendering the agreed services. In particular, you shall make available all necessary information and documents free of charge, and for the purpose of implementing the contract you shall name a contact person qualified in this specialised field and adequately authorised. If necessary, this shall also involve making available an API and providing the website and access to external resources. Information and documents provided shall serve as an essential basis for Booktype's implementation services. You shall be held responsible for the provision of any incorrect or incomplete information.
- 6.2 You shall back up data and information, including data and information that the you process on IT systems for which Booktype is responsible. The scope and frequency of data back-ups by Booktype shall be based on customary practice commensurate with the state of the art in terms of technology.
- 6.3 If Booktype receives materials, data and/or other information from you ("Your Materials") in the course of the implementation of the contract, you shall ensure that a copy of the data remains with you for back-up purposes. Moreover, you shall ensure that data stored on Booktype's systems is free of any malware whatsoever.
- 6.4 Insofar as you provide Booktype with protected content (e.g. graphics, trademarks and other content protected under copyright or trademark law), you shall grant Booktype all the rights required for implementing the contractual agreement. In particular, this shall include the right to copy such content and solely for the purpose of the contract, make such content accessible to the public. In this context, you affirm that in respect of Your Materials provided, you hold all the rights necessary for granting Booktype the rights concerned.
- 6.5 Booktype shall be released from its obligation to render the contractual services, if and insofar as you fail to perform your duties to co-operate. Any existing time schedules shall be automatically adapted accordingly. If you are responsible for any failure to co-operate, and if any loss is incurred upon Booktype as a result, you shall compensate such loss.

7. Changes to the Subject-Matter of the Contract / Change Request Procedure

- 7.1 Requests for substantive changes to the service owed (i.e. for example any take-up of additional offers) may be addressed to any assigned project manager by email, to the ticket system or to help@sourcefabric.org. Change requests shall be taken receipt of on business days from Mondays to Fridays between 9 a.m. and 9 p.m. CET, and shall be documented in the ticket system. Such change request shall contain at least the following information:
- a description of the change requested;
 - the aim and object of the change requested;
 - any special circumstances and/or background information that need to be taken into account with regard to the change requested;
 - the urgency of the change requested.
- 7.2 Booktype shall then promptly investigate what effects the requested change would have on the structure of the contractual services, particularly in respect of the agreed remuneration. If Booktype establishes that the change request concerned is feasible without difficulty, and that it possibly also ensues from the specifications already laid down, the change request shall be implemented.
- 7.3 If Booktype establishes that, owing to the time and cost likely to be involved in investigating the change request concerned, services to be rendered cannot be carried out or can only be carried out with a delay, Booktype shall notify you to this effect and point out to you that the change request can only be further investigated if the services concerned are postponed accordingly. If you agree to such postponement, Booktype shall carry out an investigation of the change request. If, however, you withdraw the change request, the change request procedure initiated shall terminate.
- 7.4 Insofar as the change request cannot be implemented immediately and without extra consultations with you, Booktype shall, after having investigated the change request, explain to you the effects that the change request would have on the agreements reached. Such explanation shall contain either a proposal for the implementation of the change request or details as to why the change request is not feasible. The Parties shall promptly agree upon the content of a proposal for the implementation of the change request, and shall lay down in a supplementary agreement the outcome of any arrangements successfully made. If no agreement is brought about, or if the change request procedure ends for some other reason, the original content and scope of the services shall continue to apply.
- 7.5 You shall bear the expenditure incurred as a result of the change request concerned. In particular, this shall also include expenditures for investigating the change request, for drawing up a change proposal, as well as any downtime periods. The hourly rate applicable in this respect shall depend on the daily/hourly rate valid at the time of contract closure.
- 7.6 Booktype shall be entitled to alter the services to be rendered under the contract or to

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deviate from these services, if you consent to such changes or deviations after Booktype has notified you accordingly, or if you do not object thereto within two weeks of receipt of such notification.

7.7 If the catalogue of services has to be altered as a result of you having failed to carry out an act of co-operation, particularly as a result of any correction of information already provided prior to formal acceptance of performance, or as a result of any information subsequently submitted, this shall be deemed to be a change to the services as per this Section.

