

General Terms of Business for Commissioned Translations

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall be given the following meanings:

‘Agreement’ means these standard terms of business.

‘Assignment’ means the period during which a Translator performs services or carries out work for or on behalf of the Client or as otherwise agreed between the Client and the Translator, commencing at the time the Translator first starts such work and services and ending upon the cessation by the Translator of all such work and services.

‘Client’ means the Party commissioning a Translation in the normal course of business.

‘Confidential Material’ means any sensitive or private information with regard to the Client or their business.

‘Source Material’ means any text or other medium provided by the Client to the Translator and which contains a communication which has to be translated, and may comprise text, sound and/or images.

‘Translator’ means the Party providing a Translation in the normal course of business. The Translator shall normally be the creator of a Translation unless the Client has been explicitly informed that the Translation Task will be subcontracted, or the Translator customarily trades as an intermediary.

‘Translation Task’ means the preparation of a Translation or any other translation related task such as revising, editing, etc., which calls upon the translation skills of a Translator, but not copywriting or adaptation.

‘Translation’ means the commissioned work produced by the Translator.

‘Third Party’ means any party who is not a party to this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

Words in the singular shall include the plural and vice versa.

No part of any numbered clause shall be read separately from any other part.

Clause headings are provided for convenience of reading only and shall be ignored for the purposes of ascertaining meaning.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

References to a “Party” or the “Parties” means the parties to this Agreement. Such Parties may be natural or legal persons, including, for example, private individuals, associations, partnerships, economic interest groupings or corporate entities.

Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Copyright in Source Material, and Translation Rights

2.1 The Translator accepts a Translation Task from the Client on the understanding that performance of the Translation Task will not infringe any Third-Party rights. Accordingly, the Client warrants to the Translator that:

- 1) the Client has full right and authority to enter into this Agreement, having acquired the right and licence to translate and publish the Source Material; and
- 2) the Source Material does not infringe the copyright or any other right of any person;

2.2 The Client shall indemnify the Translator against any loss, injury or damage (including legal costs and expenses and compensation paid by the Translator to compromise or settle any claim) which the Translator suffers as a consequence of any breach or alleged breach of any of the above warranties or as a consequence of any claim that the Source Material contains anything objectionable, libellous, blasphemous or obscene or which constitutes an infringement of copyright or of any other rights of any Third Party.

3. Fees: Quotations

3.1 In the absence of any specific agreement, the fee to be charged shall be determined by the Translator on the basis of the Client's description of the Source Material, the purpose of the Translation and any instructions given by the Client.

3.2 No fixed quotation shall be given by the Translator until he/she has seen or heard all the Source Material and has received clear and complete instructions in writing from the Client.

3.3 Any fee quoted, estimated or agreed by the Translator on the basis of the Client's description of the Translation Task may be subject to amendment by agreement between the Parties if, in the Translator's opinion on having seen or heard the Source Material, that description is materially inadequate or inaccurate.

3.4 Any fee agreed for a Translation which is found to present latent special difficulties of which neither party could be reasonably aware at the time of offer and acceptance shall be renegotiated, always provided that the circumstances are made known to the other Party as soon as reasonably practical after they become apparent.

3.5 A quotation shall remain valid for a period of thirty (30) days from the date on which it was given, after which time it may be subject to revision. Prior to final agreement, the deadline for a Translation shall remain subject to negotiation.

3.6 Additional work requested of the Translator following assignment of the Translation or delivery thereof shall incur a charge, to be agreed between the Client and the Translator. Such work is included, but not limited to, insertions, updates, and further requests related to the original Translation.

3.7 Supplementary charges, for example those arising from:

- Formatting and presentation
- Discontinuous text
- Poorly legible copy or audible sound media
- Certification
- Urgency to meet the deadline as requested by the Client.

shall be agreed with the Client in advance and incurred accordingly.

3.8 Adaptation and copywriting must be regarded as separate activities to that of translating, for which separate fees shall be payable.

3.9 If any changes are made to the text or the requirements of the Client change at any time while the Translation Task is in progress, the Translator's fee, any applicable supplementary charges and the terms of delivery shall be adjusted in respect of the additional work.

4. Delivery

4.1 Any delivery date or dates agreed between the Translator and the Client shall become binding only after the Translator has seen or heard all of the Source Material to be translated and has received complete instructions in writing from the Client.

4.2 The date of delivery shall not be of the essence unless specifically agreed in writing.

4.3 All Translations shall be delivered electronically, not later than the agreed deadline, unless otherwise agreed.

4.4 It shall be the responsibility of the Client to request any other form of delivery, including hard copies. The Client shall bear the cost of such delivery; any delivery requiring travel to client premises or the postal service. The Translator shall provide such service for a base rate of £20 plus charges for postage and supplementary costs, such charges to be agreed with the Client. The Client shall incur the postal charges concurrent with the rates provided by Royal Mail.

4.5 The Client shall bear the charges for any supplementary costs for a Translation requiring Third Party services.

5. Payment

5.1 Unless otherwise stipulated, payment to the Translator shall be effected no later than thirty (30) days from the date of invoice by the method of payment specified.

5.2 For long Assignments or texts, the Translator may request an initial payment and periodic partial payments on terms to be agreed.

5.4 Where delivery is in instalments and notice has been given that an interim payment is overdue, the Translator shall have the right to stop working on the Translation Task at hand until the outstanding payment is made or other terms agreed.

5.3 Settlement of any invoice, part-invoice or other payment shall be made by the due date agreed between the Parties or in the absence of such agreement within the period stipulated in clause 5.1.

