

General Terms & Conditions for Business, Delivery and Payment

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I. General - scope

1. These Terms & Conditions apply to all present and future business relations.
2. End-users within the meaning of these Terms & Conditions are natural persons with whom a business relationship is entered into who are engaged in neither commercial nor freelance work.
3. Traders within the meaning of these Terms & Conditions are natural or legal persons or personal companies with legal status, with whom a business relationship is entered into and who are acting in the practice of a commercial or freelance professional activity.
4. Divergent, contrary or supplementary General Terms & Conditions, even if known, form no part of any contract unless their applicability is expressly assented to in writing.
5. Except where expressly stated otherwise, text form is always permissible as well as written form.

II. Conclusion of contract

All quotations are without engagement unless expressly designated binding on acceptance.

1. By placing an order for translation work the customer states a binding intention to avail himself of the work.
2. If several customers constitute one contracting party, they authorise one another reciprocally to receive our legally binding statements in all matters relating to the placed order. Service is rendered by us to each of the customers with effect for and in relation to all the other customers.
3. We are entitled to accept the contractual offer contained in a purchase order within two weeks of receipt. Acceptance is effected by written acknowledgement which is definitive for the order's scope, the manner of its execution and the other contractually material points, or by delivery of the translation to the customer.
4. Amendments or additions to a purchase order require written acknowledgement by us.
5. A latent or patent ambiguity does not invalidate the entire contract but only the affected section/s.
6. We are also entitled to outsource work to subcontractors.
7. If the end-user orders the product electronically, we will acknowledge receipt of the order promptly. Acknowledgement of receipt does not in itself constitute binding acceptance of the order. Acknowledgement of receipt may be combined with the acceptance note.
8. Conclusion of contract is always subject to the proviso of correct and timely delivery by our own suppliers/subcontractors, if any. This applies only to cases where non-delivery is not our responsibility, especially where we have agreed a congruent covering transaction with our supplier. The customer will be informed promptly of the non-availability of the service. The payment made for it will be promptly returned.
9. Where contracts are concluded with traders, the applicability of § 312e (I) Subsections 1-3 BGB is precluded.
10. Where the customer, whether end-user or trader, orders the translation electronically, the contract text will be stored by us and emailed to the customer on request together with these GT&C.

III. Customer's obligations to assist

1. The customer must inform us at order placement in writing or in text form fully and as comprehensively as possible of copied dates, special details of the translation's execution (e.g. translation on data media, number of copies, readiness of printing, outward form of the translation, particular file formats etc) or particular requirements to be met by the translation.
2. Where the translation is intended for printing, the customer must provide us with a galley proof.
3. Translations are produced according to the principles of proper and professional practice. Unless otherwise agreed, technical terms and expressions etc. are translated into the commonly used/understood and lexically appropriate version.
4. Translations are performed literally or more freely, depending on the purpose of the original.
5. In the interests of having the order processed smoothly and if appropriate on schedule the customer must ensure that the original texts for translation, including any customer glossaries, illustrations, drawings, tables, abbreviations etc. needed, are supplied promptly and in impeccably legible form.
6. The customer must provide us in a separate memorandum with Latin-script versions of names, numbers and addresses written in non-Latin script, stating in each case the point at which they occur in the text for translation.
7. The customer must himself examine translated texts to be used in marketing or public relations work in the light of this special purpose and of the associated individual requirements, to ensure their suitability for their intended purpose. Any necessary changes in this connection do not constitute remediation on our part and must be separately paid for.
8. Should the customer default on his obligations to assist and/or provide information, all claims in respect of liability for defects and/or compensation are – where legally admissible – precluded.

IV. Retention of ownership

- In the case of end-users we retain ownership of the translation until the full fee has been paid.
1. In the case of traders we retain ownership of the translation until all accounts due to us under an ongoing business relationship have been settled in full.
 2. In the event of breaches of contract by the customer, in particular default in payment and/or failure to comply with an obligation under Subsection 4 of this Section, we are entitled to cancel the contract and reclaim the translation and any copies made of it, no further use of the translation by the customer on any scale being allowed.
 3. The trader is entitled to resell the translation in the course of normal business. He assigns to us now up to the invoice amount all accounts receivable from a third party accruing to him from resale. We accept the assignment. Following the assignment the trader is authorised to collect the account. We reserve the right to collect the account ourselves immediately if the trader fails to meet his payment obligations duly and is in default. In the case of (impending) inability to pay or in the event of an application for the opening of insolvency proceedings or of insolvency the trader must inform us promptly of the assigned accounts receivable and the liable parties, inform the liable parties of the assignment and pass to us all records needed for collecting the account.
 4. We undertake to release at the trader's request securities due to us where the securities' value exceeds the secured receivables by more than 20%; it is for us to select the securities to be released.
 5. Editing and use of the translation by the trader is always in our name and on our behalf. If it is used in conjunction with items not belonging to us, we acquire co-ownership of the new item in the ratio of the value of the product supplied by us to that of the other items used. The same applies if the product has been mixed with other objects not belonging to the supplier.

