

General Terms and Conditions for Translation Agencies

State: December 1999

*Compiled and revised by the Printing Guild of the Province of Vienna as
the legal representative of the interests of commercial translation agencies
in the framework of the Economic Chamber.
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1. Extent of the Service

- 1.1 The following conditions shall be in effect for the extent of the service, unless otherwise stipulated in writing.
- 1.2 The Client is requested to inform us about the purpose of the translation, e.g. whether it is
 - 1.2.1 for information only,
 - 1.2.2 to be published or used for advertising,
 - 1.2.3 to be used for legal purposes or a patent procedure,
 - 1.2.4 or is supposed to serve some other purpose, necessitating that the text be translated in some special way by the translator in charge.
- 1.3 The Client can use the translation only for the purpose declared. If the Client uses the translation for some other purpose than that stated in the order and for which it was delivered, the Client cannot claim damages from the translation agency, herein after referred to as the Contractor.
- 1.4 If the Contractor has not been informed about the purpose of the translation, he will produce the translation to the best of his knowledge for information purposes (see section 1.2.1).
- 1.5 Unless otherwise arranged, the Contractor will deliver to the Client a single copy of the translation in machine-written form on A4 format paper.
- 1.6 Unless otherwise arranged, the provisions of section 6.3 of the DIN 2345 standard ("Translation Assignments") apply to the layout of the translation.
- 1.7 If the Client desires a certain terminology to be used, he has to inform the Contractor about it and supply him concomitantly with the necessary support documents. The above also applies to language varieties.
- 1.8 The technical and linguistic accuracy of the source text is the exclusive responsibility of the Client.
- 1.9 The Contractor has the right to pass the assignment to equally qualified third parties. In this case, however, he remains the exclusive Contractor.
- 1.10 The name of the Contractor may be added to the published translation only when the entire text was translated by the Contractor and only when no changes have been made without the consent of the Contractor.

2. Charges

- 2.1 The charges (prices) for the translations are defined according to the rates (price lists) of the Contractor applicable to the particular kind of translation. Translations are quoted by lines of translated text, documents excluded. The latter are quoted by pages.

1 line = 50 to 55 characters; 1 page = approximately 25 typewritten lines (DIN A4).
The minimum fee to be charged is one page.
- 2.2 Services requiring tasks exceeding simple text processing (e.g. originals are delivered in a special file format; the Client demands a special graphic form requiring specific software) are quoted by arrangement.
- 2.3 Unless otherwise agreed, the target text (the translation product) represents the basis of the price calculation.
- 2.4 If a price quotation has been made, it is valid only if it was made in writing.

- 2.4.1 Other price quotations shall be valid only as nonbinding guidelines.
- 2.4.2 The quotation shall be prepared to the best of our expertise; however, the Contractor cannot assume any liability for its accuracy. If, after the assignment has been made, any increase in costs appears to exceed 15% of the original quotation, the Contractor shall immediately inform the Client about it. In the case of a cost increase up to 15% of the original quotation, no special notification shall be necessary and these costs can be invoiced off-hand.
- 2.5 Quotations made without access to the original document shall be valid only as nonbinding guidelines. The Client shall be obliged to pay the real costs of the translation pursuant to section 2.1 also without a notification according to section 2.4.2, unless the Contractor provides a new price quotation.
- 2.6 Unless arranged otherwise, changes in the assignment or in additional assignments may be invoiced at appropriate prices.
- 2.7 Pay or salary increases deriving from collective agreements entitle the Contractor to adjust the original fee.
- 2.8 The value of receivables including secondary receivables remains stable. The measure of calculating the fee shall be the Consumer Price Index published monthly by the Austrian Central Office for Statistics or some other index replacing it. The index number calculated for the month in which the contract was concluded serves as a reference parameter. Upward and downward fluctuations of the index number up to and excluding 2.5 % shall be ignored. This range shall be recalculated each time it is exceeded; the first index number beyond the limit shall represent the base for the reset of the amount receivable, as well as for the calculation of the new limit. The amounts calculated in this way shall be rounded up to one decimal place.
- 2.9 In case of corrections of translations compiled by others, the full fee for a primary translation may be charged.
- 2.10 Appropriate surcharges may be made for express and weekend work.

