

General Terms and Conditions of texthandwerk.at

Version of 12 March 2018

1 Scope of application and general provisions

- 1.1 These General Terms and Conditions specify the contents and processing of contracts on translation and interpretation services as well as other services, such as proofreading, compiling glossaries, etc., between the principal (in the following referred to as the "Client") and texthandwerk.at (the Language Service Provider, in the following referred to as the "LSP") as the contractor unless otherwise agreed in individual cases.
- 1.2 These General Terms and Conditions apply to all present and future business relationships between the Client and the LSP, even if they have not been explicitly agreed for a specific business relationship.
- 1.3 The Client waives the application of the Client's own general terms and conditions.
- 1.4 For the purpose of interpretation of these General Terms and Conditions, ÖNORM EN ISO 17100 applies in relation to translation services.
- 1.5 These General Terms and Conditions are drawn up in German. Translations thereof are for convenience only and must not be used for interpretation purposes.
- 1.6 Regarding contracts with consumers as defined in the Consumer Protection Act (*KSchG, Konsumentenschutzgesetz*), the statutory provisions apply. Therefore, items 2.1, 7.4, 9 and 16.3 apply with the restrictions stipulated in the relevant provisions of the Consumer Protection Act.
- 1.7 Any terms in these General Terms and Conditions referring to natural persons that are only used in the female form apply equally to women and men.

2 Offer, order, scope of services

- 2.1 A cost estimate (= offer) is prepared to the best of the LSP's specialist knowledge and is based on the text submitted at the time when the offer is prepared. Changes to the text made after the order was placed are charged additionally.
- 2.2 A cost estimate is a non-binding guideline.
If it turns out after the order was placed that the costs will increase by more than 15%, the LSP will notify the Client thereof without delay. If the increase is an unavoidable increase of up to 15%, a separate notification is not required, and the LSP can charge such costs without consulting the Client.
This provision does not apply to consumers as defined in the Consumer Protection Act (section 5 of the Consumer Protection Act).
- 2.3 An order is deemed placed if the offer is accepted in writing before the expiry of the period stated in the offer. The period is deemed complied with if acceptance of the offer is received within this period.
- 2.4 The scope of services to be provided to the Client depends on the order and in principle includes translation or interpretation services or other services agreed (proofreading, compilation of glossaries, etc.) as well as project management, and the planning of the performance of any additional services. In the absence of an express agreement to the contrary, an order for the translation of a document refers to the entire text.
- 2.5 The formal design of the translation is the responsibility of the LSP unless a certain formal design has been expressly agreed. In the case of source texts that can be processed with the standard Office applications, the formatting of the source text is preserved in any event.
- 2.6 Any special requests must be separately agreed and paid for (special formats, correction of proofs, etc.).

3 Cooperation between the Client and the LSP

- 3.1 The LSP undertakes to perform all contracted activities to the best of her knowledge and within the agreed periods.
- 3.2 The LSP has the right to pass on the order to equally qualified subcontractors. In that case, however, the LSP remains the exclusive language service provider and contractual partner of the Client.
- 3.3 To the extent possible and reasonable for the order, the Client must support the LSP by providing the documents and information required to perform the service. If the Client fails to cooperate as required to perform the service, the LSP is entitled to set a reasonable period for the Client to cooperate, including a notice that the contract will be deemed terminated if the period expires and the Client does not cooperate (section 1168 (2) of the General Civil Code [*ABGB, Allgemeines Bürgerliches Gesetzbuch*]).
- 3.4 The quality of the language service can depend substantially on preparation and thus on the documents provided by the Client.
The following can be required for this purpose:
 - style guides
 - intra-company terminology, specialist terminology (glossaries);
 - existing translations, relevant translation units from translation memories;
 - publications referred to in the source text;
 - technical documents and visuals;
 - training materials;
 - manuscripts and presentations of talks;
 - web addresses;
 - parallel texts;
 - background texts;

