



## Institute of Translation & Interpreting

### Model General Terms of Business for Commissioned Translation Work

#### 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: (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 clear and complete instructions in writing 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 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.

3.5 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 (30) 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 (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.

3.9 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 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 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 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 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 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.

5.5 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.

5.6 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 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 licence for the purpose has been granted by the Translator in writing and the agreed fee has been paid in full.

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

6.10 All Translations are subject to the Translator's right of integrity.

6.11 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.

6.12 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. 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 Source Material or Translations thereof without the express authorisation of the Client.

7.3 Notwithstanding clause 7.2, the Parties agree that a Third Party may be consulted over specific translation terminology queries in relation to the Source Material.

7.4 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.

7.5 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 8.4 pay the Translator the full fee unless otherwise agreed in advance.

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 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.

8.5 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:

- 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 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 one month 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 Institute of Translation and Interpreting.

10.2 Time and expense permitting, the Translator shall use his or her reasonable commercial endeavours 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 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 Nothing in this Agreement shall be construed as seeking to restrict a Party's liability for personal injury or death arising from its own negligence.

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

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

## **11. Unfair Competition**

11.1 Subject to clause 11.2, 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.

11.2 The restrictions in clause 11.1 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 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.

12.2 This Agreement should be read in conjunction with the Code of Professional Conduct of the Institute of Translation and Interpreting.

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

12.4 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.

We hereby accept these terms and conditions:

Signed by **Translator** .....

Name .....

Signed by **Client** .....

Name .....]



## NOTES ON USE OF THE MODEL TERMS OF BUSINESS FOR TRANSLATION

### General

These Model General Terms of Business represent a set of general conditions that can be used by all Translation providers and buyers as a basis of contract.

They only provide a background framework; the details of a Translation Task will be specified in the Order. The terms of the Order constitute the Special Terms of the contract and prevail over the General Terms.

As a member of ITI you are not obliged to use these Terms of Business, nor do they apply automatically. They are there for your guidance, we are not giving you advice in respect of them and we recommend you should take legal advice in respect of them. You are free to enter into any contractual arrangement you like, and to alter these terms as you like, but it would be prudent to take legal advice before doing so.

However, if you do use them, you must tell your Client or your supplier you are doing so, and you must do so before you start any Translation Task. You should send your Client a copy before you accept a Translation Task or start working regularly with a particular Client or supplier.

Remember that any agreement you enter into with a Client for the provision of translation services against payment, even if only oral or specifying the minimum particulars, is technically a contract.

If you accept a contract for a Translation Task orally, you must say at the time if you are applying these conditions.

Similarly, you must tell your Client or supplier about any other terms or variants you are applying. It is good practice to confirm these immediately in writing.

If you do not tell your Client what terms of business you are using (or vice versa) then none of them will apply.

A Client may also send you his terms, either before or after receiving yours. Remember that the terms which will apply to the contract will be those last sent by either one of you to the other but, to make sure, it is better to receive written confirmation that your terms are acceptable before you start a first Translation Task for a new Client.

### Notes on Definitions and Individual Clauses

This is a non-exclusive and non-exhaustive summary of some of the provisions as at the date of these notes. Again, we are not providing legal advice and we recommend that you take legal advice in respect of the contents as required.

Definition of “**Translator**”: 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.

#### Clause 1

Your contract is between you and your Client. It is independent of any other contract and is unaffected by any other terms and conditions. For example, a Client cannot delay payment to you for work satisfactorily done just because he/she is still waiting for payment from his/her Client, or for any other reason connected with a Third Party.

#### Clause 2

Use of a Translation for study and/or information is regarded as "fair dealing" and is not subject to copyright. This means that no copyright holder can sue your Client (or you) for infringement because you made the Translation. However, if you or your Client sell the Translation on to others, then the copyright holder may have a valid claim against you.



### **Clause 3**

When asked what you will charge for a job, you must make it plain whether you are giving a quotation or an estimate. If you give a quotation you cannot vary it later, and you will have to do the job, no matter what it takes, for the price you have quoted. While any uncertainty remains over what a job will require, make sure your Client knows that the price you indicate is only an estimate.

If you are VAT registered you must state that VAT will be payable in addition to the fees (and supplements) charged.

Clause 3.5 gives you the opportunity to agree a change in a quotation given to a Client, as long as there was no way the reason for the change could reasonably have been foreseen by either of you at the time when you provided the quotation. If you have made a proper assessment of what the job entails, this situation should only arise very rarely in very special circumstances.

If you are working on the basis of an estimate, and this is likely to be exceeded, it is good practice to inform the Client immediately when this becomes apparent.

It is up to the Client to ask for any special form of delivery, and he/she must agree to pay for it at cost. If this involves extra time and/or effort on your part (e.g. a special trip to, say, a collection point) and this has not been factored into your quotation/estimate, then you may have a right to charge for it, but you must give the Client an estimate of what this will be in advance.

If it is not possible for you to agree some of these supplementary charges in advance because you do not know what they will be, then you should give an estimate, or, if appropriate, a ceiling price. You should pass on the cost of any solicitor's or notary's fees for certification together with any time cost to you. Whether you charge for self-certification is your own commercial decision.

If you charge for time outside normal office hours it must be because the Client is making you work outside those hours, not because you choose to. Remember that most of the country gets 50% extra for overtime or Saturday working, and 100% extra for Sundays and Public Holidays.