3. Delivery

- 3.1 The deadline for delivery of the translation shall be based on the written statements of both parties. In the event that the deadline constitutes an important part of the assignment accepted by the Contractor, the Client shall advise the Contractor explicitly in advance.
The deadline shall be met upon timely receipt of all documents to be delivered by the Client in the manner specified (e.g. source texts and all the necessary background information), as well as upon meeting the terms of payment and other commitments arranged.
Shall these preconditions not be met in due time, the deadline will be extended accordingly.
- 3.2 When a deadline is not met, the Client shall have the right to terminate only in the event that the deadline was explicitly arranged as a fixed date (see section 3.1, sub-section one) and the Client met all the conditions stated in section 3.1, sub-section two. Claims of damages shall be ruled out, with the exception of damages caused by wilful or grossly negligent action.
- 3.3 Unless agreed otherwise, the translation shall be delivered by post.

- 3.4 The Client shall be responsible for any risks connected to the delivery (transmission).
- 3.5 Unless agreed otherwise, the Contractor shall keep the documents provided to the Contractor by the Client. The Contractor shall not be obliged to store or deal with them in any way. However, the Contractor shall ensure that these documents are not used in any way contrary to the contract.

4. Force Majeure

- 4.1 In the event of a force majeure the Contractor shall advise the Client immediately of the event. Force majeure entitles the Contractor, as well as the Client to terminate the contract. However, the Client shall compensate the Contractor for expenses and services already provided.
- 4.2 Especially the following events are considered to be force majeure: accident; industrial dispute; acts of war; civil war; occurrence of unpredictable obstacles decisively impairing the possibility of the Contractor to complete the assignment.

5. Liabilities for Defects (Warranties)

- 5.1 Any claims regarding the quality of the translation shall be exercised within four weeks after the delivery (posting) of the translation. The Client shall explain and prove the defects to the Contractor in writing.
- 5.2 The Client is deemed to grant the Contractor a reasonable period of time and an opportunity to amend the defects. In the event of the Client refusing to do so, the Contractor shall be exonerated from the liability. If the defects are amended within a reasonable period of time, the Client shall not be entitled to claim a price reduction.
- 5.3 If the Contractor lets the reasonable extension of the deadline elapse without amending the defects, the Client can recede from the contract or claim a scaling down (a reduction) of the fee. In the event of marginal defects, there shall be no right to recede from the contract or to obtain a reduction.
- 5.4 Warranty claims shall not entitle the Client to withhold the agreed payments or to a set-off.
- 5.5 In case of translations used for printouts, the Contractor shall be liable for defects only if the Client states in writing his intent to publish the text and if the Contractor is presented galley proofs up to and including that version of the text, after which no more changes are made. In that case the Contractor shall be paid an adequate cost compensation or an adequate hourly rate to be invoiced by the Contractor.
- 5.6 No liability for defects shall be granted to translations of texts that are difficult to read, illegible or incomprehensible. This also shall be applied to proof reading of translations according to sections 2.9 and 5.5.
- 5.7 Stylistic enhancement and adjustment of specific terminology (especially of sectoral and company-specific terms) shall not be recognised as translation defects.
- 5.8 No liability shall be assumed for assignment-specific abbreviations not specified and/or explained by the Client.

- 5.9 The Contractor shall not assume any liability for the correct reproduction of names and addresses not written in Latin characters in the original text. In such cases, the Contractor advises the Client to write the names and denominations in Latin block letters on a separate sheet. This also applies to illegible names and numbers in birth certificates or other documents.
- 5.10 Numbers are reproduced according to the manuscript. No liability shall be assumed for the conversion of numbers, measures, currencies and suchlike.
- 5.11 Unless they are returned to the Client upon delivery of the translation, the Contractor shall be liable for manuscripts, originals and suchlike as a safekeeper according to the Austrian Civil Code for a period of four weeks after the completion of the assignment.
There is no insurance duty. Section 3.5 applies to restitutions analogously.
- 5.12 The Contractor shall not be liable for the retrieval of translators and interpreters, with the exception of damages caused by wilful or grossly negligent action during the selection.
- 5.13 The Contractor shall not be liable for correction services according to section 2.9 if the Client does not provide the Contractor with the source text.
- 5.14 In the event of the translations being delivered via data transfer (such as e-mail, modem etc.), the Contractor shall not be liable for defects and impairments (such as virus transmission, violation of the obligation of secrecy), unless the Contractor acted with gross negligence.

6. Damages

- 6.1 Any claims of damages to be paid by the Contractor are limited to the (net) amount invoiced, unless otherwise stringently stipulated by law. The cases in which the damage has been caused by gross negligence or wilfully are exempt from this damages limitation. There is no liability for lost profit or consequential losses.
- 6.2 In the event that the Client activates liability insurance for financial losses, damages claims shall be limited to the amount compensated by the insurance in the specific case.

