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## **GENERAL TERMS AND CONDITIONS OF BUSINESS**

### **§ 1 General, scope of application**

- (1) These general terms and conditions of business (hereinafter: "TCB") shall apply to all business relations between Telelingua Deutschland GmbH (hereinafter: "Telelingua") and its clients. These TCB shall apply in particular to contracts for language services, such as inter alia translation and interpreting, and to all associated services including all additional services, regardless whether Telelingua provides these itself or has the services provided by third parties, in particular its subsidiaries. These TCB shall apply as amended – including to future contracts with the same client -, without requirement for reference to them in each individual case.
- (2) These TCB shall apply exclusively. Deviating terms, including supplementary general terms and conditions of business of the client, shall apply only where and to the extent that Telelingua has agreed to their application expressly in writing. This shall also apply where Telelingua has accepted the contractual offer without reservation, having knowledge of the general terms and conditions of business of the client.
- (3) Individual agreements with the client (including additions and amendments) shall take priority over these TCB.
- (4) Declarations made by the client to Telelingua following conclusion of the contract (e.g. setting deadlines, notification of defects, rescission notices) must be in text form or by telecommunication transmission in order to be effective.

### **§ 2 Conclusion of contract, subject matter of contract, sub-contractors**

- (1) Telelingua shall produce a non-binding quotation for the production of a translation on the basis of the information and data provided by the client. Quotations by Telelingua are subject to alteration and non-binding. If Telelingua provides a quotation designated as binding, the contract shall be concluded on acceptance of the quotation by the client. The client's order is a binding offer. A contract is made only on confirmation of an order by Telelingua or by delivery or invoicing of the legally binding order of the client.
- (2) The respective subject matter of the contract is derived solely from the confirmation or the performance/delivery of the binding order of the client by Telelingua or from the binding

quotation of Telelingua confirmed by the client (hereinafter for all alternatives: "Confirmed Quotation").

- (3) Prices and delivery dates can be withdrawn at any time where Telelingua was not able to inspect the complete text for translation or processing prior to production of the quotation.
- (4) Telelingua can refuse to translate a text. This shall apply in particular in cases of texts delivered for translation with content liable to prosecution and texts that transgress standards of moral decency, and texts where the provision of a translation of suitable quality in the client's time scale appears to be untenable by reason of difficulty and/or size.
- (5) Telelingua may also have the services due under the contract provided by third parties, in particular its subsidiaries, unless the client has justified objections to the third party.

### **§ 3 Provision of services, amendment of contract, termination of contract**

- (1) Telelingua shall provide the translation and the agreed services in accordance with the agreed terms. Telelingua undertakes to translate or have translated a text provided by the client competently and correctly into the agreed language(s) and to ensure that the translation is made without abridgements, additions or other alterations to content. Translations will be provided thereby in accordance with the literal and/or implied meaning of the original text according to the average, generally accepted quality standards of the translation industry in the relevant language region. The observance of individual specialist terminology as established by the client shall be by specific corresponding agreement only.
- (2) Telelingua shall deliver the finished translation in the form agreed. Certifications, adaptations of foreign language advertising texts, website and software localisation, text entry, type-setting and printing work, formatting and conversion, expedited deliveries, creation and extension of a terminology list or a glossary are not part of the contract save where otherwise expressly agreed.
- (3) Telelingua shall normally provide the contractual services by the agreed dates. If Telelingua cannot comply with a binding agreed delivery period for reasons for which Telelingua is not responsible, the agreed deadlines shall be postponed appropriately, at least for the duration of the events impeding compliance. Telelingua shall inform the client without delay of the anticipated new delivery date.
- (4) If performance by Telelingua is delayed by reasons for which the client is responsible, Telelingua may demand compensation in respect of the resulting damage and any additional expenses. All other claims and rights remain reserved.
- (5) The delivery of the contractual services by Telelingua shall be deemed completed at the date of despatch by post, fax, telex, courier, modem and/or Internet etc. The delivery of data by email shall be deemed to have taken place at the time the email delivery has been confirmed by the medium.
- (6) Where the client desires to alter the contractually defined scope of the services to be provided by Telelingua, this must be communicated to Telelingua in text form. The desired alteration shall become part of the contract on confirmation by Telelingua in text form.

- (7) The client shall be liable for the costs arising from the desired alterations. These include in particular the checking of the desired alteration, the production of a new concept and any down time (e.g. in relation to translators already scheduled/commissioned).
- (8) If following conclusion of the contract the client desires material changes to the order, Telelingua may either alter the quoted price and/or delivery period or decline the order. In the latter case the client must pay for translations already carried out/other services and compensation for any increased expenditure of Telelingua. All other claims and rights remain reserved. In the event of declining to complete the order Telelingua shall provide at the request of the client the translation work already carried out, but shall provide no assurance in respect of its quality.
- (9) If the client terminates the awarded order following conclusion of the contract or if it otherwise ends it prematurely, Telelingua may invoice for the translations/other services already carried out and for compensation for additional expenditure by Telelingua. All other claims and rights remain reserved. In the event of premature termination of the contract at the request of the client Telelingua shall make available the translation work already carried out, but shall provide no assurance in respect of its quality.

