



These Terms and Conditions ("Terms") form the contract between Elena Zini Sole Trader (the "Translator") and yourself (the "Customer") for the supply by the Translator to the Customer of the Services (as hereinafter defined).

In this document no part of any numbered clause shall be read separately from any other part. Section headings are provided for convenience of reading only and shall be ignored for the purposes of ascertaining meaning.

Definitions

1. In these Terms, the following words and phrases shall have the following meanings:

1.1 The "Translator" means Elena Zini, a Sole Trader having its Registered Office at 10 York Place, Edinburgh EH3 9QL;

1.2 "Clear Days" means any day except Saturday or Sunday when Scottish clearing banks are open for business;

1.3 "Customer" means the party for whom the Translator has agreed to provide the Services in accordance with these Terms; the parties may be natural or legal persons, including, as an example only, private individuals, associations, partnerships, economic interest groupings or corporate entities.

1.4 "Credit Arrangement" means in relation to the payment of the Fee in Clause 5, the consent of the Translator to allow Customers to pay by credit card or by any other credit arrangement agreed in advance by the Translator;

1.5 "Fee" means the fee payable by the Customer to the Translator in the Relevant Currency in accordance with Clause 5 of this Agreement;

1.6 "Relevant Currency" means the European currency appropriate to the Customer's residence which the Translator shall convert into the Trading Currency;

1.7 "Services" means the translation, subtitling, interpreting services, tutoring and any other services that the Translator may provide to the Customer;

1.8 "Source material" shall be understood to mean any text or medium containing a communication which has to be translated or otherwise used as a source for the Translator's work and may comprise text, sound or images.

1.9 "Trading Currency" means local currency, converted by the Translator by such means as the Translator shall determine.

Copyright in Source Material, and Translation Rights

2. The Translator accepts an order from the Customer on the understanding that performance of the translation or other service assigned will not infringe any third party rights.

2.1 The Customer undertakes to keep the Translator harmless from any claim for infringement of copyright and/or other intellectual property rights in all cases.

2.2 The Customer likewise undertakes to keep the Translator harmless from any legal action including defamation which may arise as a result of the content of the original source material or its translation or other products based on it.

Charges

3. The price payable by the Customer for the Services shall be set out in the order or invoice directly relating to the Services provided by the Translator, or otherwise agreed with the Translator by email or other correspondence.

3.1 No fixed quotation shall be given by the Translator until this has been seen or heard all the source material and has received firm instructions from the Customer.

3.2 Where VAT is chargeable it will be charged in addition to the quoted fee if the Translator is VAT registered.

3.3 Any fee quoted, estimated or agreed by the Translator on the basis of the Customer's description of the task may be subject to amendment by agreement between the parties if, in the Translator's opinion on having seen or heard the source material, that description is materially inadequate or inaccurate.

3.4 Any fee agreed for a translation or other service 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.

3.5 If any changes are made in the text or the Client's requirements at any time while the Translation Task is in progress, the Translator's fee, any applicable supplementary charges and the terms of delivery shall be adjusted in respect of the additional work.

3.6 An estimate shall not be considered contractually binding, but given for guidance or information only.

Delivery

4. Any delivery date or dates agreed between the Translator and the Customer shall become binding only after the Translator has seen or heard all of the source material to be translated and has received complete instructions from the Customer.

4.1 The date of delivery shall not be of the essence unless specifically agreed in writing.

4.2 Unless otherwise agreed, the Translator shall dispatch the translation or other service in such a way that the Customer can reasonably expect to receive it not later than the normal close of business at the Customer's premises on the date of delivery.

Payment

5. Payment in full to the Translator shall be effected not later than 30 days from the date of invoice by the method of payment specified.

5.1 For long assignments or texts, the Translator may request an initial payment and periodic partial payments on terms to be agreed.

5.2 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 this Clause.

5.3 The Translator reserves the right to charge Customers by Credit Arrangement, demand payment in advance and charge Customers any bank transfer fees and expenses and any other currency conversion costs in addition to the Fee, at its sole discretion.

5.4 Interest shall automatically be applied at the rate of 8% per annum over base rate (or such rate as is determined by statute, the latter prevailing) to all overdue sums from the date on which they first become due until they are paid in full. Interest shall accrue on a daily basis.

5.5 Where delivery is in instalments and notice has been given that an interim payment is overdue, the Translator shall have the right to stop work on the task in hand until the outstanding payment is made or other terms agreed.

5.6 This action shall be without prejudice to any sums due and without any liability whatsoever to the Customer or any third party.

Copyright of translations and other services

6. In the absence of a specific written agreement to the contrary, copyright in the translation, subtitles or other services produced remains the property of the Translator.

6.1 The Translator may use and sell or resell any non-confidential product or any part or record thereof not covered by copyright, the Official Secrets Act, legal professional privilege or public interest immunity.

6.2 Where copyright is 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) this shall be effective only on payment of the agreed fee in full.

6.3 Copyright in any completed or residual part of a service shall remain the property of the Translator, 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, subtitles or other services produced.

