

## **General Terms and Conditions of the Netherlands Association of Translation Agencies (ATA)**

### Definition

In these General Terms and Conditions 'the Translation Agency' shall be understood to mean: Overtaal BV, located at Niasstraat 6B, NL-3531 WP Utrecht.

### Article 1 - General

These General Terms and Conditions shall govern the legal relationship between the Translation Agency and the Client, and shall supersede any (general) terms and conditions of the Client, unless the Translation Agency approves the applicability of such terms and conditions in writing.

### Article 2 - Quotations, conclusion of contracts

- 2.1 General quotations and estimates provided by the Translation Agency shall not entail any commitment.
- 2.2 The Translation Agency may at any time revoke or change prices and dates of delivery quoted if it has not had the opportunity - prior to quoting such details - to view the entire text to be translated or edited. The Client's oral or written acceptance of the quotation submitted by the Translation Agency or, if no quotation is submitted, confirmation by the Translation Agency in writing of an order placed by the Client shall constitute a contract.
- 2.3 The Translation Agency may consider as a Client any person or entity that has placed an order with the Translation Agency, unless said person or entity explicitly states that they are acting on the instructions, on behalf and at the expense of a third party, whose name and address shall be disclosed to the Translation Agency at the same time.
- 2.4 Agreements made and assurances given by representatives or personnel of the Translation Agency shall not be binding upon the Translation Agency unless explicitly confirmed by the Translation Agency in writing.
- 2.5 Any reasonable doubt on the part of the Translation Agency about the Client's ability to pay shall entitle the Translation Agency to require the Client to provide sufficient security before the Translation Agency commences or continues to execute an order.

### Article 3 - Changes to or cancellation of orders

- 3.1 Any major changes made by the Client to an order after a contract has been concluded shall entitle the Translation Agency either to modify the price and/or the date of delivery agreed or to refuse to execute the order. In the latter case, the Client shall be required to pay for the work already performed, and the provisions stipulated in clause 3.3 shall apply by analogy.
- 3.2 Cancellation of an order by the Client shall require the Client to pay in full for the work already performed with respect to that order and, where appropriate, to pay compensation on the basis of an hourly rate for time spent on research for that part of the work not performed. The Translation Agency shall make the work performed available to the Client at the latter's request, but shall accept no responsibility for its quality.
- 3.3 If the Translation Agency has earmarked time for executing an order that has been cancelled, it may charge the Client 50% of the agreed price for that part of the work not performed.

### Article 4 - Execution of orders and non-disclosure clause

- 4.1 The Translation Agency undertakes to carry out orders to the best of its ability, bringing to bear sufficient professional know-how to meet the purpose specified by the Client for the text(s) to be translated or edited by the Translation Agency.
- 4.2 The Translation Agency shall keep any information provided by the Client confidential in so far as this is possible in connection with the performance of the contract. The Translation Agency shall require its employees to observe this code of confidentiality. However, the Translation Agency shall not be liable for any breach of confidentiality by its employees if it can sufficiently demonstrate that it was unable to prevent the same.
- 4.3 Unless explicitly agreed otherwise, the Translation Agency shall be entitled to hire third parties to carry out the order (in full or in part), without prejudice to the Translation Agency's responsibility for the confidential treatment and proper execution of the order. The Translation Agency shall require any such third party to observe this code of confidentiality. However, the Translation Agency shall not be liable for any breach of confidentiality by such third parties if it can sufficiently demonstrate that it was unable to prevent the same.

- 4.4 As far as possible, the Client shall honour any request for information by the Translation Agency about the content of the text to be translated, as well as requests for relevant documentation and lists of terms if such are available. Such information and documentation shall be dispatched at the Client's expense and risk.