#### **§ 4 Client's obligations of cooperation**

- (1) The client must make available all information/documents required for the performance of the order, including the necessary source material, such as e.g. hard copies, data files etc., and shall specify to Telelingua the desired method of delivery (in particular type of file, paper form, etc.). The client is responsible for the content of all information/documents supplied to Telelingua. Where the client provides Telelingua with software for the purposes of carrying out the order, the client shall ensure that all legal provisions related thereto, in particular licence agreements and other obligations to third parties, are complied with. If the client does not have the necessary user rights it shall inform Telelingua thereof when supplying the software. In the event of claims by third parties by reason of alleged infringement of third party rights associated with the information/documents provided, in particular software, the client must indemnify Telelingua against liability immediately at the time of the first demand.
- (2) Where industry standard software is required for the carrying out of the order, the client shall make this available to Telelingua for the carrying out of the order.
- (3) Defects must be notified to Telelingua by the client in text form immediately on being discovered.
- (4) Where services due by Telelingua are to be accepted, the client must confirm acceptance to Telelingua immediately in text form, as soon as the services have been substantially performed or the client is asked by Telelingua to accept the services. Acceptance shall also be deemed to have taken place where the client has not within 30 days of substantial performance or request for acceptance specified in text form the reasons for refusing acceptance. Acceptance shall also be deemed to have taken place where the client starts using the product supplied by Telelingua.

- (5) If the client does not comply with an obligation to cooperate even after a reasonable period has been set with threat of withdrawal, Telelingua may terminate the contract or withdraw from it with immediate effect. In this event Telelingua may also invoice for all work completed to this point at cost in accordance with the rates of remuneration agreed between the parties or the applicable price list of Telelingua.

## **§ 5 Remuneration, payment terms, rights of off-setting and retention**

- (1) Save where otherwise expressly agreed in text form, the remuneration of Telelingua for translations shall be on the basis of a fixed price per word (number of words in the source text). For all additional services, including desktop publishing, interpreting, project management, terminology work, SEO, etc. either there shall be agreed a separate remuneration agreement or the fee will be based on the relevant cost (hours spent).
- (2) The level of remuneration and the payment terms are set out in the Confirmed Quotation. Statutory VAT is not included herein. The fee plus statutory VAT shall be due for payment, save where otherwise agreed, within 30 days of the invoice date and payable without deductions.
- (3) On expiry of the payment period the client shall be in default. During a period of default Telelingua may charge interest on the fee at the relevant statutorily applicable interest rate.
- (4) The client may only assert rights of set-off or retention where its claim has been legally established, is not disputed or is accepted by Telelingua. A right of retention may be exercised by the client only where its counterclaim arises from the same contract.

## **§ 6 Property, use and exploitation rights**

- (1) Telelingua grants to the client - on payment in full of the agreed remuneration and all other current fees due under the ongoing business relationship - the simple right unlimited in time, content or region, to use and exploit the contractual work/translations and other services provided for the client. The client may transfer such rights to third parties without the requirement for the prior written agreement of Telelingua.
- (2) Telelingua confirms that all information/materials that are in the Translation Memories ("TM") and glossaries are and remain the property of Telelingua, unless otherwise agreed with the client.

## **§ 7 Retention of title**

- (1) Until payment in full of all current outstanding fees under the respective contract or an ongoing business relationship Telelingua reserves ownership of the supplied contractual subject matter.

- (2) The contractual subject matter subject to retention of title may not, prior to payment in full of the secured claims, be published or pledged to third parties or used as security. The client must inform Telelingua immediately in writing when and to the extent that third party claims are made in respect of contractual subject matter belonging to Telelingua.

## **§ 8 Confidentiality**

- (1) Telelingua shall keep confidential the information/data/documents provided by the client for the performance of the contract and shall not make them accessible to third parties outside its concern not involved in the performance of the contract.
- (2) Telelingua shall also ensure confidentiality where and in so far as it is working with sub-contractors in the course of the performance of the contract under § 2 (5).

## **§ 9 Warranty**

### **(1) Duty to check and give notice of defects**

The client must check the contractual subject matter carefully immediately on receipt. Complaint may be made about apparent defects only within 10 days after receipt of the contractual subject matter, about other defects within 10 days after discovery of the defect, but at the latest within 30 days after receipt of the contractual subject matter (cut-off period). The complaint must be made in text form. It shall be sufficient to despatch the notification within the relevant period. If the client fails to carry out a proper check and/or properly notify defects, the liability of Telelingua shall be excluded for the unnotified defects.