8. Remuneration; Terms of Payment and Billing

8.1 Unless otherwise indicated, value-added tax at the statutory rate in force at the time has to be added to the prices quoted by Booktype. The remuneration shall be based on the agreement between the Parties.

8.2 If a fixed price has been agreed upon as a one-off payment, this fixed price shall be due for payment, without any deduction, upon receipt of the invoice. If payment of the fixed price by instalments has been agreed upon, the agreed instalment shall be due, without any further deduction, upon receipt of the invoice for each instalment.

8.3 If the service agreed upon is remunerated on a time and cost basis, the invoice shall be submitted monthly in arrears for the past month in each case, unless otherwise agreed. The invoice shall be issued on the basis of written timesheets, which shall be enclosed with the invoice. The services shall be documented by Booktype with the smallest unit being 30 min. Such timesheets shall be deemed accepted, if the ordering party does not object to them within a maximum of 5 business days after receipt. If the contract ends prematurely, you shall owe remuneration for the services rendered up to the time when the contract ended.

8.4 In the case of fixed-term contracts, Booktype may, after the contract term initially agreed upon has expired, adjust the prices as well as the rates for any remuneration agreed on a time and cost basis to reflect general price trends. If any increase in the fee exceeds 5%, you may terminate the contractual relationship giving five business days' notice. Notice is to be given within 14 days of notification of the increase.

8.5 In the case of agreed part-services, and with regard to invoices for instalments, the provisions in this Section 8 shall apply.

8.6 Payments shall be due immediately, without any deduction, upon receipt of the invoice. The prerequisites for default and the consequences of default shall be governed by statutory provisions. For customers who are not consumers, § 288 (5) *BGB* [German Civil Code] shall apply. In this respect, however, the flat-rate charge shall be offset against all payments to be made by you on account of default.

8.7 In the event of a due payment owed by a customer being more than three months overdue, Booktype reserves the right to discontinue its own services or block access to the service. If part of the invoiced amount is disputed, the undisputed portion is always to be paid.

8.8 For both parties to the contract, set-off shall be permissible only against due claims that have been declared *res judicata* or are undisputed, or against due claims that have originated from the same legal and contractual relationship.

9. Liability

9.1 Both parties shall equally be liable in accordance with statutory provisions for any loss incurred as a result of wrongful intent or gross negligence, that is the consequence of the service concerned lacking a guaranteed feature, that is due to any culpable breach of duties material to the contract (so-called "Cardinal Duties"; see Item 9.2), that is the consequence of culpable health damage, physical harm or mortal injury, or for which liability is provided for under the *Produkthaftungsgesetz* [Product Liability Act].

9.2 Cardinal Duties are contractual duties which are a prerequisite for due implementation of the contract in the first place and may always be relied upon by the contractual partner, and which conversely may jeopardize attainment of the contractual purpose if breached.

9.3 If a Cardinal Duty is breached, liability shall be limited to the contract sum, i.e. the total amount to be paid by you, provided the loss concerned is due merely to ordinary negligence and not to physical harm, mortal injury or health damage.

9.4 Liability on account of interruption, disruption or any other events that cause loss and are due to telecommunications services from Booktype or from third parties for which Booktype is liable, shall be limited to the extent of Booktype's possible recourse against the telecommunications service provider concerned. Booktype shall not be liable for the proper functioning of the connecting lines to the contractual server or to the handover point, or in the event of power failures or the outage of servers that are not within Booktype's sphere of influence.

9.5 Claims arising from lost profit are excluded.

9.6 Booktype's liability for loss of data shall be limited to the typical cost of data recovery that would have been unavoidable even if you had made back-up copies on a regular basis and commensurate with the risk.

9.7 In all other respects, Booktype's liability and that of its vicarious agents – for whatsoever legal cause – shall be excluded.

10. Warranty

Booktype's warranty follows legal provisions according to §536 BGB.

