

Gabriele François - Standard Terms and Conditions as at Feb. 1, 2010

1. Scope

(1) Unless otherwise stated and insofar as allowable by law, the terms and conditions hereunder apply to contracts between the translator (Gabriele François) and customer. The customer hereby accepts the terms and conditions hereunder, which shall apply for the duration of the contractual relationship between the parties. Any noncompliance with the provisions hereunder shall be subject to a written agreement between the parties.

(2) The customer's standard terms and conditions shall only apply to the translator insofar as the translator accepts such terms and conditions in writing.

(3) Where the customer acts on behalf of a third party, the translator shall have a contractual relationship with the customer only. The customer shall fulfill their payment obligations as provided in item 10 hereunder in a timely manner, irrespective of any payments effected by any end customer.

2. Order placement

(1) Prior to acceptance of the order, the translator shall submit to the customer a document (hereinafter referred to as "order overview") containing all data pertaining to the order, including at a minimum the customer's name and full address, the delivery modality, delivery date, and estimated or exact price.

(2) The translation order shall be deemed to have been issued insofar as the customer expressly accepts the order overview as well as the terms and conditions hereunder, via email, fax or postal mail.

(3) Where, prior to issuance of the order, the customer provides the translator with an incomplete version of the source text, the translator shall be entitled to refuse the order insofar as, upon receipt of the definitive text from the customer, it emerges that the contents, length, complexity or any other attribute of such text are inconsistent with the information provided previously by the customer, or where the circumstances as provided in item 6.3 hereunder obtain. Any liability claim on the part of the customer arising from such order refusal shall be excluded.

3. Scope of translation orders

The translation shall be performed with due care in accordance with prevailing professional standards. The translation delivered to the customer shall comply in all respects with the agreed manner of execution as provided in the order overview.

4. Customer's obligations

(1) The translator shall be entitled either to ask the customer to clarify any aspect of the text or to translate the text understandably to the translator's best ability.

(2) The customer shall indicate to the translator in writing and in a timely manner the purpose of the translated text (e.g. company information, letter to a third party) as well as any specifications in regard to the execution modality of such translation (e.g. translation on a data carrier, number of copies, text for printing, type of text, formatting requirements etc.).

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(3) Where the translation is to be printed out, the customer shall advise the translator of this fact in advance and shall provide the translator with a proofing copy of the translation prior to printing. Where the customer fails to provide such proofing copy, the translator shall not be responsible for any deficiency in the translated text. The customer shall submit a copy of the final printed text to the translator.

(4) The customer shall provide the translator with any information and documentation that the translator may require in order to execute the translation. Such information (e.g. customer's glossary, mandatory company terminology, graphics, drawings, tables, explanations of abbreviations etc.) shall be provided automatically and upon issuance of the order or immediately thereafter. Where such documentation is not provided, technical terminology shall be translated in a conventional and generally understandable fashion. The translator shall not be responsible for any error in the translation that results from a failure on the customer's part to provide any or all of the aforementioned documentation.

(5) The customer shall indemnify and hold the translator harmless from all copyright claims including any secondary or ancillary costs arising therefrom, insofar as such claims are lodged by the author of the source text against the translator and arise from the translation executed by the translator.

(6) The customer shall confirm receipt of the translation immediately upon receipt thereof via email, fax or postal mail.

5. Delivery deadlines, force majeure

(1) The translator shall be deemed to have defaulted on a delivery date insofar as such date has been agreed upon in writing and the translator is responsible for such default.

(2) The translator shall have no responsibility for any default on delivery insofar as such default is provoked by force majeure or occurs for cause (e.g. illness, power failure, computer virus etc.). The translator shall immediately advise the customer of such default.

(3) In the event of a default for cause, both parties shall make good faith efforts to perform the contract. Any later delivery deadline shall be subject to a written agreement by both parties.

(4) In the event of a default for cause, either party shall be entitled to terminate the contract insofar as such termination is effected in writing. The customer shall remunerate the translator for any services rendered by the translator prior to such termination. In such cases, the enforcement of any other right, including the right to lodge a liability claim, shall be excluded.

6. Data protection, confidentiality

(1) The translator shall keep confidential any information regarding the customer and/or the customer's company of which the translator gains knowledge while performing the contract hereunder.

(2) The translator shall be entitled to make the translation available to third parties as a professional reference insofar as such translation has been published as a printed document, on the internet, or in any other venue.

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(3) Application of items 6.1 and 6.2 hereunder shall be excluded insofar as the content of the translated text is in violation of the law or is an affront to common decency. The translator shall be entitled to decline to translate such text, including after acceptance of the order.

7. Termination

(1) Where the customer terminates the contract without cause, the customer shall remunerate the translator for any translation that has been performed up to the time of such termination, and at the agreed upon price.

(2) The translator shall deduct from the customer's bill any expenses saved as a result of the contract having been terminated. Where the translator receives another order that occupies the working time that had been set aside to fulfill the customer's order, any income earned from such new order shall be deducted from the total amount of the customer's bill.

(3) Such termination shall be effected in a writing.

8. Liability

(1) The translator shall only be liable for damage insofar as the damage results from gross negligence. The translator shall also be liable for material damage insofar as such damage is provoked by carelessness and any contractual provision has been violated.

(2) Insofar as allowable by law, the translator's liability for insurable damage shall be limited to the total amount of insured liability (100,000 euros for material damage and 3 million euros for personal damage). The translator's liability for non-insurable damage shall be limited to the total amount invoiced by the translator to the customer for the order in question.

