

General Terms and Conditions of Trade, Delivery and Payment of TTS Technical Translation Services GmbH

I. Scope

The General Terms and Conditions of Trade, Delivery and Payment listed below are the basis for all contracts concluded by TTS Technical Translation Services R.C. Abbey GmbH – referred to in the following: TTS – for the provision of goods and services. Our Terms and Conditions of Trade, Delivery and Payment are acknowledged by our clients at the latest with the placing of an order. Deviant agreements require a written form if they are to be valid. The TTS Terms and Conditions of Trade, Delivery and Payment have priority over the Terms and Conditions of Trade, Delivery and Payment of our clients.

II. Order obligations

All offers made by TTS are subject to confirmation and non-binding. Not until written order confirmation is given by TTS do they become binding.

III. Services provided by TTS

TTS offers the following services within the field of technical documentation and communication:

- Subject-specific translations from agreed source languages into agreed target languages.
- Editing, updating and revision of technical documentation
- Information translations, foreign language type setting and proofreading
- Interpreter services
- Development of concepts and compilation of technical documentation

Content and scope of the specific service obligations deriving from the contractual relationship between TTS and its client ensue from the service description included in the written offer, in the confirmation of order or in the contract to be concluded in writing between TTS and the client and which, together with these general terms and conditions, constitute the basis of the contractual relationship between the client and TTS.

IV. Obligations of the Client

1. Remuneration

■ General

The payment to be made by the client for services rendered by TTS ensue from the written confirmation of order, the written offer or the contract concluded in writing between the parties. The amount of work is re-calculated and invoiced for any subsequent modifications and/or reductions in the order value that are effected at the request of the client.

■ Rush orders

Orders that must be effected outside of normal office hours (rush orders) are executed in agreement with the client or the order situation against payment of a reasonable additional charge.

■ Incidental costs

A flat rate is charged for standard postal deliveries, necessary telephone calls, faxes and data transfers. Special requests, such as express delivery or additional copies, are invoiced separately according to the incidental costs.

2. Estimates

On request of the client TTS will make an offer. Offers in excess of the usual type, scope and expense are invoiced on a time and material basis. All offers made by TTS are non-binding. Exceedance of the estimate by 10% is not regarded as significant and does not entitle the client to cancel the contract. The precise remuneration results in the following sequence from the TTS confirmation of order, the contract concluded by the parties in writing or the written offer made by TTS.

3. Payment

Unless otherwise agreed by the parties in writing, payment of the agreed remuneration is due strictly net within two weeks after the invoice date. The following payment periods apply per order to order values of EUR 10,000 and above:

- One third of the agreed remuneration is due with transmission of the written placing of the order by the client.
- One third of the agreed remuneration is due with delivery of the service rendered by TTS to the client.
- One third of the agreed remuneration is due with the acceptance by the client, as specified in article VII, of the service rendered.

All outstanding invoices become due for payment immediately in the case that the client falls behind with only one payment. Furthermore complete payment for the current order then falls due.

TTS is entitled to allocate incoming payments at its own discretion; any payment instructions to the contrary that the client may give are of no account.

Default in payment, substantial deterioration in the assets of the client or subsequent knowledge of circumstances that render the client's credit worthiness or solvency questionable, entitle TTS to refuse performance of the service or to demand payment in advance. This in no affects the rights of TTS to demand compensation for damage or to withdraw from the contract. Objections to any TTS invoice must be made in writing to TTS and have been received by TTS within 10 days after receipt of the invoice. Thereafter the invoice is regarded as accepted.

Unless in possession of an indisputable or legally binding counter claim, the client has no right to retention or to offset against any claims for payment on the part of TTS.

4. Client obligations to co-operate

a) General

On placing of the order, the client assures TTS that he/she is in possession of both the title to the documents and its right of use. In the case that copy right or other third party rights are violated during performance of the order placed with TTS, the client shall bear sole liability; he shall release TTS from all third party claims pertaining to any such violation of rights. This shall include the reimbursement of all necessary expenses incurred by TTS as a result of the legal action.

b) Technical documentation

The client shall ensure that all appropriate auxiliary material is made available to TTS before the work is started on the order. Further the client is obliged provide TTS with all necessary information (e.g. indication of the area of application and the target group, characterisation of the product's functionality) and to make available any important product or process-specific documents (e.g. product descriptions, technical drawings, photographs or documentation etc.). In as far as such documents and documentation is put at the disposal of TTS, the client shall guarantee that these are free from any third party property rights and that there are no other rights that exclude or limit the contractual use made by TTS. The client shall insofar keep TTS free from all third party claims, including any solicitor fees or court costs that may possibly arise.

Should the client be in default of these obligations to co-operate, TTS is entitled to set the client a reasonable period of grace within which to perform these obligations, this to be accompanied with the declaration that the contract will be cancelled should these not be fulfilled within the set period. Should the contract be cancelled on the afore-mentioned grounds, TTS is entitled to demand payment for work performed proportional to the remuneration, plus compensation for costs not included in the remuneration as well as a reasonable compensation. This does not affect any more extensive liabilities the client may have in compliance with legal regulations.

V. Delivery period

The delivery period commences with the client's dispatch of the written confirmation of the order of the contract concluded by the parties or of the written offer, however, not before the client's obligation to co-operate in compliance with article IV 4 has been fulfilled. The delivery period is regarded as duly kept if the completed service has left TTS or the client has been informed of its readiness for dispatch before expiry of the delivery period. The delivery period is extended appropriately – even within a delay in delivery – in the event of unforeseen hindrances that cannot be averted by TTS despite all reasonable due care appropriate to the circumstances – regardless of whether these occur at TTS or one of its sub-suppliers – e.g. breakdowns or official intervention, power supply problems, occurrences of force major, delay in the delivery of essential hard and/or software. The same applies in the case of strikes or lock-outs. TTS is obliged to inform its clients of such hindrances without delay.