7. Where the Translator retains the copyright, unless otherwise agreed in writing, any published text of the translation, subtitles or other services produced, shall carry the following statement: "© (English or other) text (Translator's name) (Year date)" as appropriate to the particular case.

8. Where the Translator assigns the copyright and the translation, subtitles or other services produced is subsequently printed for distribution or otherwise published, the Customer shall acknowledge the Translator'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 (or other service as appropriate) by (Translator's name)", as appropriate to the particular case.

9. Where a translation, subtitles list or other services produced are to be incorporated into a translation memory system or any other corpus the Translator shall license use of the services for this purpose for an agreed fee.

9.1 Such incorporation and use shall only take place after the licence for the purpose has been granted by the Translator in writing and the agreed fee has been paid in full.

9.2 It shall be the duty of the Customer to notify the Translator that such use will be made of the translation, subtitles or other services produced.

10. All translation, subtitles or other services produced are subject to the Translator's right of integrity.

10.1 If a translation, subtitles or other services produced are in any way amended or altered without the written permission of the Translator, he/she shall not be in any way liable for amendments made or their consequences.

10.2 If the Translator retains the copyright in a translation, subtitles or other services produced, or if a translation, subtitles or other services produced are to be used for legal purposes, no amendment or alteration

may be made to a translation, subtitles or other services produced without the Translator's written permission. The right of integrity may be specifically waived in advance by the Translator in writing.

Confidentiality and Safe-keeping of the Customer's Documents

11. No documents for translation, subtitles or other services shall be deemed to be confidential unless this is expressly stated by the Customer.

11.1 However the Translator shall at all times exercise due discretion in respect of disclosure to any Third Party of any information contained in the Customer's original documents or translations thereof without the express authorisation of the Customer.

11.2 Nevertheless third parties may be consulted over specific terminology queries, provided that there is no disclosure of confidential material.

12. The Translator shall be responsible for the safe-keeping of the Customer's documents and copies of the translation, subtitles or other services produced, and shall ensure their secure disposal.

13. If requested to do so by the Customer, the Translator shall insure documents in transit from the Translator, at the Customer's expense.

14. The Customer is at all times responsible for the use of the Services.

14.1 Where the Customer accesses the Services by means of the Internet, the Customer is responsible for providing access to the Services, including but not limited to a computer, modem and/or additional communications equipment and a telephone line capable of and necessary for connecting to and accessing the Services. The internal network configuration remains the responsibility of the Customer. Any interruptions to the Services that occur as a result of an internal configuration issue are not deemed as an interruption or suspension of the Services.

14.2 The Translator expressly has no responsibility for the content of the documents submitted to her by the Customer, nor does the Translator have any responsibility for the implications of any of its translations, subtitles or other services.

14.3 The Customer will indemnify the Translator against all liabilities, losses, or costs that the Translator may incur, in consequence of any claim that may be made against the Translator in consequence of the content of any document translated by the Translator.

Cancellation and Frustration

15. If a service is commissioned and subsequently cancelled, reduced in scope or frustrated by an act or omission on the part of the Customer or any third party, the Customer shall except in the circumstances described in clause 21 pay the Translator the full contract sum unless otherwise agreed in advance.

15.1 The work completed shall be made available to the Customer.

16. If a Customer 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 Translator shall have the right to terminate a contract.

17. Neither the Translator nor the Customer 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.

18. The Translator reserves the right to modify, suspend or discontinue any or all of the Services at its sole discretion, without prior notice.

18.1 The Customer shall be given the right to object to any such modification, suspension or discontinuation of any or all of the Services under this clause 18 and shall additionally be entitled to receive a refund from the Translator of any overpayment of money paid to the Translator in respect of the Services, calculated by the Translator on a pro-rata basis.

18.2 The Translator shall notify the Customer as soon as is reasonably practical of any circumstances likely to prejudice the Translator's ability to comply with the terms of the Customer's order, and assist the Customer as far as reasonably practical to identify an alternative solution.

Termination

19. Without prejudice to clause 18, the Translator may terminate this Agreement at any time without prior notice and without affecting any accrued rights or claims of the Translator where the Services are misused by the Customer, for non-payment of the Fee or for breach of the Terms or in the case of the insolvency of the Customer.

19.1 Without prejudice to clause 18, the Translator reserves the right to suspend provision of the Services for the duration of any non-payment period. Suspension of the Services does not necessarily constitute termination of the Services, at the Translator's discretion.

19.2 For the avoidance of doubt, where the Services are terminated by the Translator in terms of this clause 19, the Customer shall remain liable for the full purchase price for the Services completed, all work in progress and any interest in terms of clause 5.

Complaints and Disputes

20. Failure by the Translator to meet agreed order requirements or to provide a translation or other service which is fit for its stated purpose shall entitle the Customer to:

- 1) reduce, with the Translator's consent, the fee payable for work done by a sum equal to the reasonable cost necessary to remedy the deficiencies, and/or
- 2) cancel any further installments of work being undertaken by the Translator.

20.1 Such entitlement shall only apply after the Translator has been given one opportunity to bring the work up to the required standard.