11. Sub-Contractors and Transfer of Contractual Obligations

11.1 Booktype may make use of sub-contractors for rendering the services owed.

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11.2 Booktype is entitled to transfer its obligations under this Agreement (alone or as part of a contract transfer) with your consent to a third party. In the case of such a proposed transfer of service Booktype will notify you via e-mail no later than three months before the planned effective date of the transfer, indicating the date of the planned transfer and the identity of the new sub-contractor (or contractual partner). Your consent shall be deemed granted if you have not indicated disapproval no later than 8 weeks prior to the proposed effective date of the changes.

12. Confidentiality

12.1 In respect of all information concerning Booktype that has come or may yet come to your knowledge in connection with this Contract, and that is designated confidential or that in view of other circumstances is evidently a trade or company secret (e.g. the devising and implementation of the programming undertaken by Booktype, as well as other technical and technological know-how of Booktype, hereinafter: "Confidential Information"), you shall keep this information permanently secret, not disclose it to third parties, not record it and not exploit it in any other manner, unless Booktype has expressly consented in writing to such disclosure or use, or unless this information needs to be disclosed by law or under a court ruling or an administrative decision.

12.2 Insofar as relevant, you shall, by making suitable contractual agreements your employees and all other persons working for it, ensure that these persons also refrain from disclosing, exploiting, passing on and recording Confidential Information.

12.3 Confidential Information within the meaning of this Section 11 shall not include information that

- was already previously known to you without being subject to any confidentiality obligation,
- is public knowledge or becomes public knowledge without any breach of the confidentiality obligations assumed,
- is disclosed to you by a third party without any breach of a confidentiality obligation.

12.4 If you breach any of the obligations laid down in this clause, Booktype may terminate this Contract with extraordinary notice, reserved the right to assert further and more extensive claims, in particular compensation claims.

12.5 The obligations under this Section 11 shall survive termination of the Contract.

13. Quoting References

When giving references for advertising purposes on its own website and/or in its own documents, Booktype shall be entitled to indicate services that are to be or have been rendered for the ordering party, and may also use your logo and company name (shortened if need be) for this purpose. Moreover, Booktype may publish press releases concerning your order and the project.

14. Data Protection

- 14.1 Booktype cares about the protection and security of your data and therefore complies with the applicable data protection legislation in Germany. Booktype also commits all employees and contractors who are responsible for the execution of this contract to maintain data security according to § 5 BDSG, insofar as this is not already obligatory.
- 14.2 Insofar as Booktype collects, processes and uses personal data from your sphere, this shall be done in keeping with the applicable statutory provisions on data protection, and in particular only within the scope of the purpose of the contract.
- 14.3 If you commission Booktype with carrying out services, in the context of which it cannot be ruled out that Booktype will come into contact with personal data for which the you are responsible, an agreement on contract data processing shall be concluded.

15. Miscellaneous

- 15.1 If you are a business person, a legal entity under public law or a special fund under public law, Booktype's registered place of business shall be the place of performance for all obligations under the respective contract.
- 15.2 The laws of the Federal Republic of Germany shall apply to the contract exclusively. Application of German private international law and of Regulation (EC) No. 593/2008 (Rome I) and Regulation (EC) No. 864/2007 (Rome II) is hereby excluded.
- 15.3 If you are a registered business person, a legal entity under public law or a special fund under public law, Berlin shall be place of jurisdiction for all legal disputes ensuing directly or indirectly from or in connection with the contractual relationship.
- 15.4 If any provision in these Terms and Conditions or in any other contractual document is or becomes ineffective, this shall not affect the effectiveness of any of the other provisions.

B. Managed Hosting

1. Subject-Matter of the Contract

- 1.1 Managed hosting encompasses the provision of a client instance of one of the software programs from Booktype, as well as computer capacity and memory space and the making-available of data for permanent retrieval from the Internet depending upon the individual agreement made between the Parties in accordance with the quotation sheet. Moreover, Booktype offers services (e.g. Amazon hosting with a fall-back server) that support or supplement hosting, that you can book separately, and that, insofar as agreed upon, likewise ensue from the quotation.
- 1.2 To use managed hosting, it is necessary to register and set up user accounts. To this end, you shall, insofar as available, set a username and a password and enter its contact details. The username and password ("Access Data") shall be kept secret. If you obtain knowledge of any unauthorized use of its Access Data, you shall immediately notify Booktype accordingly. You shall be solely responsible for all activities in connection with your Access Data.

