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## **GENERAL TERMS AND CONDITIONS**

*This Terms of Service details the definitions of services, client confidentiality, procedures for payment and for cancellation of language services provided by TranZFern Translations, hereafter referred to as "the Translator".*

### **1. DEFINITIONS**

- 1.1. Translator shall mean the party providing a translation in the normal course of business.
- 1.2. The translator shall normally be the creator of a translation unless the Client has been explicitly informed that the act of translation (the translation task) will be subcontracted, or the translator customarily trades as an intermediary.
- 1.3. Translation task shall mean 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.
- 1.4. Client shall mean the party commissioning a translation in the normal course of business.
- 1.5. The parties may be natural or legal persons, including, as an example only, private individuals, associations, partnerships, economic interest groupings or corporate entities.
- 1.6. A translator may act as an intermediary. A relationship involving an intermediary of any nature acting in the normal course of business shall comprise two (or more) direct and discrete translator/Client contracts.
- 1.7. Source material shall be understood to mean any text or medium containing a communication which has to be translated, and may comprise text, sound or images.

### **2. COPYRIGHT IN SOURCE MATERIAL, AND TRANSLATION RIGHTS**

- 2.1. The translator accepts an order from the Client on the understanding that performance of the translation task will not infringe any third party rights.
- 2.2. The Client undertakes to keep the translator harmless from any claim for infringement of copyright and/or other intellectual property rights in all cases.
- 2.3. The Client likewise undertakes to keep the translator harmless from any legal action including defamation which may arise as a result of the content of the original source material or its translation.

### **3. FEES: (BINDING) QUOTATIONS AND (NON-BINDING) ESTIMATES**

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 firm instructions from the Client.

3.3. Where VAT is chargeable it will be charged in addition to the quoted fee if the translator is VAT registered.

3.4. Any fee quoted, estimated or agreed by the translator on the basis of the Client's description of the 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.

3.5. 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.

3.6. An estimate shall not be considered contractually binding, but given for guidance or information only.

3.7. Subject to clause 3.2. above, a binding quotation once given after the translator has seen or heard all the source material shall remain valid for a period of thirty days from the date on which it was given, after which time it may be subject to revision.

3.8. Costs of delivery of the translation shall normally be borne by the translator. Where delivery requested by the Client involves expenditure greater than the cost normally incurred for delivery, the additional cost shall be chargeable to the Client. If the additional cost is incurred as a result of action or inaction by the translator, it shall not be borne by the Client, unless otherwise agreed.

3.9. Other supplementary charges, for example those arising from:

- discontinuous text, complicated layout or other forms of layout or presentation requiring additional time or resources, and/or
- poorly legible copy or poorly audible sound media, and/or
- terminological research, and/or
- certification, and/or
- priority work or work outside normal office hours in order to meet the Client's deadline or other requirements, may also be charged.

The nature of such charges shall be agreed in advance.

3.10. If any changes are made in the text or the Client's requirements at any time while the 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 from the Client.

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

4.3. Unless otherwise agreed, the translator shall dispatch the translation in such a way that the Client can reasonably expect to receive it not later than the normal close of business at the Client's premises on the date of delivery.

#### **5. PAYMENT**

5.1. Payment in full to the translator shall be effected not later than 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.

5.3. 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. Interest shall automatically be applied at the rate of 8% per annum over base rate (or such rate as is determined by statute, the latter prevailing) to all overdue sums from the date on which they first become due until they are paid in full.

5.5. Where delivery is in installments and notice has been given that an interim payment is overdue, the translator shall have the right to stop work on the task in hand until the outstanding payment is made or other terms agreed. 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) 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 license to publish shall be as specified above in relation to a completed translation.

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 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. Where a translation is to be incorporated into a translation memory system or any other corpus the translator shall license use of the translation for this purpose for an agreed fee.

6.8. Such incorporation and use shall only take place after the license for the purpose has been granted by the translator in writing and the agreed fee has been paid in full. It shall be the duty of the Client to notify the translator that such use will be made of the translation.

6.9. All translations are subject to the translator's right of integrity. If a translation is in any way amended or altered without the written permission of the translator, he/she shall not be in any way liable for amendments made or their consequences.

