

Karen Rutland

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BA, Dip Trans (IoLET), MCIL CL (Translator), MITI

General Terms and Conditions of Business

1. Definitions

In these General Terms and Conditions of Business (T&Cs):

- a) The **Client** is the party that places the Assignment in the normal course of business.
- b) The **Service Provider** is Karen Rutland, the linguist providing the completed Assignment in the normal course of business. The Service Provider shall normally be the creator of the Assignment unless the Client has been explicitly informed that the Assignment will be subcontracted or the Service Provider trades as an intermediary.
- c) The **Assignment** is the period during which the task placed with the Service Provider by the Client is carried out, commencing at the time the Service Provider first starts such work and services and ending upon the cessation by the Service Provider of all such work and services, and may comprise translation, abstraction, revision, editing translations or any similar or associated work, but not copywriting or transcreation.
- d) The **Source Language** is the language in which the text of the Assignment that is to be translated or abstracted is written.
- e) The **Target Language** is the language into which the text of the Assignment is to be translated or the abstract is to be written; any text to be revised or edited will also be in the Target Language.
- f) For the purpose of the Assignment and related work, **Requirements** shall include the required layout, software, deadlines, target language and variant, the purpose of Assignment or related work (e.g. whether for publication, information only, etc.), method of delivery, any special terminology to be used, whether proof-reading/checking will be done by the Client, etc.
- g) A **Third Party** is any party who is not a party to this Agreement.
- h) The **Agreement** means these standard terms of business.

2. Interpretation

In this document:

- a) No part of any numbered clause shall be read separately from any other part. Section headings are provided for convenience only and shall be ignored for the purpose of ascertaining meaning.
- b) Words in the singular shall include the plural and vice versa.
- c) No part of any numbered clause shall be read separately from any other part.
- d) Clause headings are provided for convenience of reading only and shall be ignored for the purposes of ascertaining meaning.
- e) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- f) References to a "Party" or the "Parties" mean the parties to this Agreement. Such Parties may be natural or legal persons, including, for example, private individuals, associations, partnerships, economic interest groupings or corporate entities.
- g) Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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3. Purpose

These Terms and Conditions of Business are intended:

- a) as a basis for executing Assignments and will be made available to Client(s) on request;
- b) to form the basis of a good working relationship between Client(s) and the Service Provider.

4. Fees: (binding) quotations and (non-binding) estimates

4.1. The basis on which fees are calculated shall be agreed before the Assignment commences, as shall the charges to be made for any additional Requirements, e.g.:

- special delivery
- courier charges
- travel costs
- expenses

or issues arising from, e.g.:

- discontinuous text, complicated 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 Assignments or Assignments to be completed outside normal office hours in order to meet the Client's deadline or other requirements.

4.2. In the absence of any specific agreement, the fee to be charged shall be determined by the Service Provider on the basis of the Client's description of the source material, the purpose of the Assignment and any instructions given by the Client.

4.3. Any estimate based on the Client's description of the Assignment shall not be considered contractually binding but given for guidance or information only until the Service Provider has submitted a quotation based on full sight of the Assignment.

4.4. No fixed quotation shall be given by the Service Provider until she has seen or heard all the source material and has received firm instructions from the Client.

4.5. Fees may be varied after the Assignment has commenced if it emerges that not all relevant information has been provided and/or if there are any changes to the Source Text or Requirements while the Assignment is in progress.

4.6. Any fee quoted, estimated or agreed by the Service Provider on the basis of the Client's description of the Assignment may be subject to amendment by agreement between the Parties if, in the Service Provider's opinion on having seen or heard the source material, that description is materially inadequate or inaccurate

4.7. Any fee agreed for an Assignment 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.

4.8. Where VAT is chargeable it will be charged in addition to the quoted fees and supplements. VAT Registration No.: GB169 5771 56

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- 4.9. Subject to 4.4 above, a binding quotation once given after the Service Provider 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.
- 4.10. Costs of delivery of the Assignment shall normally be borne by the Service Provider. 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 Service Provider, it shall not be borne by the Client, unless otherwise agreed.
- 4.11. All Assignments must be paid for.