- inspection of facilities;
 - certain technologies (including, without limitation, technologies other than the standard Office applications; if the Client requests the use of a certain technology, the Client must notify the LSP thereof and at the same time provide the required materials);
 - texts to be sight-translated;
 - texts read out in an interpreted setting.
- 3.5 If the Client requests the use of language and/or terminology specific to the Client's organisation or a specific form of abbreviations or a controlled language, the Client must notify the LSP thereof and provide the LSP with all required materials; this also applies to language variants.
- 3.6 The Client also undertakes to notify the LSP of the purpose of use of the translation before the offer is prepared (e.g. for the Client's own information, for submission to a court or authority, for publication, for advertising purposes, etc.). If the LSP is not notified of the purpose of the translation, the translation will be made for the purpose of the Client's information.
- 3.7 The Client may use the translation only for the purpose stated by the Client.
- 3.8 As a rule, an interpretation is intended for immediate listening. Recording or live streaming an interpretation is permitted only with the LSP's prior consent.
- 3.9 The Client must name to the LSP, in advance, competent contact persons who are available for questions.
- 3.10 The LSP must clarify obvious defects (e.g. contradictory statements, etc.) in the source text with the Client and can point out typing mistakes or other mistakes to the Client.
- 3.11 In the case of source texts that are difficult to read, illegible or incomprehensible, the LSP informs the Client if translation is not possible or is possible only with unreasonable effort.
- 3.12 The correctness of the source text in terms of contents and language is the exclusive responsibility of the Client.
- 3.13 The LSP renders numbers only on the basis of the source text. The conversion of numbers, measures, currencies or the like is the exclusive responsibility of the Client.
- 3.14 For the purpose of the correct rendering of handwritten text and text that is in a script other than Latin script, the Client must write that text on a separate sheet of paper in Latin print letters in advance.
- 3.15 The Client may add the LSP's name to a translation only if the entire text was translated by the LSP and changes to the translation were made exclusively with the LSP's consent.

4 Deadlines, delivery

- 4.1 A non-certified translation is delivered as a Word file by e-mail unless otherwise agreed. A certified translation is delivered as a single hard copy in A4 format unless otherwise agreed.
- 4.2 The decisive factor for the deadline for delivery of the translation is the respective agreement between the Client and the LSP. If the delivery date is an indispensable part of the order accepted by the LSP that cannot be postponed for a reasonable period and if the Client is not interested in delayed delivery (contract for delivery by a fixed date), the Client must expressly state this in advance.
- 4.3 If applicable, the Client and the LSP agree on deadlines for the following:
- receipt by the LSP of the source text and all materials required as background information;
 - receipt by the Client of a copy for proofreading (if requested);
 - return to the LSP of the proofread copy;
 - receipt by the Client of the translation in the agreed form of delivery.
- 4.4 Receipt, in due time, of all materials to be provided by the Client to the extent stated (e.g. final source texts and all materials required as background information) as well as compliance with the agreed payment conditions and other obligations are the requirements for compliance with the delivery period and delivery date, also in the case of a contract for delivery by a fixed date. If these requirements are not met in due time or if the source text is changed during the delivery period, the delivery period is extended by the time of the delay in providing the required materials to the LSP or by the time required to process the changes of the source text; in the case of a contract for delivery by a fixed date, it is up to the LSP to decide whether the agreed delivery date can be complied with even though materials were provided too late or changes to the source text were made by the Client.
- 4.5 Non-compliance with the delivery period entitles the Client to cancel the contract only if the above-mentioned requirements were met and in the case of an expressly agreed contract for delivery by a fixed date.
- 4.6 The risk associated with delivering (sending) the translation and the materials is borne by the Client. In relation to consumers, section 7b of the Consumer Protection Act applies.
- 4.7 Unless otherwise agreed, the materials provided to the LSP by the Client remain with the LSP after completion of the order. The LSP must ensure that such materials are kept safe with due care for a period of four weeks after completion of the order. After that time, the LSP is entitled, but not obligated, to destroy the materials.
- 4.8 During the safekeeping period, the LSP is obligated to keep the materials in such a way that unauthorised persons do not have access, the confidentiality obligation is not violated and the materials cannot be used in a manner that is contrary to the contract.

