



## *Recommended Model General Terms of Business for commissioned Translation Work*

In this document: No part of any numbered clause shall be read separately from any other part. Section headings are provided for convenience of reading only and shall be ignored for the purposes of ascertaining meaning.

### **Definitions**

**1.** Translator shall mean 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 act of translation (the translation task) will be subcontracted, or the translator customarily trades as an intermediary.

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.

Client shall mean the party commissioning a translation in the normal course of business.

The parties may be natural or legal persons, including, as an example only, private individuals, associations, partnerships, economic interest groupings or corporate entities.

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.

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.

### **Copyright in Source Material, and Translation Rights**

**2.** The translator accepts an order from the Client on the understanding that performance of the translation task will not infringe any third party rights.

The Client undertakes to keep the translator harmless from any claim for infringement of copyright and/or other intellectual property rights in all cases.

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.

### **Fees: (binding) Quotations and (non-binding) Estimates**

**3.** 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.

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.

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

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.

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.

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

**4.** Subject to the second paragraph of clause 3 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.

**5.** 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.

**6.** 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.

**7.** 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.

### **Delivery**

**8.** 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.

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

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.

### **Payment**

**9.** 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.

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

**10.** 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 9.

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.

Where delivery is in instalments 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.

## Copyright in Translations

11. In the absence of a specific written agreement to the contrary, copyright in the translation remains the property of the translator.

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.

Where copyright is assigned or licensed (formally in writing as required by § 90 of the Copyright, Designs and Patents Act 1988, 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.

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 shall be as specified above in relation to a completed translation.

12. 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.

13. 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.

14. 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.

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.

It shall be the duty of the Client to notify the translator that such use will be made of the translation.

15. 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.

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.

## Confidentiality and Safe-keeping of the Client's Documents

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

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 authorisation of the Client.

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

17. 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.

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

## Cancellation and Frustration

19. 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.

20. 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.

21. 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.

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.

## Complaints and Disputes

22. 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.

This entitlement shall not apply unless the translator has been notified in writing of all alleged defects.

23. 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 agree, the matter may be referred by the more diligent party to the Arbitration Committee of the Institute of Translation and Interpreting.

Such referral shall be made no later than two months from the date on which the original complaint was made.

24. 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 England and Wales.

In any event these terms shall be construed in accordance with English law.

## Responsibility and Liability

25. 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.

Time and expense permitting, the translator shall use his or her best 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.

A translation shall be fit for its stated purpose and target readership, and the level of quality specified.

Unless specified otherwise, translations shall be deemed to be required to be of "for information" quality.

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.

## Unfair Competition

26. 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.

## Applicability and Integrity

27. 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.

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

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

### General

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

They only provide a background framework; the details of an assignment 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. 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 assignment. You should send your Client a copy before you accept an assignment 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 an assignment 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 by fax.

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

A Client or supplier 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 assignment for a new Client.

Remember also that the acceptance of terms of business must be total; the rejection of any part will result in rejection of the whole.

## Notes on Individual Clauses

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.

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 has a valid claim against you.

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.

The last paragraph does give 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 quoted. If you have made a proper assessment of what the job entails, this situation should only arise very rarely in very special circumstances.

4. 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 this becomes apparent.

5. 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 on your part (e.g. a special trip to e.g. a collection point) then you have a right to charge for it, but you must give the Client an estimate of what this will be in advance.

6. 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 (as in 5). 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.

7. 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.

8. 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 time is of the essence, and this must be done in writing.

9. Payment within 30 days, though not hitherto the norm in this industry, is good practice and consistent with the requirements of the Late Payment of Commercial Debts (Interest) Act 1998.

**10.** Delay interest at base rate + 8% is specified in the Late Payment of Commercial Debts (Interest) Act 1998.

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.

You have the right to stop work on a current job if you think that you might not get paid, but 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.

**11.** As a result of the 1988 Act, 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.

**14.** 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.

**15.** The right of integrity is also granted by the 1988 Act. In any event 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.

**16.** Although the relationship between the translator and Client is generally held to be of the utmost good faith (*uberrimae fidei*), and the ITI Code of Conduct requires translators to keep all information confidential, for confidentiality to be a contractual requirement it is the responsibility of the Client to say so.

Some companies 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 17 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.

**19.** 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 is technically breach of contract, but 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.

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

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

**25.** 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.

The Client has to tell you that you might risk liability beyond the invoiced value of the work, but it is up to you to ensure that your professional indemnity insurance will cover it.

**26.** 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.

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