

## **General Terms and Conditions**

### **§ 1 Scope of Terms and Conditions**

These General Terms and Conditions shall apply to all current and future business relations between the pro-diction GmbH (pro-diction) and its Clients, even if pro-diction does not refer explicitly to these General Terms and Conditions on accepting the individual contracts. pro-diction shall be moreover authorised to modify or amend these General Terms and Conditions. Client shall be informed of any modifications or amendments. Modifications and amendments to the disadvantage of Client shall permit Client in consequence thereof to terminate the contractual relationship without notice within one month after receipt of the notification of change. pro-diction hereby explicitly draws Client's attention to this right of termination. If Client does not terminate the contractual relationship, the modifications and amendments shall automatically take effect. Contracts shall be processed according to the following conditions. Any deviating terms and conditions of Client, which are not explicitly acknowledged in writing by pro-diction shall not be binding for pro-diction and shall be deemed to be contradicted. Ancillary agreements, warranties and any other agreements, in addition to modifications and supplements of the Agreement shall not be valid unless made in writing.

### **§ 2 Conclusion of contract**

If a contract is awarded by telephone on the grounds of a previously submitted quote, the contract has to be confirmed in writing. A contract shall not be processed before receipt of the written confirmation. pro-diction shall be entitled to subject the conclusion of a contract to the presentation of proof of a written proxy, an advance payment resp. the certificate of bond issued by a mayor German bank. In so far as no deviating term is given, price calculations by pro-diction shall be subject to change at all times and non-binding.

### **§ 3 Execution**

The translation services, or any other services related to the actual translation (for example, illustration, DTP, subsequent formatting, voice recordings etc.) shall be executed in due care according to the principles of proper professionalism. The above-mentioned additional services shall be settled in an extra agreement at the point of concluding the contract and shall be invoiced separately.

Technical terms, unless no special instructions or documents have been enclosed by Client, shall be translated in the generally customary and comprehensible and lexigraphically justifiable version. Depending on the meaning of the text translations shall be translated literally resp. in line with the specific mentality. Consideration of any special technical terminology adopted by Client shall only take place after coming to an appropriate agreement and if sufficient and complete documents, for example, previous translations or terminology lists are made available at the point of placing the contract. Technical terms shall otherwise be translated according to the quality standards otherwise normally applied. Names and addresses in documents which are not written in Latin letters, shall be translated literally or according to the phonetic alphabet, unless Client renounces a translation. Exclusively texts shall be translated. pro-diction reserves the right to reject documents with criminal contents or contents contra bonos mores. A contract may also be rejected, if a translation cannot be produced in an appropriate quality within the period specified by the Client on the grounds of difficulties and/or the scope of the original. This shall be in particular the case if the contract covers more than 4,800 lines, with each standard line having 55 characters including space characters. In the event of a rejection no claim for remuneration shall become due.

#### **§ 4 Client's obligations to cooperate and to render explanations**

Client shall inform pro-diction at the point of awarding the contract of any special requirements regarding the execution of the contract (translation on data carrier, provision of polished translation ready for press, layout, number of copies etc.).

Client shall make any and all information and documents required to produce the service available to pro-diction in due time, at the latest at the point of awarding the contract (Client's glossaries, illustrations, drawings, charts, abbreviations etc.).

Client shall give pro-diction the name of a qualified contact person who shall support pro-diction during the complete process of handling the contract and who shall also be authorised to bindingly release any material supplied by pro-diction. If it is not possible to nominate any such contact person, any and all of Client's claims with regard to stylistic, formal, design or terminology issues shall be forfeited in consequence thereof. If a translation is determined for print, Client commits himself to make a proof available to pro-diction. Translations which shall be printed at the instigation of pro-diction on behalf of Client, have to be explicitly released by Client in due time by signature.

If Client fails to meet his obligations in terms of cooperation and/or to render explanations, pro-diction shall be authorised to terminate the contract after an appropriate period of grace has elapsed. The claim for remuneration and substitution of the additional expenses incurred as a result of failure to cooperate as well as any possible damage caused shall remain, even if pro-diction does not make use of its right to terminate the contract. Errors and delays resulting from Client's non-compliance with his obligations to cooperate and/or render information, shall be exclusively justified by Client and shall not be to the disadvantage of pro-diction.

#### **§ 5 Modifications of contract**

If Client desires to modify the translation after placing the contract, the implementation of which is associated with additional expenses on the part of pro-diction, in such a case pro-diction shall be authorised to charge an appropriate additional fee to Client. If these change requests lead to a delay in executing the contract, any possibly agreed date of completion shall be amended accordingly.