5 Cancellation terms

- 5.1 For interpretation services:
- a) cancellation is made up to two weeks before the booked date and time of the interpretation: no cancellation fee (with the exception of hotel or travelling expenses that have already been incurred)
 - b) cancellation is made between two weeks and one week before the booked date and time of the interpretation: 50% of the agreed interpreting fee plus any expenses that might have been incurred (hotel and travelling expenses)
 - c) cancellation is made in the week before the booked date and time of the interpretation: 100% of the agreed interpreting fee plus any expenses that might have been incurred (hotel and travelling expenses)
- 5.2 For translation services:
The time spent and efforts made until the cancellation must be suitably remunerated.

6 Consumers' right of withdrawal in the case of distance contracts

- 6.1 If the Client is a consumer as defined in section 1 of the Consumer Protection Act, the Client is entitled to withdraw from a distance contract as defined in section 3 item 2 of the Distance and Off-Premises Contracts Act (*FAGG, Fern- und Auswärtsgeschäfte-Gesetz*) or an off-premises contract as defined in section 3 item 1 of the Distance and Off-Premises Contracts Act within 14 days without giving any reason (section 11 of the Distance and Off-Premises Contracts Act). The withdrawal period starts on the day of the conclusion of the contract. The statement of withdrawal by the consumer is not required to have a certain form. To exercise the right of withdrawal, the consumer must inform the LSP of her decision to withdraw from the contract by an unequivocal statement (e.g. a letter sent by post or e-mail). For that purpose, the model withdrawal form (Annex 1) may be used, but it is not obligatory. To meet the withdrawal deadline, it is sufficient for the consumer to send the communication concerning the exercise of the right of withdrawal before the withdrawal period has expired.
- 6.2 In the case of withdrawal, the LSP reimburses the consumer for all payments received from the consumer without undue delay and in any event not later than 14 days from the day on which the LSP was informed about the decision to withdraw from this contract. Such reimbursement is carried out using the same means of payment as was used for the initial transaction; in any event, no fees are incurred as a result of such reimbursement.
- 6.3 If the consumer requests that the LSP begin performance of the contract before the expiry of the 14-day withdrawal period pursuant to section 11 of the Distance and Off-Premises Contracts Act, the consumer must call upon the LSP to perform the contract early and make an express request to that effect in writing (section 10 of the Distance and Off-Premises Contracts Act). For that purpose, the model request (Annex 2) may be used, but it is not obligatory.
- 6.4 If the consumer withdraws from the contract pursuant to section 11 of the Distance and Off-Premises Contracts Act after the consumer has requested that performance of the contract begin early pursuant to section 10 of the Distance and Off-Premises Contracts Act and the LSP then started performance of the contract, the consumer must pay an amount which is in proportion to what has been provided by the LSP until the withdrawal, in comparison with the total price agreed in the contract.