5. Acceptance of an Assignment

- 5.1. Having regard to her other commitments, the Service Provider shall not be obliged to accept an Assignment if the Client asking for a quotation fails to place the Assignment within five (5) working days.

6. Delivery and delivery date(s)

- 6.1. Delivery date(s) shall be binding only when the Service Provider has had full sight of the Source Material and received complete instructions from the Client. They may be subject to alteration if any amendment is made to the requirements after the Assignment has been placed.
- 6.2. The Service Provider undertakes to deliver the Assignment promptly to the Client and shall not be held responsible for any loss, damage or late delivery of the Assignment due to the postal or telecommunication services or to force majeure (see 15).
- 6.3. The date of delivery shall not be of the essence unless specifically agreed in writing.
- 6.4. Unless otherwise agreed, the Service Provider shall dispatch the Assignment 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.
- 6.5. The Service Provider will always try to be flexible in order to meet a particularly urgent deadline, but in general Clients should give as much notice of the need for the Assignment as possible and relevant to the amount of work involved.
- 6.6. Clients are requested to acknowledge safe receipt, particularly of e-mailed Assignments. However, an Assignment is deemed to have been received by the Client even if it is not acknowledged, unless the Service Provider is advised by the Client's server that it was not possible to deliver the message with the attachment. In such cases, the Service Provider will telephone the Client, who should make arrangements for an alternative address or method of delivery to be provided.

7. Payment

- 7.1. Payment shall be made in full within thirty (30) days of the date of the invoice by the method of payment specified.
- 7.2. In the case of long Assignments, the Service Provider may request an initial payment and/or payment in instalments on terms to be agreed.
- 7.3. 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 7.1.

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- 7.4. Where delivery is in instalments and notice has been given that an interim payment is overdue, the Service Provider shall have the right to stop work on the Assignment in hand until the outstanding payment is made or other terms are agreed. This action shall be without prejudice to any sums due and without any liability whatsoever to the Client or Third Party.
- 7.5. Any payment that is not made before the due date shall bear interest at the rate of three per cent (3%) above the base rate of Barclays Bank calculated on a daily basis from the date when such payment fell due until the date of payment in full.
- 7.6. This action shall be without prejudice to any sums due and without any liability whatsoever to the Client or any Third Party.

8. Cancellation and frustration

- 8.1. In the event of cancellation or reduction in scope of the Assignment by the Client after it has been placed, or the Assignment is frustrated by an act or omission on the part of the Client or any third party, except in the circumstances described in 8.4 below, the Client shall be liable for all work complete up to the cancellation/reduction/frustration date and for all other costs and expenses which may accrue as a result of such cancellation/reduction/frustration in addition to 10% of the agreed/estimated fee based on the rate specified in 4, unless otherwise agreed.
- 8.2. The work completed shall be made available to the Client.
- 8.3. 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 Service Provider shall have the right to terminate a contract.
- 8.4. Neither the Service Provider 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.
- 8.5. The Service Provider shall notify the Client as soon as is reasonably practical of any circumstances likely to prejudice the Service Provider'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.

9. Intended use of the Assignment

- 9.1. The intended use of the Assignment shall always be agreed and stated. Unless specified otherwise, Assignments shall be deemed to be required to be of "for information" quality. The Client shall not use the Assignment for any other purpose without the agreement of the Service Provider.
- 9.2. If the field from which the text has been taken is a specific technical field, the Client is requested to provide as much background information as possible (e.g. web sites, glossaries, existing previous material or correspondence, explanation of business situation) in order to assist the Service Provider in providing a correct Assignment. This is particularly important for texts taken from a specific technical field or short Assignments where the context is not immediately clear.
- 9.3. In cases of doubt, the Service Provider will seek to clarify a specific technical term or concept with the Client direct. However, where the Assignment is destined for

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publication or for legal purposes, it is recommended that the Client arrange for an additional expert in the field to check the completed Assignment locally for current Client-specific terminology prior to publication.