(3) The translator shall not be responsible for the accuracy or correctness of the source text, particularly in regard to any legal or technical matters.

(4) The customer shall indemnify and hold the translator harmless from any liability claims lodged by third parties (non-contractual parties).

(5) The translator shall not be liable for any damage or loss arising from transmitting or sending the translation. Although the translator uses an updated computer virus protection program, the translator shall not be liable for any damage provoked by computer viruses.

(6) The translator shall not be liable for the loss of any document provoked by fire, water, natural disasters, break-in or theft. The translator shall not be liable for default on delivery (pursuant to item 5 hereunder) that is provoked by such causes.

(7) The translator shall not be liable for any changes effected in the translation by the customer or any third party. The translator shall not be liable for any circumstance arising from the cases pursuant to section 4 hereunder.

9. Correction of defects, warranty

(1) The translator shall not be liable for any defects in the translation that are provoked by any illegible, erroneous or incomplete text, or erroneous terminology provided by the customer.

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(2) The translator shall correct any defect in the translation with the exception of defects as provided in section 9.1 hereunder. Within eight days of receiving the translation, the customer shall notify the translator of any quality defect in the translation and shall adequately explain any such defect in a writing. Where the translator is not notified of any quality defect in the translation within such time period, the translation shall be deemed to be free of any defect and the customer shall henceforth waive his right to lodge any claim in regard to the translation.

(3) The translator shall be afforded the opportunity to correct any quality defect in the translation. The customer shall set a reasonable deadline for the correction of any such defect. Where the customer fails to allow such deadline, the translator shall not be liable for any quality defect in the translation. Where the translator fails to correct any defect within the prescribed deadline, the customer shall be entitled to demand a reduction of the fee for the translation. Application of such right to a reduction shall be excluded where the defect is immaterial or irrelevant.

(4) Warranty claims shall not entitle the customer to withhold payment of the agreed amount.

10. Remuneration, terms of payment

(1) The price of the translation shall be based on the length, complexity and level of difficulty of the source text. The price indicated in the order overview shall be binding insofar as such price is a firm price. Where such price constitutes an estimate, the invoice amount shall be calculated on the basis of the work that was actually performed.

(2) Unless otherwise agreed, the price of the translation shall be based on lines for customers in Germany and on words for all other customers. TextCount software shall be used to count words or lines for purposes of billing. In lieu of billing on the basis of a line count, the customer and translator may agree upon a fixed price either for translation or for any other service rendered by the translator such as editing, proofreading or research. Each order shall be subject to a minimum price of 20 euros irrespective of its scope, and any certified translation shall be subject to a five euro surcharge. Sales tax (VAT), insofar as required by law, shall be added to the agreed upon price of the translation.

(3) Per-line prices shall be based on the number of 55 character lines in the source text, including spaces; partial lines shall be counted as whole lines. Where the customer provides the text in a non-electronic form, the price shall be based on the translated text.

(4) Payment shall be due immediately upon delivery of the translation without any discount whatsoever. The acceptance deadline shall be as indicated in item 9.4 hereunder. In special cases, e. g. for first orders, the translator is entitled to claim cash in advance or on delivery.

(5) The translator shall be remunerated at the agreed upon fee and shall be reimbursed for any expenses (e.g. research) for which the customer has agreed to effect payment. In the case of large-scale projects, the translator shall be entitled to require a deposit on account in an amount needed in order to fulfill the contract. Insofar as warranted, the translator shall be entitled to require payment of the full contractual amount prior to delivery of work carried out in exchange for the deposit on account.

(6) Where the amount of the translator's remuneration is stipulated in advance, the translator shall receive reasonable and industry-standard remuneration in accordance with the type and difficulty of the translation in question. Such remuneration shall be, at a minimum, in accordance with the Justizvergütungs- und -entschädigungsgesetz (JVEG) (German Court Payment and Reimbursement Act).

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11. Copyright, retention of title

(1) The translation shall remain the property of the translator until payment for the translation has been effected in full. The customer shall have no right of use to the translation until such payment has been effected.

(2) The translator shall hold the copyright to the translation pursuant to section 3 UrhG (Copyright Act).

(3) Except with prior written authorization from the translator, the customer shall not be entitled to (a) pass on the translation and/or transfer the rights arising thereto to any third party and/or (b) archive the translation in any database system, or process or use such translation electronically in any online or other system.

(4) No omissions or additions may be effected in the translation that either falsify or change the meaning of such translation. The content of the translation shall not be distorted or otherwise interfered with pursuant to section 14 UrhG (Copyright Act).

(5) In the case of certain translations slated for publication, the translator shall be clearly credited by name, and shall be provided with a proofing copy of such translation for approval in a timely manner.

(6) In the event a translation realized by the translator is published on the internet, the customer shall provide the translator with the name of the website on which the translation is to be published. In such case, a prominently visible link that says either "Translated by Gabriele François" or "Traduit par Gabriele François" shall be posted on the translator's website <http://www.francois-fachuebersetzungen.de>.

12. Applicable law, court of jurisdiction, place of fulfillment, separability

(1) German law shall apply to the order and any claim arising thereto. The court of jurisdiction and place of fulfillment shall be Osnabrück, Germany.

(2) Should any individual provision be or become void, illegal or unenforceable, the validity of the remaining provisions herewith shall in no way be affected. In such a case, the parties shall undertake to replace any provision that has become ineffective with a clause whose effectiveness and realizability are as close as possible to the intentions of the invalid clause.

(3) The separability clause shall be invoked solely where no dispositive law exists as a substitute and where such clause allows for a supplementary construal of the contract.

January 1st, 2005