#### Article 5 - Agreed date and time of delivery

- 5.1 The agreed date of delivery shall be provisional, unless an explicit written agreement stipulates otherwise. The Translation Agency shall notify the Client immediately if it perceives that it will be unable to meet an agreed deadline.
- 5.2 If a fixed delivery date is specifically agreed in writing and if the Translation Agency fails to meet it for reasons other than circumstances beyond its control, and if the Client cannot reasonably be expected to accept any further delay, the Client shall be entitled to cancel the contract unilaterally. In such cases, however, the Translation Agency shall not be required to pay any compensation whatsoever. Such cancellation shall not affect the obligation on the part of the Client to pay for the work already performed.
- 5.3 Delivery shall be deemed to have taken place at the moment when the text is dispatched. The moment when the text is posted, handed to a courier or - if the text is transmitted electronically (by fax, e-mail, modem, FTP etc) - the moment when the medium completes the transmission shall count as the time of dispatch.
- 5.4 The Client shall do whatever may reasonably be necessary for or conducive to prompt delivery by the Translation Agency of work performed under the contract.
- 5.5 The Client shall do everything in its power to facilitate delivery of the product by the Translation Agency under the contract. Any refusal to accept the Translation Agency's product shall constitute default on the part of the Client, and the provisions of clause 6.5 shall apply accordingly, even if no explicit request for acceptance has been made.

#### Article 6 - Prices and payment

- 6.1 Prices shall generally be based on the Translation Agency's current rate (per hour or per word), unless agreed otherwise. In addition, the Translation Agency may charge the Client for any out-of-pocket expenses incurred in the execution of the order. The Translation Agency shall be free to charge a minimum rate for each combination of source and target language.
- 6.2 Quoted prices shall apply only to services and products conforming to agreed specifications.
- 6.3 The Translation Agency shall be entitled to raise the agreed price if it is forced to perform more work or incur more costs than might reasonably have been foreseen on conclusion of the contract as a result of having to work with laborious, time-consuming or unclear texts, for example, or faulty files or software supplied by the Client. This list of examples is not exhaustive.
- 6.4 All prices are quoted exclusive of VAT.
- 6.5 Payment for products supplied or services rendered under the contract shall be due 30 calendar days after the invoice date (or within such other term as the Translation Agency shall set in writing). Payment shall be net and in full - without any discount, set-off or deferral - in the currency invoiced. If payment is not made by the due date, the Client shall be in default -immediately and without notice of default being required - and shall owe the statutory interest due on the invoice amount, plus two percentage points, from the due date until settlement in full.
- 6.6 The rate for extrajudicial collection costs shall be 15% on the first EUR 2,500 of the principal sum plus interest, and 10% on the balance, subject to a minimum of EUR 100 per invoice.

#### Article 7 - Complaints and disputes

- 7.1 The Client shall be required to notify the Translation Agency in writing of any complaints about the product supplied or service rendered by the Translation Agency as soon as possible, yet no later than ten working days after the said product is supplied or the said service is rendered. Lodging a complaint shall not release the Client from its payment obligations.
- 7.2 Should the Client query the accuracy of specific passages of the translation supplied by the Translation Agency and ask the Translation Agency for its comments, and should the Translation Agency subsequently be able to demonstrate that the passages in question are not incorrect, the Translation Agency shall be entitled to charge the Client in full for the additional time spent on dealing with the query and for any other expenses incurred in this connection.

- 7.3 If the Client does not lodge a complaint within the period specified in clause 7.1 above, the Client shall be deemed to have fully accepted the product supplied or the services rendered by the Translation Agency, and complaints shall only be considered if the Translation Agency at its sole discretion deems such to be expedient. Any changes made by the Translation Agency, at the Client's request, to any part of the translated or edited text shall in no way constitute an acknowledgement on the part of the Translation Agency of supplying an inferior product or rendering an inferior service.
- 7.4 In the case of a valid complaint, the Translation Agency shall be allowed a reasonable period of time to improve or substitute the product or service. If the Translation Agency in all fairness is unable to make the required improvements or to substitute the product or service, it may grant the Client a discount.
- 7.5 If the Client and the Translation Agency prove unable to settle their dispute amicably within a reasonable period of time, they may refer it to the ATA Arbitration Committee within two months once it has become apparent that no settlement will be reached. The dispute shall then be settled by an arbitral tribunal in accordance with the ATA Arbitration Rules (*Geschillenreglement ATA*). If the Client wishes to submit a dispute for arbitration on the basis of these Arbitration Rules, the Translation Agency shall be required to concur in and assist with this procedure. The Arbitration Committee's decision shall be binding on both parties.
- 7.6 The Client's right to complain shall lapse if the Client has itself edited or has instructed others to edit the part or parts of the product forming the subject of the complaint, regardless of whether the Client has subsequently supplied the product to a third party or not.