- 9.4. Clients are urged to provide feedback with regard to specific technical terms so that these can be incorporated into the Service Provider's database of terms.

10. Copyright in source material and translation rights

- 10.1. If the Source Language text is copyright, the Service Provider shall only accept the Assignment on the understanding that the Client:
- a) has obtained the translation rights or;
 - b) will be using the translation only for private study.
- 10.2. The Client shall hold the Service Provider harmless for any claim for infringement of copyright and/or other intellectual property rights and translation rights and also from any legal action which may arise from the contents of the original in all case;
- 10.3. The Client likewise undertakes to keep the Service Provider harmless from any legal action including defamation which may arise as a result of the content of the original source material or its translation.
- 10.4. The Client shall indemnify the Service Provider against any loss, injury or damage (including legal costs and expenses and compensation paid by the Service Provider to compromise or settle any claim) which the Service Provider suffers as a consequence of any breach or alleged breach of any of the above warranties or as a consequence of any claim that the Source Material contains anything objectionable, libellous, blasphemous or obscene or which constitutes an infringement of copyright or of any other rights of any Third Party.

11. Copyright in translation

- 11.1. In the absence of a specific written agreement to the contrary, copyright in the translation remains the property of the Service Provider.
- 11.2. The Service Provider 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.
- 11.3. When it is agreed that copyright is to be 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) to the Client after translation, such copyright shall only be assigned when full payment for the Assignment has been received. Until such time, the copyright shall be owned by the Service Provider.
- 11.4. Copyright in any completed or residual part of a translation shall remain the property of the Service Provider, 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.
- 11.5. Copyright may subsist in material in written or spoken form or recorded in electronic form.
- 11.6. Where the Service Provider retains the copyright, unless otherwise agreed in writing, any published text of the translation shall carry the following statement: "©

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(English or other) text (Service Provider's name) (Year date)" as appropriate to the particular case.

- 11.7. Where the Service Provider assigns the copyright and the translation is subsequently printed for distribution, the Client shall acknowledge the Service Provider'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 (Service Provider's name)", as appropriate to the particular case.
- 11.8. If the translation is to be incorporated in translation memory, the Service Provider shall license the use of the translation for this purpose. It shall be the duty of the Client to notify the Service Provider that such use will be made of the translation.
- 11.9. All Assignments are subject to the Service Provider's right of integrity.
- 11.10. If the Assignment is in any way amended or altered without the Service Provider's permission the Service Provider shall not be in any way liable for the amendments made or their consequences.
- 11.11. If the Service Provider retains the copyright in an Assignment, or if an Assignment is to be used for legal purposes, no amendment or alteration may be made to an Assignment without the Service Provider's written permission. The right of integrity may be specifically waived in advance by the Service Provider in writing.

12. Confidentiality and safe-keeping of the Client's documents

- 12.1. No documents for the Assignment shall be deemed to be confidential unless this is expressly stated by the Client. However the Service Provider 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 completed Assignments without the express authorisation of the Client.
- 12.2. Nevertheless, when necessary, the Service Provider shall consult with colleagues about problems of terminology and other linguistic matters, but shall ensure in all cases that there is no disclosure of confidential material.
- 12.3. The Service Provider shall be responsible for the safe-keeping of the Client's documents and copies of the Assignment, and shall ensure their secure disposal.
- 12.4. If requested to do so by the Client, the Service Provider shall insure documents in transit from the Service Provider, at the Client's expense.
- 12.5. The Service Provider shall not make copies in addition to those required in the normal conduct of business and copies shall be for internal use only. Only such copies shall be retained as are required for professional indemnity insurance.
- 1.1. The Service Provider shall ensure that the need for confidentiality is made known to any Third Party (typists, checkers, proof-readers, etc.) employed.
- 1.2. The Client shall not disclose to Third Parties any information relating to the Service Provider or her business (e.g. fees, working methods, names and addresses/telephone numbers of individuals (e.g. typists/proofreaders) executing Assignments for her) without her permission.
- 1.3. The Service Provider will not make contact with my Client's direct clients without the express permission of the Client