Compliance with the delivery period requires fulfilment of the client's obligation to co-operate. The delivery period is extended without any further notice from TTS should the client be in default of his obligation to co-operate, the period of extension to be at least the same as the period in which the client was in default of his obligations to co-operate.

Unless otherwise specifically agreed, the delivery period shall be extended with a reasonable period in the case of subsequent changes to the contract that may affect the delivery period.

VI. Passing of risk and dispatch

Dispatch is effected from the TTS premises at the cost and risk of the client. Unless otherwise specifically requested and agreed in writing, the route of transport is decided by TTS at its own discretion. Risk passes to the client as soon as the consignment has been posted or has been handed over to the person or company responsible for the transport.

Unless guilty of wilful misconduct or gross negligence, TTS shall not be held liable in any way for consignments of documentation or products etc. compiled by TTS that it prepares for dispatch and/or dispatches to third parties – including dispatch preparation – that has been performed by TTS at the request of the client.

On written request of the client and at his expense, TTS will insure the consignment against theft, breakage, transport, damage by fire or water and any other insurable risks.

Unless gross negligence is proved against TTS GmbH, the client shall be liable for damage, notably in the form of loss, delay, mistakes, mutilation or duplicate dispatches, arising from the use of a postal service, telephone, telex, fax, email or other forms of transfer.

VII. Acceptance

Unless a written declaration to the contrary is made by the client or unless otherwise agreed, services provided by TTS are regarded as accepted within 7 working days after transfer.

VIII. Warranty

The client is obliged to check the service delivered for any faults immediately on receipt and to advise TTS of any faults. This in no way affects obligations arising from § 377 HGB (German Commercial Code).

The client is obliged to give written advice of any obvious faults or faults that are discovered in duly performed checks and inspections of the services provided by TTS or of incomplete deliveries within seven days after receipt.

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The client is obliged to give written advice of not obvious faults or faults not recognisable during duly performed checks within seven days of their discovery, however, at the latest within one month after receipt. Warranty is excluded should the above-mentioned time limits be exceeded.

Likewise warranty claims or claims for damage are excluded in such cases where the client himself or his vicarious agents do not check the goods and advise TTS immediately of any faults before these are followed up, passed on or processed. If faults are apparent, no form of processing nor transfer of services performed by TTS may be carried out.

Should the service provided by TTS be faulty or should guaranteed features be missing, the client is obliged to advise TTS of such in writing and to substantiate his claims. In such cases TTS is initially obliged to deliver a replacement or corrected version, under exclusion of other warranty rights of the client. Should the first attempt at correction fail, the customer is obliged to once again demand correction of TTS and set an appropriate period of grace for this. Any claim to correction is excluded in such cases where the client himself is responsible for the defects, e.g. due to incorrect or incomplete information or faulty original documents.

Unless wilful intent or gross negligence is proven against TTS, its vicarious agents or assistants, TTS is not liable within the scope of the no-fault claims for damages. The client's claims are limited to the amount of the order value. Liability for consequential damage caused by defect is excluded in all cases. TTS is not liable for damage arising from slight negligence on the part of TTS, its vicarious agents or assistants.

All the client's rights to a remedy of defects in the product as well as his claims for redhibitory action, a reduction or damages due to faults become time-barred within a period of 12 months. The time bar starts with the acceptance of services provided by TTS or the substitute of acceptance of the services in compliance with figure VII.

IX. Granting of a right of use

Unless otherwise agreed between TTS and the client, TTS grants the client the right to duplicate and circulate the work it delivers in printed and electronic form.

The right to duplicate and circulate the work is limited to the subject of the agreement, the type or the series specified in the respective written contractual offer, the written confirmation of order or the written contract concluded by the parties. Unless authorised in writing by TTS, no changes may be made by the client to the documentation delivered.

TTS shall not be liable for damage arising from the duplication or circulation of services that have been changed by the client or any third party.

Should diagrams, photographs, graphic images, sketches or technical drawings be a part of the service performed by TTS and should these fall under the rights of third parties, TTS shall supply the client with the respective list of sources in order that he is in a position to solicit the acquisition of title. Should the acquisition of title prove impossible or only possible with extraordinary difficulty, TTS shall, against reimbursement of its expenses, supply appropriate substitutes.

TTS retains the title to glossaries and libraries. Use of the glossaries by the client is only permitted against payment of a sum that is to be agreed.

The client authorises TTS to make use of the services of subcontractors for the performance of specific part performances.

X. References

The client authorises TTS to include his name or his company's name in its list of references after acceptance by the client.

XI. Commissions from competitors

TTS is authorised to perform commissions for companies that may possibly be in competition with the client.

XII. Confidentiality

Documentation and information submitted to TTS by the client, or which come to the knowledge of TTS in the course of the performance of the service, shall be treated confidentially and with all due care by TTS with regard to third parties.

XIII. Retention of Title

The services delivered by TTS remain the property of TTS until payment of all, including future, claims arising from the business relationship with the client have been settled in full.

XIV. Miscellaneous

Unless otherwise agreed in writing, the place of performance for all services arising from this contract shall be Hamburg.

In as far as the client is a businessman in the sense of §§ 1 ff HGB (German Commercial Code) or is a legal entity of public law, the place of jurisdiction for claims or legal disputes arising from the business relationship is Hamburg. It is understood as agreed that German law shall be applied.

Should any provision of these general terms and conditions of trade, delivery and payment be or become invalid or null and void, this shall in no way affect the validity of the remaining provisions.