7 Fee and payment conditions

- 7.1 The Client continues to be the contractual partner of the LSP and is liable for the complete payment of the fee even if the Client named another person as the recipient of the invoice.
- 7.2 For translations, the basis of calculation is a standard line (55 characters including spaces) of the completed translation; for all other activities (e.g. interpreting, proofreading of translations made by persons other than the LSP, inserting changes made to the source text into the translation, compiling glossaries, proofreading a text, etc.), the basis of calculation is an hour unless a flat fee has been agreed.
- 7.3 Unless otherwise agreed, changes to orders or additional orders are carried out for a fee corresponding to the time spent and efforts made. This provision applies to consumers with the limitation stipulated in section 6 (1) item 5 of the Consumer Protection Act.
- 7.4 Formatting work exceeding the time and efforts needed for regular word processing is charged separately on an hourly basis. The time and efforts needed for regular word processing is exceeded, in particular, if the Client provides the source texts in a special file format or requests special formatting of the translation.
- 7.5 For the review of translations made by third parties (proofreading of translations made by persons other than the LSP), a fee corresponding to the actual time spent and efforts made, which can be as much as the full fee for a new translation, is charged.
- 7.6 For the correction of proofs of a translation made by the LSP, the LSP is entitled to a reasonable fee.
- 7.7 For reserving time for the translation of a source text that has not yet been written, a fee agreed in each individual case is charged if the order for the translation is not placed by the agreed time.
- 7.8 Additional costs, e.g. fees for courier or postal services for sending a translation as well as travelling costs in the case of interpretation assignments outside the professional domicile of the LSP (public transport, kilometre allowance or costs of a rented car), are charged to the Client.
- 7.9 A surcharge of up to 100% can be charged for express or weekend work, which is to be agreed accordingly.
- 7.10 For travelling times and waiting times in the case of interpretation services as well as for the time spent going to the post office to deliver a translation by mail, a reasonable fee is charged.
- 7.11 An additional fee is charged for the recording or live streaming of an interpretation, which is agreed in each individual case.
- 7.12 Unless otherwise agreed, the LSP's services must be paid without any deduction by transfer to the LSP's account stated in the statement of fees after receipt of the statement of fees within the period stated in the statement of fees. If personal collection and cash payment of the translation have been agreed and if the Client does not collect the translation in due time, the Client's payment obligation becomes due on the day when the translation was made available for collection.
- 7.13 If there is culpable delay of payment, the LSP is entitled to retain the translation and any materials provided for completing the order. In the case of a delay of payment, interest on arrears in the statutory amount (4% above the base rate for consumers, and 9.2% above the base rate for businesses) as well as a reminder fee (€20 for consumers and €40 for businesses pursuant to section 458 of the Business Code [*UGB, Unternehmensgesetzbuch*]) are charged.
- 7.14 The LSP is entitled to demand a reasonable advance payment. Advance payment of the entire fee can be demanded from clients abroad and consumers.
- 7.15 If partial or full advance payment was agreed between the Client and the LSP and if the Client is in culpable delay of payment, the LSP is entitled to perform the agreed service only if the Client meets the Client's payment obligations, without any legal consequences for the LSP and without prejudice to the LSP's rights. This also applies to orders for which a fixed delivery date was agreed (contract for delivery by a fixed date pursuant to item 4.2).
- 7.16 The value of any claims, including subsidiary claims, is deemed to be guaranteed. The basis for calculating the guaranteed value is the consumer price index published every month by Statistics Austria (*Bundesanstalt Statistik Austria*) or an index replacing it. The second reference basis is the index figure calculated for the month of the conclusion of the contract. Fluctuations of the index figure up to and including 2.5% are not taken into account. Every time the index figure exceeds or falls below this limit, this range must be recalculated; the first index figure outside the applicable range forms the basis both for redetermining the amount of the claim and for calculating the new range. The resulting amounts must be rounded to one decimal place.

Wage or salary increases or reductions under a collective bargaining agreement also entitle the LSP to subsequently correct prices accordingly.

8 Force majeure

- 8.1 In the event of force majeure, the LSP must notify the Client thereof without delay, as far as this is possible. Force majeure entitles both the LSP and the Client to withdraw from the contract. However, the Client must reimburse the LSP for any expenses incurred and pay a fee corresponding to the actual time spent and efforts made for the services already performed provided that the LSP notifies the Client of the reasons for the fact that she has not saved anything due to the non-performance of the work nor acquired, nor wilfully failed to acquire anything due to an alternative assignment.
- 8.2 Force majeure includes, without limitation: labour disputes; acts of war; civil war; suspension of the activities of the courts and/or administrative authorities; breakdown of the means of communication; and the occurrence of unforeseeable events that cannot be influenced by the LSP and that demonstrably and decisively impair the LSP's ability to perform the order as agreed.