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13. Responsibility and Liability

- 13.1. The Service Provider shall carry out the Assignment with reasonable skill and care and in accordance with the Code of Professional Conduct of the Chartered Institute of Linguists (CIoL) and the Institute of Translation and Interpreting (ITI).
- 13.2. Time and expense permitting, the Service Provider shall use her best endeavours to do the work to the best of her ability, knowledge and belief, and consulting such authorities as are reasonably available to her at the time.
- 13.3. A completed Assignment shall be fit for its stated purpose and target readership, and the level of quality specified.
- 13.4. Unless specified otherwise, completed Assignments shall be deemed to be required to be of "for information" quality.
- 13.5. While quality control is implemented, no liability can be accepted for any inadvertent inaccuracy in an Assignment, nor for any fine distinctions in tones or grades of vocabulary used, nor writing styles employed. It is understood that an Assignment is, to some degree, a creative piece of work, and one person may choose a term or style that another person may not like.
- 13.6. The liability of the Service Provider 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:
 - a) the potential for such liability is expressly notified to the Service Provider in writing, and
 - b) such liability is restricted to an agreed limit of cover under the professional indemnity insurance available to Language Service Providers

14. Unfair competition

- 14.1. Where in the course of business the Service Provider's Client is an intermediary and introduces the Service Provider to a third-party work-provider, the Service Provider shall not knowingly, for a period of 6 months from return of the last Assignment 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 the offered Services, without the Client's written consent.
- 14.2. However, this shall not apply where:
 - a) the third-party work-provider has had previous dealings with the Service Provider, or
 - b) the Service Provider acts on the basis of information in the public domain, or
 - c) the approach from the third party is independent of the relationship with the intermediary, or
 - d) the approach to the third party arises as the result of broad-band advertising, or
 - e) the third party is seeking suppliers on the open market, or
 - f) the intermediary only makes isolated use of the Service Provider's services.

15. Force Majeure

- 15.1. In the event of my being unable to complete the Assignment within the agreed time as a result of Force Majeure (i.e. fires, storms, flood or any other natural disaster, industrial dispute, civil commotion, acts of war, terrorism, power failures, equipment failures (including Internet and e-mail failures), illness or any other

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situation beyond her control), the Service Provider shall notify the Client of the circumstances, which shall entitle the Client and the Service Provider to withdraw from the contract for the Assignment.

15.2. The Client shall pay the Service Provider for any completed part of the Assignment and the Service Provider will use her best endeavours to assist the Client to place the Assignment elsewhere or take some other remedial action.

15.3. As a safeguard against hard disk failure or theft of computer equipment the Service Provider will back up all work externally on a daily basis.

16. Complaints and disputes

16.1. Failure by the Service Provider to meet agreed order requirements or to provide an Assignment which is fit for its stated purpose shall entitle the Client to:

- a) reduce, with the Service Provider's consent, the fee payable for work done by a sum equal to the reasonable cost necessary to remedy the deficiencies, and/or
- b) cancel any further instalments of work being undertaken by the Service Provider

16.2 Any complaint by the Client in connection with the Assignment completed by the Service Provider (or vice-versa) shall be submitted to the Service Provider within 30 days of the delivery date of the Assignment.

16.3 If a dispute cannot be resolved between the Client and the Service Provider, the matter shall be referred to the Chartered Institute of Linguists (CIoL) or Institute of Translation and Interpreting (ITI) for arbitration.

16.4 Any dispute about the quality of the Service Provider's Assignment shall be submitted to the Chartered Institute of Linguists (CIoL) or Institute of Translation and Interpreting (ITI) for Independent assessment.

16.5 Such entitlement shall only apply after the Service Provider has been given one opportunity to bring the work up to the required standard. This entitlement shall not apply unless the Service Provider has been notified in writing of all alleged defects.

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

16.7 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.

17. Applicable Law

17.1. These Terms and Conditions of Business shall be interpreted in accordance with English law, to which both the Client and the Service Provider, agree to submit in the event of any dispute.

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