#### Article 8 - Liability and indemnity

- 8.1 The Translation Agency shall exclusively be liable to the Client for any loss or damage directly and demonstrably deriving from shortcomings attributable to the Translation Agency. The Translation Agency shall under no circumstances be liable for any other forms of loss or damage, such as indirect loss, consequential loss, trading loss, loss caused by delay in performance or loss of profit.
- 8.2 The Translation Agency's liability shall never exceed the invoice value, exclusive of VAT, of the part of the product or service in question, which part has already been invoiced and/or supplied or rendered. The Translation Agency's liability shall never exceed EUR 45,000 per event or per sequence of related events.
- 8.3 Ambiguities in the text to be translated shall release the Translation Agency from any liability whatsoever.
- 8.4 The question of whether (the use of) a text to be translated or edited or the translation or edited version of such text, produced by the Translation Agency, entails any risk of bodily injury shall be entirely at the Client's expense and risk.
- 8.5 No liability whatsoever shall be incurred by the Translation Agency in respect of damage to or loss of documents, data or data carriers made available to facilitate performance of the contract. Nor shall any liability be incurred by the Translation Agency in respect of any costs incurred and/or any loss or damage sustained as a result of (i) the use of information technology and telecommunications media, (ii) the transport or dispatch of data or data carriers, or (iii) the presence of computer viruses in any files or data carriers supplied by the Translation Agency.
- 8.6 The Client undertakes to indemnify the Translation Agency against any claims by third parties deriving from the use of the product supplied or the services rendered.
- 8.7 The Client similarly undertakes to indemnify the Translation Agency against any claims by third parties on account of alleged violation or infringement of property rights, proprietary rights, patent rights, copyrights or any other intellectual property rights in connection with the performance of the contract.

#### Article 9 - Dissolution and force majeure

- 9.1 If the Client fails to meet its obligations, if the Client is declared insolvent or bankrupt or if a petition is filed for the Client's compulsory liquidation or bankruptcy, if the Client applies for or obtains a moratorium, if the Client is subject to an arrangement under the debt rescheduling regulations for natural persons or if the Client's company or business is liquidated, the Translation Agency shall have the right, without being required to pay any compensation, to dissolve the contract in whole or in part or to suspend performance of the contract. The Translation Agency shall in that case be entitled to demand immediate payment of any outstanding amounts.

- 9.2 Should the Translation Agency prove unable to meet its obligations due to circumstances beyond its control and risk, it shall be entitled to dissolve the contract without being liable to pay any compensation whatsoever. Such circumstances (force majeure) include, but are not limited to: fire, accidents, illness, strikes, riots, war, terrorist attacks, transport restrictions and delays, government measures, disruption of the services of Internet providers, negligence on the part of suppliers or any other circumstances beyond the Translation Agency's control.
- 9.3 If the Translation Agency is compelled by force majeure to discontinue further performance of the contract, it shall retain the right to payment for any work performed up to that moment as well as reimbursement for any costs and out-of-pocket expenses incurred.

#### Article 10 - Copyright

Barring explicit agreement in writing to the contrary, the copyright on translations produced by the Translation Agency shall devolve upon the Client at such time as the Client meets all its financial and other obligations to the Translation Agency in full with respect to the work in question.

#### Article 11 - Governing law

- 11.1 The legal relationship between the Client and the Translation Agency shall be governed by Netherlands law.
- 11.2 Any disputes in respect of which no binding decision has been given by the ATA Arbitration Committee in accordance with clause 7.5 above shall be submitted for judgment to the competent court at the place where the Translation Agency has its office.

#### Article 12 - Registration

- 12.1 These General Terms and Conditions were filed with the Utrecht Chamber of Commerce on 3 April 2003 under file number GV 4131.
- 12.2 The Association of Translation Agencies is listed in the Register of Associations of the Utrecht Chamber of Commerce under number 40482690.

The original Dutch text of these General Terms and Conditions shall prevail over versions published in any other language.

A copy of these General Terms and Conditions shall be made available free of charge upon request.