### **(2) Rectification**

In the event of material defects the client may in the first instance only claim rectification. Telelingua can provide rectification by correction or replacement delivery. The client's right to claim rectification is excluded where the defects have been caused by the client e.g. through incorrect or incomplete information, erroneous and/or incomplete original texts. In the case of justified properly raised complaints Telelingua may at its election rectify the translation at least twice or provide a replacement. The client shall remain obligated to accept the service provided and to make payment for it.

### **(3) Statutory provisions for defects of quality and title**

If the defect is not corrected notwithstanding two rectifications, if Telelingua is not willing or able to rectify or re-deliver, if this is not done within a reasonable period or if supplementary performance fails for other reasons, statutory provisions for defects of quality and title shall apply. Any notices of withdrawal or termination on the part of the client shall have no effect on the other contracts between the client and Telelingua, but must be made individually. In the case of a minor breach of contract, in particular in the case of minor defects, the client has no right of withdrawal.

## **§ 10 Liability**

- (1) Telelingua shall be liable regardless of the legal basis (e.g. breach of duty, negligence) for damages or compensation for wasted expenditure in accordance with the following provisions:
  - (a) in the event of intent or gross negligence on the part of lawful representatives or management personnel or grave organisational negligence, without limitation;
  - (b) subject to limitation of the amount to the contractually typical damage reasonably foreseeable at the time the contract was concluded, where the damage is caused by ordinary vicariously liable agents intentionally or through gross negligence;
  - (c) in the case of slight negligence on the part of lawful representatives, management personnel and other vicarious agents, where there is breach of a duty compliance with which is of special significance for achieving the purpose of the contract (material contractual duty). Liability is limited for each incidence of damage to three times the respective remuneration amount or to a maximum of the contractually typical damage reasonably foreseeable at the time the contract was concluded. Otherwise liability for damage caused by slight negligence and for loss of profit is excluded.
  - (d) Contractually typical damage reasonably foreseeable at the time the contract was concluded does not include damage consequential from the direct use of a text translated by Telelingua. In this respect the client in reviewing translations is also subject to a special duty to check.
- (2) Since the client is responsible for regularly backing-up its data, Telelingua shall be liable in the event of data loss caused by it only for the copying and replacement costs that would also be incurred in the course of a properly conducted data back-up.
- (3) Liability for the breach of a guarantee given, by reason of fraud, under the German Product Liability Act ("Produkthaftungsgesetz") and for fatal injury, personal injury or damage to health shall be in accordance with the statutory provisions.
- (4) The client undertakes to mitigate its loss. This shall include immediate notification in text form to Telelingua of any losses within the meaning of the liability provisions above.

## **§ 11 Limitation**

- (1) Claims by the client on the grounds of defects of quality or title (§ 9) shall be time-barred within one year of delivery of the subject matter of the contract.
- (2) For other claims of the client under the contract or an obligation (S.311 ss. 2 German Civil Code (Bürgerliches Gesetzbuch or "BGB") there shall apply a limitation period of one year from the statutory commencement of the limitation period. Claims shall be time-barred at the latest on the expiry of the statutory maximum period (S.199 ss. 3 and 4 BGB).
- (3) In case of personal injury and in the event of intent and gross negligence the statutory limitation periods shall apply.

## **§ 12 Place of performance, applicable law, jurisdiction**

- (1) Place of performance for deliveries and services is the location that has been contractually identified as the performance address in the Confirmed Quotation, and in cases of doubt it shall be the headquarters of Telelingua Deutschland GmbH.
- (2) The TCB and the contracts concluded on the basis of the TCB are subject to the law of the Federal Republic of Germany excluding the UN Convention on Contracts for the International Sale of Goods.
- (3) If the client is a business person, legal entity under public law or a special fund under public law, the court having exclusive jurisdiction for all disputes arising from the TCB and the contracts concluded on the basis of the TCB shall be the court responsible for the headquarters of Telelingua Deutschland GmbH. The same shall apply where the client is not subject to any general court of jurisdiction within Germany Telelingua may however bring its claims within the jurisdiction of the client.

## **§ 13 Severability clause**

Should individual provisions of these TCB be or become wholly or partially void, or should there be an omission from these TCB, then the validity of the other provisions shall not be affected thereby. There shall be deemed agreed in place of the void provisions a valid provision that corresponds to the meaning and purpose of the void provision. In the case of an omission there shall be deemed agreed a provision that corresponds to the provision that would have been agreed in accordance with the meaning and purpose of these TCB, had this issue been considered at the outset.