20.2 Such entitlement shall not apply unless the Translator has been notified in writing of all alleged defects.

21. Customers are requested to make the Translator aware of any problems regarding the quality of the translation or other service received no later than 30 days after the commissioned project was delivered. Please note, that after this period has expired, whilst best endeavors will be made, we cannot guarantee that the translation or other service will be reviewed.

21.1 If the parties are unable to agree, the matter may be referred to an independent arbiter chosen by the parties who shall act as an expert and whose decision shall be binding on the parties and whose costs shall be shared equally between the parties. Where the parties are unable to decide on the appointment of the said independent arbiter within a period of five (5) Clear Days, the said independent arbiter shall be chosen by the Chairman of the United Kingdom Institute of Translation and Interpreting. Customers may reasonably refuse to have the matter referred to arbitration in accordance with this clause.

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

22. 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 Scottish Courts.

22.1 In any event these terms shall be construed in accordance with Scottish law.

Responsibility and Liability

23. The Translator warrants to the Customer that the Services will be provided using reasonable care and skill. The Translator expressly does not give the Customer any other warranties whatsoever and excludes any implied warranties to the maximum extent permitted by law. Notwithstanding this clause 23, Customers' statutory rights shall not be affected or limited to any extent.

23.1 The Translator shall not be liable to the Customer for any representation (unless fraudulent), or any implied warranty, condition or other term, for any duty at common law, for any loss of profit or any indirect, special or consequential loss, damage, cost, expenses or other claims (whether caused by the negligence of the Translator, its agents or employees or otherwise) which arise out of or in connection with provision of Services or their use by the Customer.

23.2 Time and expense permitting, the Translator shall use her best endeavours to ensure the work is done to the best of her ability, knowledge and belief and that, when appropriate to the nature of the translation or other service, she consults such authorities as are reasonably available to her at the time.

23.3 A translation or other service shall be fit for its stated purpose and target readership, and the level of quality specified.

23.4 Unless specified otherwise, translations or other services shall be deemed to be required to be of "for information" quality only.

24. Where the Translator translates any legal or other documents of a technical nature and content, the Customer fully understands that the Translator is not an expert in such matters and that no reliance whatsoever can be placed on the translation or other service produced being completely accurate. It is the Customer's sole responsibility to take legal advice in the relevant jurisdiction before placing any reliance on the translated document. The Translator shall not be liable for any such reliance, nor any other loss that the Customer may incur.

25. The Customer expressly agrees the use of the Services is at the Customer's sole risk. The Translator, its agents, contractors, licensors and employees do not guarantee that the Services will be uninterrupted or free from error. The liability of the Translator 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:

- 1) the potential for such liability is expressly notified to the Translator in writing, and
- 2) such liability is restricted to an agreed limit of cover under the professional indemnity insurance available to the Translator.

25.1 Nothing in this Agreement shall be construed as seeking to restrict a Party's liability for personal injury or death arising from its own negligence.

25.2 Subject to clause 26, the liability of the Translator under or in respect of this Agreement, whether in tort, contract or otherwise, shall be limited to the cost of the Translation Task being undertaken when the liability arises.

25.3 Neither Party shall be liable to the other in respect of any consequential or indirect loss whatsoever.

Unfair Competition

26. Where in the course of business the Translator's Customer is an intermediary and introduces the Translator to a third-party work-provider, the Translator shall not knowingly, for a period of 6 months from return of the last translation or other service assigned 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 translation and relating services, without the Customer's written consent.

26.1 However, this shall not apply where:

- the third-party work-provider has had previous dealings with the Translator, or
- the Translator acts on the basis of information in the public domain, or
- the approach from the third party is independent of the relationship with the intermediary, or
- the approach to the third party arises as the result of broad-band advertising, or
- the third party is seeking suppliers on the open market, or
- the intermediary only makes isolated use of the Translator's services.

Applicability and Integrity

27. These Terms shall be subject to any detailed requirements or variants expressly specified in the order relating to a particular translation or other assignment.

28. The Translator reserves the right to reasonably alter the Terms at any time by giving the Customer notice in writing. Customers shall be entitled to object to any such alteration within a period of seven (7) Clear Days of being notified by the Translator, after such time they shall be deemed to have accepted such alteration.

29. The Translator contracts under these Terms solely with the Customer and expressly has no contractual relationship or liability of whatever nature under these Terms to any third party.

30. These Terms shall exclusively govern the contract between the Translator and the Customer to the express exclusion of all other terms and conditions whatsoever. The Translator shall be entitled to assign its rights and obligations under the Agreement in whole or in part. The Customer shall not be entitled to assign, re-sell, license or otherwise transfer its rights and obligations under the Agreement in whole or in part without the prior written consent of the Translator. Notwithstanding this clause 30, Customers shall be entitled to assign their rights and obligations under the Agreement in whole or in part, provided that they notify the Translator and confirm in writing that their obligations under the Agreement shall be met in full by the person or persons to whom they have assigned their rights and obligations (the "Assignee").

31. If any provision of these Terms is held to be invalid and unenforceable but would be valid and enforceable if modified, then such provision shall apply subject to such modification as may be necessary to make it valid and enforceable.

32. No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of same or any other provision.

33. This Agreement shall be governed by and interpreted in accordance with laws of Scotland and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.