9 Warranty and damages

- 9.1 The Client is obligated to check the translation made by the LSP before using it for the agreed purpose.
- 9.2 The Client must list, and evidence, any defects of the translation in writing in sufficient form (record of defects). The Client must give notice of obvious defects in the translation within one week of receipt of the translation. Notice of obvious defects of an interpretation must be given no later than at the end of the interpretation and must be reasonably explained. If the interpretation is recorded, notice of obvious defects must be given within one week of availability of the recording and must be evidenced by submitting the recordings of the original text and the interpretation.
- 9.3 The Client is primarily entitled to rectification of the defects. The Client is obligated to cooperate in the rectification of defects by the LSP; in particular, the Client is obligated to grant to the LSP a reasonable period and opportunity to perform and improve her services and must provide to the LSP all materials required for the rectification of the defects. If the Client refuses to cooperate, the LSP is not liable for the defects. If the LSP rectifies the defects within a reasonable period, the Client does not have any further warranty claims.
- 9.4 If the LSP refuses to improve her services or lets the period lapse without rectifying the defect, or if an improvement would cause considerable inconvenience to the Client, the Client can withdraw from the contract (rescission) or demand a reduction of the fee (price reduction). In the case of minor defects, the Client does not have the right to rescind the contract (section 932 (4) of the General Civil Code).
- 9.5 Warranty claims do not entitle the Client to retain agreed payments or to a set-off.
- 9.6 In the case of translations used for print media in whatever form, the LSP is liable for defects only if the Client, when placing the order, expressly states in writing that the Client intends to publish the text and if proofs are submitted to the LSP, including the version of the text to which the Client does not make any more changes.
- 9.7 The LSP's liability for defects arising due to insufficient specification, inaccuracies of the source text in terms of language and terminology, etc. is excluded in the event of damage to property due to slight negligence.
- 9.8 There is no liability for defects in the case of the translation of source texts that are difficult to read, illegible or incomprehensible, of order-specific abbreviations that were not resolved or explained by the Client when the order was placed despite the LSP's request, of stylistic improvements or of the harmonisation of specific terminologies (including, without limitation, sector-specific or intra-company terms), of the conversion of numbers, measures and currencies as well as of the correct rendering of handwritten text. If the translation is not made in time, there can be no delay in performance for these reasons. This also applies to the review of translations made by a person other than the LSP.
- 9.9 No liability is assumed for the review of translations made by a person other than the LSP if the source text is not provided.
- 9.10 If source texts, originals and the like provided by the Client are not returned to the Client upon delivery of the translation, the LSP is liable for these as a depositary as referred to in the General Civil Code only for the duration of four weeks after completion of the order. There is no obligation to insure such documents. Item 4.7 applies mutatis mutandis to the return of such documents.
- 9.11 Due to technological circumstances, the LSP does not assume any liability for defects and impairments (such as virus transmission, violation of confidentiality obligations, damage to files) arising during sending by means of data transfer (such as e-mail) unless the LSP acted at least with gross negligence or wilful intent.
- 9.12 The LSP's liability for damage caused with slight negligence is excluded. All other claims for damages against the LSP, also for consequential damage, are limited to the invoiced amount (net) unless otherwise provided for by mandatory legal provisions. This does not include cases in which the LSP caused or effected the damage with gross negligence or wilful intent (i.e. only through the translation itself, not through the source text) or cases of damage to persons as referred to in the Product Liability Act (*Produkthaftungsgesetz*).
- 9.13 If the Client uses the translation for a purpose other than the purpose stated, the LSP's liability for damage claims is excluded.
- 9.14 Item 9 applies to contracts with consumers as defined in the Consumer Protection Act with the restrictions stipulated in the relevant provisions of the Consumer Protection Act.

10 Retention of title

- 10.1 All materials associated with the order that were provided to the Client remain the ownership of the LSP until all liabilities arising from the contract have been fully paid.
- 10.2 Any kind of materials not covered by the order, such as terminology lists, notes, etc. compiled by the LSP, remain the intellectual property of the LSP and are protected by the relevant statutory provisions. The materials may be disclosed and reproduced only with the LSP's consent. The delivery of translation memories, terminology lists and the like to the Client at the Client's request is deemed an additional order that is to be remunerated by the Client.
- 10.3 Translation memories created by the LSP during one order or several orders are the ownership of the LSP unless otherwise agreed. Translation memories provided by the Client remain the ownership of the Client unless otherwise agreed.