V. Copyright / right of use

1. Copyright to a translation resides categorically with us or – where a subcontractor is involved – with the translator concerned.
2. The customer is entitled to use for internal and external information purposes the contractually acquired translation and/or terminology in the form passed to him. For these purposes he may make any number of photocopies or printouts of files supplied to him or of translations incorporated in media created by him (e.g. catalogues, internet pages, books, operating manuals etc), provided that he disseminates these in his own name and/or free of charge/at cost price.
3. Rights of use other than those specified in Subsection 2 or contingent on acquisition of copyright require separate agreement.

VI. Rights of cancellation and return

The end-user has the right under §§ 312b to 312e BGB to cancel his declaration of intent to conclude the contract with us within two weeks from conclusion of contract. The cancellation need not cite reasons and should be declared to us in text form or by returning the product; timely dispatch suffices for adherence to the deadline. We reserve the right not to start executing the order until after the two-week cancellation period.

1. The end-user is obliged when exercising his cancellation right to return the translation including all copies made, if these can be sent by post. The costs of return are met by the end-user where the cancellation right is exercised in respect of an order worth up to € 40.00, unless the translation supplied is not the one ordered. For an order value over € 40.00 the end-user need not meet the return costs.
2. Attention is expressly drawn to the fact that the right of cancellation and return under § 312d (4) Subsection 1 BGB is precluded if the translation has been done specially in accordance with the customer's wishes or dearly tailored to his needs.

VII. Prices/payment

All prices quoted are without engagement, apply only to the stated order scope and are without discount from our offices plus statutory value-added tax for traders and inclusive of statutory value-added tax plus any delivery costs for end-users.

1. A charged price per line is based on the price list applicable at the time, unless a different price was

agreed before the order was placed. A standard line comprises 50 key-strokes. The charge is calculated according to the number of lines in the target text computed using TextCount 6.0. An extra charge is levied for certification. The minimum charge is € 46.00 plus statutory value-added tax, currently 19%.

2. Not included in quoted prices and subject to separate payment are all special services arising from subsequent changes to the contract scope, requests exceeding the scope expressly quoted for, revised versions/amendments due to flawed/incomplete original texts and additional expense arising from the customer's disregard of Section III or other obligations to assist and inform. Typing errors in a translation are corrected without charge.
3. The end-user incurs no additional costs when using remote communication to place an order except the customary connection charges.
4. We reserve the right to make an appropriate additional charge for all fiscal charges levied by Federal or State law by which the cost of the work is increased; this does not give the customer a right to cancel the contract.
5. We are entitled for large-volume translations, in cases where the customer's creditworthiness is questionable and for first-time customers to require an appropriate advance payment, not however exceeding 50% of the net order value, and/or to make delivery of the finished translation contingent on prior payment of the full fee.
6. After the translation has been received invoices are due and payable in EURO without deduction within 10 days from invoice date. After the end of this period the customer is in default. Other payment terms require written agreement.
7. While in default a trader must pay interest on the money owed at 8% above base rate, an end-user at 5% above base rate. We always reserve the right to substantiate and claim a higher loss caused by default.
8. Incoming payments are credited against the oldest debt. Cheques are accepted only subject to encashment and only as conditional payment; there is no obligation to accept bills of exchange.
9. The customer has rights to offset and to withhold payment only if his counterclaims have been established in law, derive from the same contractual relationship or have been accepted by us.
10. The right is reserved to stipulate special payment terms for deliveries outside Germany.
11. In the event of material changes in the customer's economic circumstances, especially in the event of (impending) inability to pay, we are entitled either to cancel the contract or to require payment in advance or security for the whole fee or part thereof. If the customer falls into arrears with instalments/payments because of (impending) inability to pay, we are entitled to withhold execution of any further orders pending settlement of the outstanding account. The customer remains obliged to take delivery.
12. We reserve the right to make price changes where delivery or performance take place more than 4 months after conclusion of contract and our suppliers' prices, wages, tax rates or other non-foreseeable costs change with impact on costing before the order is executed. At the customer's request evidential support for the price adjustment is shown in itemised form. We are furthermore entitled to make a commensurate increase in the prices included in quotations, if the actual details of the translation assignment differ from those in the costing data. Price changes under this provision do not entitle the customer to terminate the contract for compelling reason or – irrespective of legal basis – to declare the contract cancelled.

VIII. Delivery/passing of risk/packing

The risk of accidental destruction or impairment of the translation work passes to the customer on dispatch by email or handover to the carrier or to a courier acting for the customer.

