

Commercial Contracts in Germany

Mann

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GERMAN LAW ACCESSIBLE

Marius Mann

Commercial Contracts in Germany

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by

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Preface

Despite the internationalisation and harmonisation of law, national laws still play a significant role in international trade and commerce. This is particularly true for German commercial and contract law, as German manufacturers and intermediaries continuously enter into contracts with customers and suppliers from all over the world thereby choosing German law to govern their contractual relationships.

My aim with this second edition is to offer a practice-oriented summary of important aspects of German commercial and contract law and to provide both non-German and German businesspersons and lawyers with a quick and practical overview. At the same time, this book serves as a reference work for specific issues that often arise in business relations, in particular in the field of commercial and distribution law.

This book also contains relevant statutory materials such as important provisions of the German Commercial Code, the German Product Liability Act and the Supply Chains Due Diligence Act. Whereas translations of the German Civil Code are publicly available, this is not the case for the German Commercial Code or the Supply Chains Due Diligence Act. For the user's convenience, a German-English glossary with definitions and corresponding translations of some of the most important legal terms is attached at the end of the book.

Stuttgart, December 2023

Dr. Marius Mann

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Author

Rechtsanwalt **Dr. Marius Mann**, born 1979, studied law at the Universities of Constance, Heidelberg and Oxford (M. Jur. 2008). He holds an MBA from the Swiss EGSM. Dr. Mann practises as a lawyer in Stuttgart and advises clients – from the automotive, machine building, service and wholesale industry in particular – on commercial and contract law matters. He has considerable experience in related commercial litigation and arbitration, including the settlement of cross-border disputes, and disputes in the field of distribution, product liability, logistics, and plant construction.



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List of abbreviations

AcP	Archiv für zivilistische Praxis
ADSp	German forwarding agents standard terms and conditions (<i>Allgemeine Deutsche Spediteurbedingungen</i>)
AG	Die Aktiengesellschaft
AG	District Court (<i>Amtsgericht</i>)
AktG	Stock Corporation Act (<i>Aktiengesetz</i>)
b2b	business to business
b2c	business to consumer
BAG	Federal Labour Court (<i>Bundesarbeitsgericht</i>)
BauR	Zeitschrift für das gesamte öffentliche und zivile Baurecht
BB	Betriebs-Berater
BeckOGK	beck.online.Grosskommentar
BeckOK	Beck'scher Online-Kommentar
BeurkG	Authentication Act (<i>Beurkundungsgesetz</i>)
BGB	Civil Code (<i>Bürgerliches Gesetzbuch</i>)
BGH	Federal Court of Justice (<i>Bundesgerichtshof</i>)
BT-Drs.	Bundestag-Drucksache
BVerfG	Federal Constitutional Court (<i>Bundesverfassungsgericht</i>)
BvR	Aktenzeichen des Bundesverfassungsgerichts
Ch.	Chapter
CISG	United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980
DB	Der Betrieb
DIHK	Association of German Chambers of Commerce and Industry (<i>Deutsche Industrie- und Handelskammer</i>)
DIS	German Institution of Arbitration (<i>Deutsche Institution für Schiedsgerichtsbarkeit e.V.</i>)
DNotZ	Deutsche Notar-Zeitschrift
DStR	Deutsches Steuerrecht
DZWIR	Deutsche Zeitschrift für Wirtschafts- und Insolvenzrecht
ECJ	European Court of Justice
ed.	editor (plural: eds)
edn	edition
e.g.	exempli gratia/for example
EEA	European Economic Area
et seqq.	et sequentes/and the following
etc.	etcetera/and so forth
EU	European Union
GG	Basic Law/German Constitution (<i>Grundgesetz</i>)
GmbH	Limited Liability Company (<i>Gesellschaft mit beschränkter Haftung</i>)