11 Copyright

- 11.1 The LSP is not obligated to verify whether the Client has the right to translate the source texts or have them translated and is therefore entitled to presume that the Client has all such rights in relation to third parties. Thus the Client expressly warrants that the Client has all rights required for the performance of the order.
- 11.2 The Client is obligated to indemnify and hold the LSP harmless against all claims raised by third parties due to violations of copyrights, rights related to copyright, other industrial property rights or personal rights. This also applies if the Client did not state the purpose of the translation or uses the translation for a purpose other than the one stated. The LSP will notify the Client of such claims without delay and give third-party notice to the Client in the event claims are asserted in court. If after the third-party notice the Client does not join the proceedings as a party on the LSP's side, the LSP is entitled to acknowledge the plaintiff's claim and obtain compensation from the Client irrespective of the lawfulness of the acknowledged claim.
- 11.3 As the intellectual creator of the translation, the LSP remains the originator of the translation. Changes to the translation may be made only in agreement with the LSP.
- 11.4 The LSP has the right to be named as the originator. The LSP's name may be added to a published text or part of a text only if the entire work is from the LSP and has not been changed or if the LSP subsequently agreed to being named.
- 11.5 The Client acquires the right to use the translation upon full payment of the fee.
- 11.6 The LSP reserves the copyright in the recording of an interpretation.

12 Consent to electronic advertising

The Client agrees that the LSP may send e-mails to advertise her services at any time. The Client can revoke this consent in writing (by e-mail to the address stated above) at any time.

13 Confidentiality obligation

The LSP is under an obligation of confidentiality and must impose the confidentiality obligation to the same extent also on persons contracted by her. The LSP is not liable for non-compliance by persons contracted by her, except in the case of gross negligence when selecting the persons contracted.

14 Severability clause

The ineffectiveness of individual provisions of these General Terms and Conditions does not affect the effectiveness of the other provisions. If any provision is or becomes ineffective or unenforceable, both parties agree to replace it by a legally admissible, effective and enforceable provision that best meets the commercial intention of the provision to be replaced.

15 Written form

Any modifications of and additions to these General Terms and Conditions and other agreements between the LSP and the Client must be made in writing.

16 Place of performance, applicable law, and place of jurisdiction

- 16.1 The LSP's professional domicile is the place of performance for all contractual relationships governed by these General Terms and Conditions.
- 16.2 Austrian substantive law, excluding the conflict-of-laws rules and the UN Convention on Contracts for the International Sale of Goods, is deemed agreed.
- 16.3 The court having subject-matter jurisdiction at the LSP's professional domicile has territorial jurisdiction over all legal disputes arising from this contractual relationship. Section 14 of the Consumer Protection Act applies to consumers as defined in the Consumer Protection Act.

Annex 1

Model withdrawal form

If you wish to withdraw from the contract, please complete this form and return it to

– texthandwerk.at
Mag. Monika Thaller
Haitzing 3/1
4663 Laakirchen
mail@texthandwerk.at

– I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract for the provision of the following service (*),

– Ordered on (*)/received on (*),

– Name of consumer(s),

– Address of consumer(s),

– Signature of consumer(s) (only if the withdrawal is notified on paper),

– Date.

(*) Delete as appropriate.

Annex 2

Express request for the immediate performance of the contract under section 10 of the Distance and Off-Premises Contracts Act
(FAGG, Fern- und Auswärtsgeschäfte-Gesetz)
and acknowledgement of the legal consequences

I, _____ (name and address), herewith expressly request that performance of the translation / interpretation service regarding _____ is begun **immediately, i.e. before the expiry of the 14-day period** for the withdrawal from a distance contract as provided for in section 11 of the Distance and Off-Premises Contracts Act and that the translation / interpretation is completed before the expiry of that period.

I acknowledge that I lose my right to withdraw from the contract as soon as the translation / interpretation has been completed before the expiry of the withdrawal period.

_____, on _____