7. Copyright

- 7.1 The Contractor shall not be obliged to prove the right of the Client to translate the texts or to have them translated, but shall be entitled to assume that the Client already has those rights from any third parties necessary to perform the assignment. The Client explicitly assures the Contractor to possess these rights.
- 7.2 In case of translations protected by copyright, the Client shall declare the purpose for which he intends to use them. The Client gains only the rights corresponding to the declared purpose for which the translation is to be used.
- 7.3 The Client is obliged to compensate the Contractor for all claims made by third persons for reasons of breach of copyright, of Austrian copyright of a work's interpreter, or of other industrial or personal property rights. This also applies to cases in which the Client does not declare any intended purpose for the translation or if he uses it for other than the purpose declared.

The Contractor must immediately notify the Client of such claims and summon him to appear as third party in the event of legal proceedings. Shall the Client not join the Contractor in the proceedings upon the third party, the Contractor will be entitled to recognise the claim of the plaintiff and to obtain compensation from the Client regardless of the legitimacy of the claim recognised.

8. Payment

8.1 Unless otherwise agreed, when the translation is delivered in person, payment shall be made in cash; when the translation is delivered by other means, payment shall be made upon receipt of the translation. The Contractor shall be entitled to claim an appropriate part of the payment to be paid in advance. Private persons and foreign Clients may be asked to pay the whole sum invoiced in advance. In the event that a collection of the translation was arranged and the Client does not collect the translation on the specified date, the day of the preparation of the translation for collection is the day on which Client's duty of payment begins.

8.2 In the event of a delay of payment, the Contractor shall be entitled to keep the support documents supplied for the assignment (e.g. the manuscripts to be translated). In the event of a delay of payment, interests on late payments amounting to 2% above the particular EURIBOR (Euro Interbank Offered Rate) will be charged.

8.3 In the event that the terms of payment agreed upon by the Client and the Contractor are not met, the Contractor shall be entitled to cease work on unfinished assignments until the Client meets his duties of payment. This also applies to assignments for which a fixed date of delivery has been agreed upon (see section 3.1). Should the value of the duty of payment be much less than the value of the support document, only retention up to the value of payment will be possible. The cessation of the work neither causes any accretion of legal claims from the part of the Client nor creates any prejudice whatsoever of the Contractor's rights.

9. Obligation of secrecy

The Contractor is sworn to secrecy. He has to make sure that his appointees are sworn to secrecy. The Contractor shall not be liable for the non-compliance of the appointees with this obligation, except for cases of gross negligence during the selection of the appointees.

10. Jurisdiction

The place of business of the Contractor shall be the place of fulfilment of all contractual relationships subject to these Terms and Conditions. In the event of legal dispute over the existence or non-existence of such legal relationship or arising out of such contractual relationships, the Contractor shall choose jurisdiction between the court of the Contractor and the court of the Client, in case of legal action of the Contractor. In case of legal action against the Contractor, the court of jurisdiction of the Contractor shall have exclusive jurisdiction. Both parties agree that Austrian law shall apply.

11. Binding Character of the Contract

In the event of single sections of the contract not being legally effective, the residual sections of the contract shall remain binding.

Please note – Instruction for the user of the Terms and Conditions!
The provisions of the Consumer Protection Act shall prevail over the following regulations of these Terms and Conditions in the event that translation assignments are made by consumers (“Consumer Transactions”).

Regarding section 2.4

Article 5 section 2 of the Consumer Protection Act stipulates cost estimates to be stringently binding.

Regarding section 2.4.2

Article 6 section 2, sub-section 3 of the Consumer Protection Act stipulates that exceeding the cost estimate must be explicitly negotiated in each case and may not be agreed upon by means of the Terms and Conditions in a legally effective way.

Regarding section 2.6

The limiting provisions of article 6 section 1, sub-section 5 of the Consumer Protection Act shall be considered. However, the provided price escalation clause might be valid.

Regarding section 5

The special regulations of articles 8 and 9 of the Consumer Protection Act (Warranty) shall be considered, as should the provisions of Article 6 section 1, sub-sections 7 and 8 of the Consumer Protection Act concerning limitation of the right of retention and of possibilities for set off.

Regarding section 5.12

Article 6 section 2 sub-section 1 of the Consumer Protection Act is in opposition to the limitation of the liability.

Regarding section 8.2

In the event of a delay of payment, the interests may amount to a maximum of 5% a year pursuant to article 6 section 1 sub-section 13 of the Consumer Protection Act.

Regarding article 9

Pursuant to article 14 of the Consumer Protection Act, the court of jurisdiction may be determined only by the place of residence, the place of habitual residence or the place of employment of the consumer.

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