#### **§ 6 Delivery schedules**

The dates of completion shall only be binding for pro-diction, if these have been explicitly confirmed in writing by pro-diction. If pro-diction defaults in rendering the service as agreed, pro-diction shall be initially granted an appropriate period in which to render the service in concern. Client shall only be entitled to withdraw from the contract after a fruitless expiration of this period of grace. Client shall be obliged to only pay for the service performed by pro-diction up to the declaration of withdrawal, in so far as Client has already accepted the services performed to that point of time as fulfilment of contractual obligations. Further claims, in particular from damages in accordance with § 280 par. 2 BGB (German Civil Code) and § 218 par. 1 sentence 1 BGB shall be excluded. The date of delivery shall be deemed to be complied with if the completed contract was sent in due time so that it would have to have been delivered to Client taking normal postage runtimes for the respective dispatch method into account. If it is not possible to comply with the delivery schedule on the grounds of any act of God, in particular as a result of industrial disputes, serious disturbances in transportation, operational interruptions which do not result from any fault of pro-diction, non-imputable official measures or any other events which cannot be justified by pro-diction, even if these occur at their vicarious agents' premises, pro-diction shall not be obliged to render the services agreed, as long as the event preventing delivery of the service lasts. If the event preventing the service lasts longer than 3 months, pro-diction shall be entitled to withdraw from the contract. In this case Client shall be obliged to pay pro-diction for the services performed,

in so far as Client is able to accept this part as fulfilment.

## **§ 7 Specialists**

Part of the translations and additional services commissioned shall to a certain extent not be performed by pro-diction itself, but by free-lance translators and specialists who are granted access to the contract texts and data after being subjected to a quality check by pro-diction. In connection with performing the service pro-diction shall only warrant for the careful selection of such third parties. Liability for intentional conduct by the third party shall be excluded.

On the part of Client, exclusively legal relations shall exist to pro-diction, and not to the individual translators or specialists. A direct contact between Client and translators resp. specialists shall only be permissible after obtaining explicit approval by pro-diction.

## **§ 8 Official certification of translations**

Unless Client has given no instructions to the contrary, translations of documents shall be principally certified, so that these will be acknowledged by the competent authorities. An additional fee shall be charged for these certifications. No liability shall be assumed for the correct reproduction of names and addresses in documents written in handwriting. This regulation shall also apply to illegible proper names and figures in birth certificates or any other documents.

## **§ 9 Translations for multiple use**

Translations are protected by copyright. pro-diction guarantees that Client shall be able to use the translation in a timely and spatially unlimited scope and without limitation in quantity according to the purpose of use conveyed. Client shall also be authorised to process the translation, also to assign the rights to third parties by way of license or by any other way. pro-diction shall hereby release Client from any and all claims of the translator or of the specialist. In the event of claims being lodged against pro-diction on the grounds of an already rendered translation due to the violation of an existing copyright for any reason, Client commits himself to release pro-diction in full scope from such a liability. The material also produced in conjunction with translations e.g. translation memories and glossaries shall remain property of pro-diction.

## **§ 10 Copyrights and other trade mark rights**

Client guarantees that no third-party copyrights or any other trade mark rights shall be violated by Client as a result of the translation or any other service or by the later use thereof and releases pro-diction and any personally liable persons besides pro-diction, if applicable, of any and all damages, costs and expenses (including justifiable costs for prosecution of action).

Unless no other agreement is made, pro-diction shall retain the timely and spatially unlimited right to repeatedly use materials produced within the scope of processing the contract, such as glossaries, translation memories without any restriction. pro-diction shall also be authorised to modify this material for its own purposes and to assign rights vested therein by way of license or any other way to other third parties.

## **§ 11 Fulfilment and transfer of risk**

The service shall be rendered by pro-diction principally, in other words, if no deviating shipping instructions are given by Client, as non-coded data records in remote data transmission mode resp. by e-mail. The danger of an unintentional loss of the service shall pass on to Client at the point of sending the work by e-mail, by handing the service over to the post office, resp. by presenting it to a courier. Any possibly lost postal or courier shipments shall be replaced in so far as possible. No legal claim therein shall exist. In such cases in particular Client shall not be entitled to enforce any damage claims for lost documents or on the grounds of exceeding the contractually

agreed period of delivery.

## **§ 12 Remuneration**

If no fixed price is agreed, the price list of pro-diction valid at the point of time of concluding the contract shall be deemed to be agreed. In this case pro-diction reserves the right to make appropriate price adaptations in the event of permanent obligations, for services which are to be rendered later than 4 months after concluding the contract, as well as in the event of services to be rendered to corporations, corporate bodies of public law and special estate under public law, in so far as the service shall not be rendered at short notice to these.