1. Partial deliveries / performance of contract work in instalments are permissible.
2. If the customer is in default with acceptance, this is equivalent to handover.
3. If the customer defaults after written warning on his obligation to provide or assist, we are entitled at our discretion, after setting 14 calendar days' extra time in writing, to cancel the contract and claim compensation.
4. Claims for compensation due to delivery default are precluded unless the default is due to intent or gross negligence on our part.
5. Where the customer is a trader, we deem the persons signing a receiving slip authorised to accept the translation work and acknowledge its receipt.
6. Delivery dates are always – unless expressly stated – without engagement. Delays in delivery entitle the customer to cancel the contract only after the expiry of a reasonable extra time set previously in writing. In the case of an initial payment and delivery in instalments the initial payment may be offset only against the final instalment.

IX. Liability for defects

Where the customer is a trader, we will at our discretion initially provide warranty for defects in the translation by rectifying it, re-doing it or replacing it. In the case of rectification we will meet all the expenses required for the purpose, in particular forwarding, transport and labour costs. At our request the customer is obliged to make the translation available to us with the offending passages/words marked.

1. If the customer is the end-user, he first has the choice between rectification and replacement as the form which remediation is to take. We are however entitled to refuse the chosen form of remediation if it is practicable only at disproportionate expense and the other form of remediation holds no material disadvantages for the end-user.
2. Where the customer is a trader, he must inform us in writing of self-evident defects (e.g. self-evident factual, linguistic or orthographical errors) within 10 calendar days from receipt of the translation; assertion of warranty claims is otherwise precluded. Timely dispatch suffices for adherence to the deadline. The full burden of proof for all prerequisites for a claim, in particular for the defect itself, for the date on which the defect is found and for the timeliness of the defect notice falls on the customer.
3. End-users must advise us in writing, within two months from the date on which the translation's lack of conformity with the contract was established, of self-evident defects (e.g. self-evident factual, linguistic or orthographical errors). Receipt by us of the notification is definitive for adherence to the stipulated time. If the end-user fails to effect this notification, the defect-liability claims expire two months after his detection of the defect. This does not apply in the case of fraudulent non-disclosure on our part. The burden of proof for the date on which the defect is detected falls on the end-user.
4. If after a failed remediation the customer elects to cancel the contract because of a legal infirmity or material defect, he is not additionally entitled to claim compensation for the defect. Cancellation for minor defects is precluded.
5. If the customer opts for compensation after a failed remediation, the translation remains with the customer if this can reasonably be expected of him. Compensation is confined to the difference between the purchase price and the value of the translation. This does not apply if the breach of contract was fraudulently caused by us.
6. Rights of the customer regarding defects expire by limitation one year from acceptance of the translation. The short limitation period does not apply if we are culpable of gross negligence, or in the cases of injury to body and health attributable to us or to loss of the customer's life.
7. Where the customer is a trader, the sole agreement made as to character and quality is deemed to be our quotation or another agreement effected between the parties. Public statements, promotional claims and advertising do not moreover constitute for the trader customer a contractual description of the goods' character and quality.
8. The customer does not obtain from us warranties in the legal sense.

X. Premature termination of contract

In the event of premature termination of contract by the customer as per § 649 BGB we are entitled to the entire agreed remuneration, less however expense saved thereby. Unless in a particular case the customer substantiates a higher amount of saved expense, this amount is agreed to be 40% of the remuneration for the work not yet done by us. The customer's right to show that the saving obtained is less than 40% of the order total is reserved.

XI. Limitations of liability

In the case of slightly negligent and non-trivial breaches of duty our liability is limited to the average direct loss foreseeable in the type of contract according to the nature of the services, but to a maximum of € 50,000. This also applies to slightly negligent and non-trivial breaches of duty by our legal representatives or subcontractors.

1. The above limitations on liability do not affect claims by the customer in respect of product liability. The limitations on liability do not moreover apply to injury to body and health attributable to us or of loss of the customer's life.
2. Claims made by the customer for compensation because of a defect expire by limitation one year from delivery of the product. This does not apply if we are culpable of gross negligence or fraudulence, or to injury to body and health attributable to us or to loss of the customer's life.

XII. Final provisions

The place of performance for delivery and payment is Schwerte, Germany.

1. The laws of the Federal Republic of Germany apply.
2. Where the customer is a trader, a legal person under public law or a special fund under public law, the place of sole jurisdiction for all disputes arising from this contract is Schwerte, Germany. The same applies if the customer has no place of general jurisdiction in Germany or if his domicile or usual abode are not known at the time proceedings are instituted.
3. Force majeure affecting us or a subcontractor, e.g. operational breakdowns of any kind, in particular computer faults, strikes, stoppages, lockouts, and all other circumstances not here listed and involving no negligence which prevent us and our subcontractors from timely, proper execution of the order, entitles us at our discretion to end or suspend all or part of the delivery commitment. Where delivery deadlines are exceeded, the customer remains obliged to accept the work.
4. Should individual provisions in the contract with the customer including these General Terms & Conditions be or become partly or wholly void, this does not affect the validity of the remaining provisions. The wholly or partly void provision shall be replaced with one the economic outcome of which approximates as closely as possible to that of the void one.

Schwerte, 1st March 2009