2. Use of Software

- 2.1 Software made available, the computing power necessary for usage and the essential memory and data processing space shall be provided by Booktype at the interface between the data network within which the software runs and other networks ("Handover Point"). Unless otherwise agreed upon with you, the software shall still remain on servers for which Booktype is responsible. Booktype shall not be required to make and maintain the data connection between the Customer's IT system and the aforementioned Handover Point.
- 2.2 For the term of the contract, however, Booktype shall grant you the non-exclusive, non-transferable right, limited to the duration of the contract on use, to use the software for the agreed purposes as laid down in the quotation.

3. Impermissible Content

- 3.1 Booktype shall be bound by human rights and, in particular, freedom of opinion and freedom of the press. Therefore, you are entitled to use your account and the respective software freely. Nevertheless, you shall however be obliged not to go beyond certain limits when actively using the software. The content sent to Booktype must not contain any unlawful content. Therefore, the following content in particular is absolutely impermissible:
- content that incites, and/or is aimed at inciting, hatred against sections of the population or against any national, racial, religious or ethnic group, that calls for violent or arbitrary action against such group or that violates the human dignity or

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general personality rights of others by insulting, maliciously degrading or defaming sections of the population or any of the aforementioned groups;

- content that describes children or adolescents in unnatural, sexually suggestive poses that are pornographic, particularly if they involve acts of violence, sexual abuse of children or adolescents or sexual acts of humans with animals, or content that for any other reasons violates regulations for the protection of children and adolescents; this shall apply also to content that only refers to or implies such content and/or aims;
- content that is offensive, defamatory or otherwise libellous and/or shows racist or xenophobic tendencies;
- content that violates the right to protection of privacy, and/or other general personality rights, and/or that threatens others in any manner or otherwise puts pressure on others or would put pressure on others, if it were implemented;
- content that violates third parties' personal image rights;
- content that violates third-party positions protected under copyright law and/or the law on ancillary copyrights.

3.2 If the duties arising from Item 3.1 are unlawfully breached, Booktype shall be entitled to block or delete the data concerned or block the client account until such breaching conduct has ended. Additionally, you shall provide Booktype with information on the identity of the user responsible for such breach and all other circumstances relevant to the assertion of claims. In the event of serious breaches, including for example illegal acts or acts that expose us to the danger of criminal liability, or in the event of repeated breaches for which you are responsible; Booktype shall have the right to prematurely terminate this contract without prior notice

4. Availability

4.1 The rate of availability of the servers, and where applicable of the software and the data paths up to the Handover Point into the Internet, shall be 99% per annum, less the periods required for importing updates, upgrades, new releases and/or other modifications. Whenever possible, these shall be carried out during the hours between 1:00 a.m. and 4:00 a.m. CET/CEST, at weekends and on public holidays between the hours of 0:00 a.m. and 6:00 a.m. CET/CEST. As a general rule, a maximum of eight hours maintenance will occur each month.

4.2 In respect of the services rendered, Booktype draws your attention to the fact that restrictions or impairments beyond Booktype's sphere of influence may arise. In particular, this concerns acts by third parties not acting on behalf of Booktype, technical conditions on the Internet beyond Booktype's control, as well as *force majeure*. The hardware and software or technical infrastructure used by you may also affect the services. Insofar as such circumstances impair availability or functionality, no claims on your part shall thereby be created.

4.3 You shall report functional failures, faults or impairments to Booktype by email or via the ticket system provided by Booktype without undue delay and in as much detail as possible. If you fail to do so, § 536 c *BGB* shall apply.