## **§ 13 Payment terms**

Statutory Value Added Tax shall not be included in the agreed remuneration. It shall be listed separately in the invoice and charged in the statutory amount on the billing date. The remuneration for contracts, if no other agreements have been made, shall be payable within 10 days. The same term shall apply to payment of the statutory Value Added Tax. In the case of default in payment pro-diction shall be entitled to demand default interest in the amount of 5 percentage points above the respectively valid basic interest rate of the German Central Bank in accordance with § 1 DÜG (Discount Transition Act) up to the receipt of the outstanding amount in full. Solely Client shall be principally obliged to effect payment. Payments effected by third parties shall only be accepted in fulfilment, if they are received in due time and cover the full invoice amount, clearly specifying Client, invoice and contract number. A right of retention in the case of payments shall be principally excluded. Client shall not be authorised to offset invoice amounts with other accounts payable, unless these are uncontested and final. If partial deliveries have been agreed, accounting of the actually rendered service shall take place with the appropriate partial delivery. In the case of more extensive contracts, pro-diction shall be entitled to demand an appropriate advance payment from Client to cover the costs. The final delivery of the translation can also be made dependent on the previous settlement of the invoice amount (step-by-step delivery).

The service and the associated rights (copyright and all rights of use in translations, text adaptations, terminological databases and documentation, illustrations, voice recordings etc.) shall be subject to retention of title until payment of the remuneration has been settled in full. These rights shall not pass on to Client until payment of the invoice amount has been received in full.

## **§ 14 Duty of acceptance, inspection, notification and rejection**

Apparent defects in the service shall be immediately notified in writing not only in the commercial, but also in the non-commercial business on receipt of the documents, specifying the defects in concern. Concealed defects shall be notified immediately in writing on their discovery, specifying the defects in concern. If a written notification of the defect is not submitted at the latest within 14 days, the service shall be deemed to have been rendered in compliance with the contractually agreed terms. Liability for damage resulting from the fact that Client forwarded the translation without inspecting it shall be excluded. pro-diction shall draw Client's special attention to the significance of his duty of inspection, notification and rejection with each notification on completion.

## **§ 15 Warranty**

If a translation or any other service rendered contains errors, Client shall be entitled to demand a warranty twice at the discretion of pro-diction either by a remedy of the defects or new translation within an appropriate period of time. Client shall only be authorised to assert a reduction in price or his right to withdraw from the contract, if at least two attempts undertaken by pro-diction to subsequently fulfil the contract on granting an appropriate period of grace have elapsed fruitlessly. pro-diction shall not warrant for any damage resulting from any slightly negligent violation of the services owed by pro-diction in compliance with the contract. This exemption from liability shall not apply to damage claims based on an infringement of substantial contractual obligations by pro-diction. pro-diction shall also warrant for any damage to life caused by slight negligence. In cases of slightly negligent violation of substantial contractual obligations and of gross negligence by simple vicarious agents, damage payments shall be limited to a replacement of the typical damage which was foreseeable at the point of concluding the contract. In the event of a violation of substantial contractual obligations, pro-diction shall also warrant for direct financial losses up to an amount of 50,000 € per claim, in total, however, up to a maximum amount of 150,000 €. The limitation of liability shall also refer to the case of default in delivery of service. Further damage and liability for the incorrect contents of the service shall be excluded.

In so far as liability is excluded or limited, this term shall also refer to the personal liability of staff, employees, colleagues, representatives and vicarious agents of pro-diction. In so far as no deviating regulation has been agreed on, pro-diction shall not warrant for the fact that the respective service is permissible and suitable for the purpose of use designated by Client. This term shall apply in particular for the case of publishing or using the service for advertising purposes. The legal risk of suitability of use or publication shall in so far be borne solely by Client.

## **§ 16 Data protection**

Client declares that he agrees to his data being stored for administrative purposes within the sense of data protection.

## **§ 17 Confidentiality**

All contracts shall be principally treated as secret and confidential. All persons charged with the task of rendering the service shall have been sworn to secrecy in writing by pro-diction. Client is, however, aware of the fact that these persons may render translation services to others, under circumstances to competitors. As a result of the communication in electronic form between Client, pro-diction and the commissioned persons, it shall not be possible to guarantee an exclusive confidentiality. It is, for example, not possible to exclude third parties from obtaining unauthorised access to data which are transmitted electronically. pro-diction shall, however, endeavour to maintain confidentiality to the greatest possible extent.

## **§ 18 Withdrawal**

Client shall be authorised to withdraw from the contract at any time up to completion of the contract. If Client cancels the contract, pro-diction shall be entitled to demand the agreed remuneration minus any expenses possibly saved.

## **§ 19 Non-compete agreement**

Client commits himself during the period of cooperation between the parties and for a period of one year following the termination of cooperation to neither employ nor engage any persons working for the respective other contractual partner.

## **§ 20 Place of fulfilment and place of venue**

Place of fulfilment and place of venue shall be Hamburg. The laws of the Federal Republic of Germany shall be applicable.

## **§ 21 Escape clause**

The invalidity of any one or more terms stipulated in this contract shall not affect the validity of the remaining conditions. In any such a case a valid term approximating the legal and economic purpose in the best possible way shall be deemed to be agreed. This term shall not be applicable if adherence to the contract would represent an unreasonable hardship to one of the parties.

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