Strictly speaking, anything which a Client asks you to do after agreeing contract terms with you should be a new contract, but it is frequently convenient to extend the scope of the original contract. When this means extra work, then extra time must be allowed for it, or the rate charged must be adjusted to compensate. Any extension must be agreed and confirmed in writing.

### **Clause 4**

Missing a deadline is one of the worst things a Translator can do, but to make a deadline absolutely binding it is the responsibility of the Client to specify that particular date as well as state that time is of the essence. This must be done in writing.

### **Clause 5**

Payment within 30 days is good practice and consistent with the requirements of late payment legislation.

When subdividing a larger job into individually invoiced instalments it is prudent to keep the invoiced sums within the limit allowed for the small claims procedure, which currently stands at £10,000.

You have the right to stop work on a current job if you think that you might not get paid. You cannot stop work on a current job because you haven't been paid for an earlier one, if you do, the Client might have a claim for damages against you.





## **Clause 6**

As a result of the Copyright, Designs and Patents Act 1988, you as Translator retain the copyright until such time as it is formally assigned in writing. If you do not assign the copyright, you can grant the Client or some other Third Party a licence to use it.

Whether you decide to retain and licence, or assign, copyright, this and the fee you charge for it is your commercial decision, and you and the Client must agree it in advance on the basis of what, if anything, it might be worth to either of you. Rather than enter into a separate assignment or licence on every occasion, a Client and Translator in a regular commercial relationship may prefer to enter into a blanket agreement. This could then be amended in special circumstances as necessary.

If the material to which your copyright applies is only likely to be in demand for a short period, then to prevent a Client from obtaining copyright from you and doing nothing with it, thus causing you a loss of opportunity, it is worth making the assignment or licence for a limited time, after which it reverts to you.

If you retain copyright and your Translation is subsequently altered, your copyright continues to apply to those parts which have not been altered.

Re-use of a Translation by someone else as a result of it being incorporated into a translation memory or similar system is an infringement of your copyright if it has not been assigned or this use has not been licensed. The value of any such use is again a commercial decision and the fee must be agreed between the Parties in advance. Incorporation of a Client's original source language text into a translation memory may also infringe copyright, so assignment, licence or permission should therefore also be obtained in advance.

It is good practice for anyone who wants to change a Translation to check with the Translator first, to guard against errors. This clause protects the Translator from the consequences of any unauthorised amendment. Any agreement which you as a Translator enter into to permit amendments should continue to protect you against the consequences of mistakes which are not your own.

## **Clause 7**

As a matter of good practice, all Client information should be treated as confidential. The relationship between the Translator and the Client is generally held to be one of utmost good faith and the ITI Code of Conduct requires Translators to keep all information confidential. However, the Client may specifically ask the Translator not to disclose certain information and/or enter into a separate confidentiality undertaking.

Some Clients may ask you to destroy Translations and all materials relating to the work. As this may be prejudicial to your interests in the event of a liability claim, before doing so you should make sure that the Client agrees not to enter any such claims.

Care needs to be taken in any consultation with a Third Party which might result in the unwitting disclosure of Confidential Material. Even though strictly speaking clause 8.4 places the onus on the Client to tell you if there is any risk of such disclosure taking place, it is good practice for you to check with him/her in advance.

## **Clause 8**

In order to be effective, the arranged cancellation fee must be agreed explicitly in advance, either as a fixed sum or as a pro-rata proportion of some fixed sum.

Frustration includes any act or failure to act by your Client which makes it impossible for you to complete a Translation Task under the conditions originally agreed.

Cancellation may technically be a breach of contract, but where there are no explicit terms agreed in relation to a cancellation fee, there are likely to be very few circumstances where it is reasonable to insist on payment of the full fee. It is therefore preferable that the Parties should agree in advance upon what shall be paid in the event of cancellation. Any such cancellation payment should take into consideration:



- a) the amount of the Translation actually completed by the Translator,
- b) any preliminary research or setting up work carried out by the Translator,
- c) any inconvenience or loss of expectation caused to the Translator as a result of premature cancellation.

Where such circumstances apply you and the Client should seek to agree revised terms appropriate to the changed situation.

#### **Clause 9**

If either you or your Client is based outside the UK, you must specify that English law and jurisdiction applies to a contract. Failure to do so is likely to prejudice the cover provided by your professional indemnity insurance policy.

#### **Clause 10**

This is not a let-out for sub-standard work. It merely reflects the fact that we are all human, and that your liability should be assessed on the basis of the level of service an average professional Translator with experience of the subject matter could reasonably be expected to provide. Quality of Translation can be enhanced by revision or "polishing". A scheme for describing levels of quality in Translation in order of increasing cost is provided below:

1. Unrevised raw machine-translation
2. Cleaned-up machine translation
3. Unrevised draft translation
4. Translator-revised translation
5. Translator revised and additionally polished translation for publication
6. Revised translation for publication with additional revision by a Third Party (4 eyes)
7. Extra-revised translation for publication with additional revision by two Third Parties (6 eyes).

In which normal "for information" Translation is number 4 and normal "publication" quality is number 5. Adaptation/copywriting must be regarded as a separate activity to that of translating, for which separate fees will be payable.

#### **Clause 11**

The courts take a very dim view of any restraints on trade. This clause represents what we believe to be a fair compromise.

The essential principle is that a Translator should not, as a direct or indirect consequence of an introduction by an intermediary, attempt to make any approach to a potential Client which would be to the detriment of that intermediary's interests in the foreseeable future.

In order not to contravene the Institute's Code of Conduct, the Translator must be able to show that at least one of the exemptions applies.