5.4 The contract is solely between the Translator and the Client. It is independent of any other contract and is unaffected by other terms and conditions. The Client shall not delay payment to the Translator for work because she is waiting for payment from her Client, or for any other reason connected with a Third Party.

5.5 Payment shall be transferred by the Client via BACS transfer. Paypal is accepted, subject to a charge, to be incurred by the Client.

5.6 Any payment that is not made before the due date shall bear interest at the rate of three per cent (3%) above the base rate of Barclays Bank from time to time calculated on a daily basis from the date when such payment fell due until the date of payment.

5.7 This action shall be without prejudice to any sums due and without any liability whatsoever to the Client or any Third Party.

6. Copyright in Translations

6.1 In the absence of a specific written agreement to the contrary, copyright in the Translation remains the property of the Translator.

6.2 The Translator may use and sell, or resell any non-confidential Translation or any part or record thereof not covered by copyright, the Official Secrets Act, legal professional privilege or public interest immunity.

6.3 Where copyright is assigned or licensed (formally in writing as required by section 90(3) of the Copyright, Designs and Patents Act 1988 (the "1988 Act"), to take valid effect in law, or informally without writing but taking valid effect in equity outside the 1988 Act) this shall be effective only on payment of the agreed fee in full.

6.4 Copyright in any completed or residual part of a Translation shall remain the property of the Translator, and the conditions applicable to assignment of copyright and the grant of a licence to publish such Translation shall be as specified above.

6.5 Where the Translator retains the copyright, unless otherwise agreed in writing, any published text of the Translation shall carry the following statement: "© (English or other) text (Translator's name) (Year date)" as appropriate to the particular case.

6.6 Where the Translator assigns the copyright to the Translation and the Translation is subsequently printed for distribution, the Client shall acknowledge the Translator's work in the same weight and style of type as used for acknowledgement of the printer and/or others involved in production of the finished document, by the following statement: "(English or other) Translation by (Translator's name)", as appropriate to the particular case.

6.7 Literary translations are subject to the Translator's right of integrity.

6.8 If a Translation is in any way amended or altered without the written permission of the Translator, she shall not be in any way liable for amendments made or their consequences.

7. Confidentiality and Safe-keeping of the Client's Documents

7.1 All documents for Translation shall be deemed to be confidential.

7.2 The Translator shall be responsible for the safe-keeping of the Client's Source Material and copies of the Translations, and shall, where necessary, ensure their secure disposal.

7.3 If requested to do so by the Client, the Translator shall insure documents in transit from the Translator, at the Client's expense.

8. Cancellation

8.1 If a Translation Task is commissioned and subsequently cancelled, reduced in scope or frustrated by an act or omission on the part of the Client or any Third Party, the Client shall pay the Translator the full fee.

8.2 The work completed shall be made available to the Client.

8.3 If a Client goes into liquidation (other than voluntary liquidation for the purposes of reconstruction), or has a receiver appointed or becomes insolvent, bankrupt or enters into any arrangement with creditors the Translator shall have the right to terminate a contract.

8.4 The Translator shall notify the Client as soon as is reasonably practical of any circumstances likely to prejudice the Translator's ability to comply with the terms of the Client's order, and assist the Client as far as reasonably practical to identify an alternative solution.

9. Complaints and Disputes

9.1 Failure by the Translator to meet agreed order requirements or to provide a Translation which is fit for its stated purpose shall entitle the Client to cancel any further instalments of work being undertaken by the Translator. Such entitlement shall only apply after the Translator has been given one opportunity to bring the work up to the required standard.

9.2 The entitlement referred to in clause 9.1, shall not apply unless the Translator has been notified in writing of all alleged defects.

9.3 Any complaint in connection with a Translation Task shall be notified to the Translator by the Client (or vice-versa) within three working days of the date of delivery of the Translation. If the Parties are unable to resolve the complaint, the matter may be referred by either Party to the Chartered Institute of Arbitrators. Such referral shall be made no later than two months from the date on which the original complaint was made.

9.4 If a dispute cannot be resolved amicably between the Parties, or if either Party refuses to accept arbitration, the Parties shall be subject to the exclusive jurisdiction of the Courts of England and Wales. In any event this Agreement shall be construed in accordance with English law.

10. Responsibility and Liability

10.1 The Translation Task shall be carried out by the Translator using reasonable skill and care and in accordance with the provisions and spirit of the Code of Professional Conduct of the Chartered Institute of Linguists.

10.2 Time and expense permitting, the Translator shall her reasonable commercial endeavours to do the work to the best her ability, knowledge and belief, and

consulting such authorities as are reasonably available to her at the time. Translations may be enhanced by further refinement and revision; such task to be reflected in a reasonable deadline.

10.3 Subject to clause 10.4, a Translation shall be fit for its stated purpose and target readership, and the level of quality specified.

10.4 Unless specified otherwise, Translations shall be deemed to be of "for information" quality only.

10.5 The liability of the Translator under or in respect of this Agreement, whether in tort, contract or otherwise, shall be limited only to the cost of the Translation Task being undertaken when the liability arises.

10.6 Neither Party shall be liable to the other in respect of any consequential or indirect loss whatsoever.

11. Applicability and Integrity

11.1 This Agreement shall come into effect upon confirmation of the translation assignment by Client.

11.2 This Agreement should be read in conjunction with the Code of Professional Conduct of the Chartered Institute of Linguists.

11.3 This Agreement may be subject to any detailed requirements or variants expressly specified in the order relating to a particular Translation Task.

11.4 No waiver of any breach of any condition in this Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.

Confirmation of any assignment implies full acceptance of these Terms and Conditions.