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5. Indemnification

- 5.1 Booktype shall store content and data for you, which you enter and stores during usage and provides for retrieval by your own customers. You undertake vis-à-vis Booktype not to post any criminal or otherwise unlawful content or data. With regard to personal data, you shall remain the data controller as defined by data protection legislation, and shall therefore verify at all times whether processing of the data is permitted. If need be, an agreement on contract data processing shall be concluded with Booktype.
- 5.2 You shall be solely responsible for all the content you provide and for all the data you process, and for any legal positions required to this end. Booktype does not take note of your content or check it in any respect whatsoever.
- 5.3 In this context, you shall indemnify Booktype against all liability and all costs, including possible and actual costs of court proceedings, if a claim is brought against Booktype by third parties, including your employees, as a result of alleged acts or omissions on your part. Booktype shall inform you of such claims and, insofar as this is legally possible, give you the opportunity to avert the claim asserted. At the same time, you shall promptly and fully provide Booktype with all information available concerning the matter that is the subject of the claim.
- 5.4 Compensation claims going beyond this shall remain unaffected.

6. Term, Termination

- 6.1 The contract shall initially run for the agreed minimum term (see quotation sheet). If the contract is not terminated giving two weeks' written notice with effect as from the end of the respective term, it shall be renewed each time for the duration of the minimum term.
- 6.2 This shall not affect the right to terminate the contract with extraordinary notice.

7. Discontinuation and Winding Up

- 7.1 If this agreement is wholly or partly discontinued, Booktype shall surrender to you, or destroy at your request, all data, documents and materials in Booktype's possession that contain business, organizational or technical data or information from or concerning you. This shall not apply if such items have to be retained for legal reasons, or constitute Booktype's intellectual property, or if the data, documents, etc. having to be surrendered or destroyed are still needed by Booktype for the further winding-up of the contract.
- 7.2 After contract termination, Booktype will close your account and also permanently delete all data you might have uploaded.

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8. Remuneration

- 8.1 In the case of a monthly contractual term, you shall pay in advance a monthly fee to the agreed amount. In the case of an annual contractual term, you shall receive an invoice at the beginning of the year (see A.8).
- 8.2 In the event of termination, fee payments already made for monthly contracts shall be refunded on a pro-rata basis, insofar as these were paid for the period after notice of termination enters into effect.
- 8.3 In the event of termination, fee payments already made for annual contracts for the time between the notice sent and the notice taking effect shall not be refunded.

C. Customized Developments

1. Subject-Matter of the Contract

- 1.1 In principle, Booktype shall not be obliged to further develop or adapt the software to your orders. Subject to specific agreement between the Parties, however, Booktype shall render development services and adapt the software to your requirements, e.g. by means of new interfaces, plug-ins or modules (hereinafter referred to as "Further Development"). The agreed scope of services and all further specifications shall ensue from the quotation, and shall be jointly laid down by the Parties in separate functional specifications. In individual cases, Booktype shall make available to you its own Wiki for accompanying the Further Developments.
- 1.2 In principle, Booktype integrates and implements Further Developments into the master software ("Master Branch"). You shall allow this integration.
- 1.3 Booktype endeavors as a matter of principle to draw up binding quotations in the quickest and most uncomplicated manner possible. If necessary in view of the complexity of the project, a fee-based scoping phase has to be agreed upon first of all in order for an appropriate quotation to be drawn up. If, following this phase, you decide to place an order on the basis of the quotation, the price estimated for the scoping phase shall be deducted from the quotation as a discount, or shall be considered a down payment for the price quoted.

2. Performance Periods

- 2.1 Performance periods specified by Booktype for a Further Development shall serve both Parties as guidance regarding the anticipated performance periods. These shall be fixed deadlines only if they are expressly designated as such and are therefore part of the contractual agreements.
- 2.2 If, when carrying out the services, Booktype is hindered by circumstances for which Booktype is not responsible, the performance periods shall be extended by the duration of such hindrance. Agreed fixed deadlines shall be postponed accordingly. The existence of any such hindrance shall be notified to you; verbal notification shall suffice for this. Notification of an extension of the time limit shall not be required in the case of hindrances that are obvious or are already known to you.
- 2.3 If you are responsible for a delay, it shall bear the extra costs incurred upon Booktype in connection with the delay.
- 2.4 Binding time limits specified by Booktype for the rendering of services shall not begin to run until the day when all technical and commercial details for the Further Development have been clarified.

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3. Rights of Use

- 3.1 As a general rule, Further Developments shall likewise be licensed by Booktype as open-source software. The texts of the applicable licenses shall be made available by Booktype. The rights of use granted ensue from the respective license texts.