6.10. If the translator retains the copyright in a translation, or if a translation is to be used for legal purposes, no amendment or alteration may be made to a translation without the translator's written permission.

6.11. The right of integrity may be specifically waived in advance by the translator in writing.

## **7. CONFIDENTIALITY AND SAFE-KEEPING OF THE CLIENT'S DOCUMENTS**

7.1. No documents for translation shall be deemed to be confidential unless this is expressly stated by the Client.

7.2. However, the translator shall at all times exercise due discretion in respect of disclosure to any Third Party of any information contained in the Client's original documents or translations thereof without the express authorization of the Client.

7.3. Nevertheless a third party may be consulted over specific translation terminology queries, provided that there is no disclosure of confidential material.

7.4. The translator shall be responsible for the safe-keeping of the Client's documents and copies of the translations, and shall ensure their secure disposal.

7.5. 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 AND FRUSTRATION**

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 except in the

circumstances described in clause 21 pay the translator the full contract sum unless otherwise agreed in advance.

The work completed shall be made available to the Client.

8.2. 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.

8.3. Neither the translator nor the Client shall be liable to the other or any third party for consequences which are the result of circumstances wholly beyond the control of either party.

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.

8.5. If the translator, due to reasons of force majeure, is not in condition to fulfill her obligations, she reserves the right to terminate the contract without any liability to pay compensatory Damages to the Client. As force majeure are implied, but not only, fire, accident, illness, strikes, rebellions, war, governmental measures, or other circumstances where the translator cannot exert any influence.

## **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:

- 1) reduce, with the translator's consent, the fee payable for work done by a sum equal to the reasonable cost necessary to remedy the deficiencies, and/or
- 2) cancel any further installments of work being undertaken by the translator.

9.2. Such entitlement shall only apply after the translator has been given one opportunity to bring the work up to the required standard.

9.3. This entitlement shall not apply unless the translator has been notified in writing of all alleged defects within one month of the date of delivery of the translation.

9.4. The Client's right to complain shall cease if the Client has modified the translation or delivered it to a third party for modifications.

9.5. If the parties are unable to agree, the matter may be referred by the more diligent party to the Arbitration Committee of the NGTV (*Nederlands Genootschap van Tolken en Vertalers*). Such referral shall be made no later than two months from the date on which the original complaint was made.

9.6. 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 jurisdiction of the Courts of the Netherlands. In any event these terms shall be construed in accordance with Dutch 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 Institute of Translation and Interpreting.

10.2. Time and expense permitting, the translator shall use his or her best endeavors to do the work to the best of his or her ability, knowledge and belief, and consulting such authorities as are reasonably available to him/her at the time.

10.3. 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 required to be of "for information" quality.

10.5. The liability of the translator on any grounds whatsoever shall be limited to the invoiced value of the work, except where in connection with any consequences which are reasonably foreseeable:

- 1) the potential for such liability is expressly notified to the translator in writing, and
- 2) such liability is restricted to an agreed limit of cover under the professional indemnity insurance available to translators.

## **11. UNFAIR COMPETITION**

11.1. Where in the course of business the translator's Client is an intermediary and introduces the translator to a third-party work-provider, the translator shall not knowingly, for a period of 6 months from return of the last translation task arising from the introduction, approach the said third party for the purpose of soliciting work, nor work for the third party in any capacity involving translation, without the Client's written consent.

However, this shall not apply where:

- the third-party work-provider has had previous dealings with the translator, or
- the translator acts on the basis of information in the public domain, or
- the approach from the third party is independent of the relationship with the intermediary, or
- the approach to the third party arises as the result of broad-band advertising, or
- the third party is seeking suppliers on the open market, or
- the intermediary only makes isolated use of the translator's services.

## **12. APPLICABILITY AND INTEGRITY**

12.1. These Model Terms shall be construed jointly with the Code of Professional Conduct of the Institute of Translation and Interpreting in order to be complete and effective.

12.2. They shall also be subject to any detailed requirements or variants expressly specified in the order relating to a particular translation task.

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

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