

# **Terms and Conditions**

## **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 reenacted 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: (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 the Translator 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 An estimate shall not be considered contractually binding, but given for guidance or information only.

3.6 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 (30) days from the date on which it was given, after which time it may be subject to revision.

3.7 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 (for example, courier and/or recorded or special 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.

3.8 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.

3.9 If any changes are made in the text or the Client's requirements 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.

## **5. Payment**

5.1 Payment in full 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.

5.3 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.

5.4 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 Steiermärkische Sparkasse from time to time calculated on a daily basis from the date when such payment fell due until the date of payment.

## **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 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.

6.3 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.

6.4 Such incorporation and use shall only take place after the licence for the purpose has been granted by the Translator in writing and the agreed fee has been paid in full.

6.5 It shall be the duty of the Client to notify the Translator that such use will be made of the Translation.

6.6 If a Translation is in any way amended or altered without the written permission of the Translator, the Translator 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 The Translator will keep confidential all information and documents delivered by the Client and will not disclose any such information or the contents of such documents to any third party without the express authorization of the Client.

## **8. Cancellation and Frustration**

8.1 If the Client cancels a Translation Task once the quote has been accepted, the Client will be liable to pay the Translator for any work already carried out.

- If the project is cancelled before the halfway point of the project, the translator must be paid 50% of the sum agreed in the quote.
- If the project is cancelled after the halfway point of the project, the translator must be paid 75% of the sum agreed in the quote.

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.

## **9. Liability**

The translator will not be liable for any losses, expenses or liabilities incurred by the Client as a result of a Translation delivered by the Translator.

## **10. Applicability**

10.1 This Agreement shall come into effect either (1) when the Client signs the Agreement; or (2) when the Client commences delivery of the Source Material; or (3) when the Translator provides any services under the Agreement, whichever is the earlier.

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