4. Acceptance

- 4.1 Further developments under this Part C. shall be subject to formal acceptance of performance as defined by § 640 *BGB*. As a general rule, acceptance shall occur via email, the customer Wiki and Google Docs. Acceptance shall be declared if the Further Development does not have any significant defects. The declaration of acceptance shall be issued within two weeks after notification of completion has been given and the Further Development has been made available for functional testing of the deliverable.

- 4.2 Faults discovered during functional testing are categorized by Booktype as follows:

Category 1: Cosmetic Fault

The fault does not restrict the agreed use of the Further Development.

Category 2: Easily Circumventable Fault

No significant effects on functionality or usability. Use of the Further Development is not restricted, or is restricted only to an insignificant extent. An equivalent function can be achieved by means of reasonable additional work steps.

Category 3: Disruptive Fault

Serious effects on functionality and usability. Use of the Further Development is possible only to a limited extent. An equivalent function can be achieved only at considerable time and cost.

Category 4: Serious Defect

The Further Development cannot be used. The defect cannot be worked around by organizational means or by any other economically reasonable means.

- 4.3 In the case of faults in Categories 3 and 4, you may refuse to declare acceptance. This shall likewise be the case if the Further Development displays more than 3 faults in Category 2. Faults in Categories 1 and 2 remaining after acceptance (provided there are no more than 3 faults) shall be remedied within the scope of the warranty.
- 4.4 In addition to the circumstances specified in § 640 (1), sentence 3 *BGB*, acceptance shall also be deemed declared if the Further Development is available to you for longer than four weeks and is used by you, and you do not report any defects hindering acceptance.

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5. Warranty

- 5.1 The warranty provisions under § 633 et seq. *BGB* shall apply to Further Developments.
- 5.2 § 377 *HGB* [German Commercial Code] (obligation to report defects) shall apply.
- 5.3 Booktype draws attention to the fact that contractual conformity of ordered code relates solely to the server environment originally agreed upon.

D. Provision of Software previously hosted by Booktype

1. Type and Scope of Performance

- 1.1 If software, previously used by you under B, is provided for use outside of Booktype's infrastructure, a download contract shall come into existence – in derogation from Part A. Section 1.
- 1.2 Booktype shall provide the software to you for use in its current condition at the time of the download. The software shall be consistent with the product description as can be gathered from Booktype's website.
- 1.3 Moreover, Booktype shall provide you with documentation of the software. The documentation shall be made available in the English language upon request. On request, Booktype shall also make the documentation available in other languages.

2. Rights of Use

- 2.1 The software is licensed as open-source software; i.e. it meets the requirements of the open source definition or free software definition. The texts of the applicable licenses are enclosed with the source code. The rights of use granted ensue from the texts of the respective licences; these rights are acquired directly from the respective originator.

3. Warranty for Material Defects

- 3.1 Booktype shall provide you with the software devoid of material defects. Any insignificant impairment of its functioning shall not be deemed a material defect. The Parties agree that none of the specifications contained in the product description shall constitute guarantees of quality or durability within the meaning of § 443 *BGB*.
- 3.2 In accordance with § 377 *HGB*, you shall give prompt notification of defects by email or LiveChat, describing the faults as precisely as possible. If the ticket system is used, notification can also be given via this system.
- 3.3 Insofar as possible and reasonable for you in view of the defect's impact, the provider shall be entitled to provide an interim solution for circumventing the defect until the defect has been finally remedied.
- 3.4 The warranty shall only ever cover the last three major versions of the software that have been made available. If you do not accept patches, bug fixes, updates or

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upgrades that are made available, the warranty shall be excluded insofar as the defect in question would have been eliminated by the patches, bug fixes, update or upgrade not installed, unless you prove that the defect is not owing to this.

- 3.5 Booktype may demand additional remuneration for its time and cost, a) if Booktype acts on the basis of a reported defect although no defect exists, unless you were unable to recognize on making reasonable efforts that no defect existed; or b) if a reported malfunction is not reproducible or cannot otherwise be proved by you to be a defect; or c) if additional time and cost is incurred as a result of your failure to duly perform your obligations.