List of abbreviations

GmbHG	Law on Limited Liability Companies (<i>Gesetz betreffend die Gesellschaften mit beschränkter Haftung</i>)
GRUR	Gewerblicher Rechtsschutz und Urheberrecht
GRURInt	Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil
GWB	Act against Restraints of Competition (<i>Gesetz gegen Wettbewerbsbeschränkungen</i>)
HGB	Commercial Code (<i>Handelsgesetzbuch</i>)
i.e.	id est/that is
IP	Intellectual Property (<i>Geistiges Eigentum</i>)
JuS	Juristische Schulung
JZ	Juristen-Zeitung
LG	Regional Court (<i>Landgericht</i>)
LkSG	Supply Chains Due Diligence Act (<i>Lieferkettensorgfaltspflichtengesetz</i>)
LMuR	Lebensmittel & Recht
LSG	Higher Social Court (<i>Landessozialgericht</i>)
M&A	mergers and acquisitions
MDR	Monatsschrift für Deutsches Recht
MMR	MultiMedia und Recht
mn.	margin number
MPR	Medizin Produkte Recht, Zeitschrift für das gesamte Medizinproduktrecht
MüKo	Münchener Kommentar
NJOZ	Neue Juristische Online-Zeitschrift
NJW	Neue Juristische Wochenschrift
NJW-RR	NJW-Rechtsprechungs-Report Zivilrecht
no.	number/pl. nos.
NZA	Neue Zeitschrift für Arbeitsrecht
NZG	Neue Zeitschrift für Gesellschaftsrecht
OEM	Original Equipment Manufacturer
OLG	Higher Regional Court (<i>Oberlandesgericht</i>)
p.	page (plural: pp.)
ProdHaftG	Product Liability Act (<i>Produkthaftungsgesetz</i>)
ProdSG	Product Safety Act (<i>Produktsicherheitsgesetz</i>)
RdA	Recht der Arbeit
RG	Supreme Court of the German Reich (<i>Reichsgericht</i>)
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen
SPA	Share Purchase Agreement
StGB	Criminal Code (<i>Strafgesetzbuch</i>)
suppl.	supplement
SZR	special drawing right (<i>Sonderziehungsrecht</i>)
TransPR	Zeitschrift für Transportrecht
VIZ	Zeitschrift für Vermögens- und Immobilienrecht
VVG	Insurance Contracts Act (<i>Versicherungsvertragsgesetz</i>)
WM	Zeitschrift für Wirtschafts- und Bankrecht
WRP	Wettbewerb in Recht und Praxis
ZErB	Zeitschrift für die Steuer- und Erbrechtspraxis

List of abbreviations

ZGR	Zeitschrift für Unternehmens- und Gesellschaftsrecht
ZIP	Zeitschrift für Wirtschaftsrecht
ZPO	Code of Civil Procedure (<i>Zivilprozessordnung</i>)
ZR	Aktenzeichen des Bundesgerichtshofs in Zivilsachen
ZRP	Zeitschrift für Rechtspolitik
ZVertriebsR.....	Zeitschrift für Vertriebsrecht

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Introductory remarks

Commercial contracts play a significant and substantial role in the regulation of trade and mercantile relations. The number of commercial contracts concluded in national and international trade exceeds most other contract forms. Commercial contracts such as purchase agreements, framework and supply agreements, commercial agency agreements, distribution and authorised dealer agreements, commission agency agreements, franchise agreements, transport agreements, and warehousing agreements are discussed in this manual. These types of contracts all regulate – directly or indirectly – the distribution of goods (and in some cases, services as well). Supplemental agreements such as pre-contracts, option contracts, quality assurance agreements, confidentiality agreements or standard terms and conditions are not commercial contracts in the narrow sense as they do not govern the procurement, exchange or supply of goods. They are, however, often concluded together with commercial contracts and are therefore also discussed in this manual.

The law of commercial contracts consists of general contract law, including the law of standard terms and conditions, which is regulated in the Civil Code (*Bürgerliches Gesetzbuch* – BGB). Yet, German law also provides specific sets of rules for specific contract types which are either regulated in the BGB and the Commercial Code (*Handelsgesetzbuch* – HGB) or are developed by court practices.

This manual first discusses how commercial contracts may be concluded validly, then elaborates on specific contracts on the supply and procurement of goods, and finally discusses contracts governing logistics. In addition to typical issues that may arise when negotiating and concluding commercial contracts, this manual also goes beyond mere contract law into areas important to many commercial players such as insolvency or competition law.