

## Orb Language Solutions Ltd Terms and Conditions

### Interpretation

In these Terms and Conditions the following definitions will apply (unless the context requires otherwise):

'**Confidential Information**' means information (in any form) which is confidential either to you or to us and which either you disclose to us or we disclose to you in connection with our Services.

'**Intellectual Property Rights**' means any rights in or to any patent, copyright, database right, registered design, design right, utility model, trade mark, brand name, service mark, trade name, business name, chip topography right, know how or Confidential Information and any other rights in respect of any other industrial or intellectual property, whether capable of being registered or not and including all rights to apply for any such rights.

'**Order**' means an order for the provision of the Services placed by you with us from time to time (such Order to include an order number (the '**Order Number**').

'**Original Works**' means the documents, files, materials and works provided by you to us to enable us to carry out the Services.

'**Services**' means the translation services performed by us from time to time at your request pursuant to an Order.

'**Terms and Conditions**' means these standard terms and conditions as set out below.

'**Translated Works**' means the documents, files, materials and works translated and produced by us from the Original Works pursuant an Order.

'**We, us, our**' means Orb Language Solutions Ltd with registered office at 1 Navigation Wharf, Malton, North Yorkshire, YO17 7AA, UK

'**You, your**' means the company (and any associated companies), firm, body or person to whom we are supplying the Services.

In these Terms and Conditions:

1. The clause headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.
2. References to 'documents', 'records', 'books' and 'data' shall include information contained in computer programs and disks and records or other machine readable form or records kept otherwise than in a legible form but capable of being produced in a legible form.
3. The word 'including' shall be understood to mean 'including without limitation' and the word 'includes' shall be understood to mean 'includes without limitation'.
4. Words of a technical nature shall be construed in accordance with general trade usage in the computer industry in England.

### General

1. Quotations are not binding on us and a contract ('**Contract**') will only come into being when we issue a written confirmation of your Order or (if earlier) upon completion by us of the provision of Services to you.
2. The Contract will be subject to these Terms and Conditions. All terms and conditions appearing or referred to in the Order or otherwise stipulated by you shall have no effect. Any variation of the Contract must be confirmed in writing by us.
3. Our written quotations are given on the basis that the terms quoted will remain open for the placing of orders for a period of 30 days from the date of the quotation.
4. Quotations are given on the basis of your description of the source material, the purpose of the translation and any other instructions. Such quotations may be amended at any time if, in our opinion, the description of the source materials is materially inadequate or inaccurate.

5. Information provided on our website or in our brochures, catalogues or other published material is for information only and does not form part of the Contract.
6. These Terms and Conditions apply to all Services provided to you unless otherwise agreed by us in writing.

## Price and Payment

1. Unless otherwise stated, prices are in sterling and are exclusive of any value added tax and any other tax or duty necessary. We shall invoice you for all appropriate taxes and expenses for which we are liable to collect. You shall be liable to pay any penalties or interest on such taxes which are payable by us as a result of your delay in paying such taxes.
2. Price includes transmission to the address specified in our quotation or confirmation of Order.
3. Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.
4. Payment shall be made upfront, upon confirmation of the Order unless otherwise stated. All payments shall be made without deduction or set-off.
5. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the Contract shall entitle us to suspend further work both on the same order and on any other order from you without prejudice to any other rights we may have.
6. We reserve the right to charge interest on overdue accounts, such interest to be calculated daily on the amount outstanding at the rate of 4 per cent above the published base rate of Barclays Bank plc.

## Delivery

1. The dates for delivery of the Translated Works or the dates for carrying out the Services are approximate only and, unless otherwise expressly agreed by us, time is not of the essence for delivery or performance and delay shall not entitle you to reject any delivery or performance or to repudiate the Contract.
2. We will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform if the duration of the delay is less than 2 days or if the delay or failure is due to late delivery or performance or non-delivery or non-performance by suppliers or subcontractors, shortage of labour, an act of God, fire, inclement or exceptional weather conditions, industrial action, hostilities, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond our control or of an unexpected or exceptional nature.
3. Posting or delivery to a carrier (including post, facsimile, e-mail) for the purpose of transmission to you shall, for the purposes of the Contract, constitute delivery to you. Risk in the Translated Works shall pass to you on delivery.

## Our Responsibility and Liability

1. The Services shall be carried out using such reasonable skill and care as is expected in accordance with the standards of the industry.
2. We shall use all reasonable skill and care in selecting translators, interpreters and other personnel used to produce the Translated Works and perform the Services.
3. No terms, conditions or warranties, whether express or implied, about the quality or fitness for purpose of the Services or the Translated Works shall be incorporated unless expressly set out in this Contract.
4. We shall incur no liability to you for innocent or negligent misrepresentation.
5. We do not warrant that the Translated Works will meet your specific requirements and, unless otherwise agreed, we do not warrant that the operation of any Translated Works sent to you will be uninterrupted or error free.
6. You acknowledge that any Original Works and Translated Works submitted by or to you over the Internet cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form, and you accept that we have no liability for the loss, corruption or interception of any Original Works or Translated Works.
7. Save in respect of death or personal injury resulting from our negligence our liability to you in respect of the provision of the Services and / or the Translated Works shall be limited as follows:
  1. We shall not be liable for loss of profits, business, contracts, revenue, damage to your reputation or goodwill, anticipated savings, and or any other indirect or consequential loss or damage whatsoever; and
  2. Our entire liability to you under any Contract shall not exceed the price payable to us by you under the Contract to which any claim relates.
8. You must notify us within 30 days of delivery of the Translated Works or completion of the provision of the Services of any claim you believe you may have ('Claim') together with full details of such Claim. In any event, we shall not be liable to you if you fail to notify us of any Claim within 30 days of delivery of the Translated Work or completion of the provision of the Services.

## Your Responsibility and Liability

1. You warrant, represent and undertake that the materials submitted by you shall not contain anything of an obscene, blasphemous or libellous nature and shall not (directly or indirectly) infringe the Intellectual Property Rights of any third parties.
2. Unless otherwise agreed by us, you shall not, for a period of one year after termination of the Contract, either directly or indirectly, on your own account or for any other person, firm or company, solicit, employ, endeavour to entice away from us or use the services of a translator or interpreter who has provided the Services and/or Translated Works to you on our behalf under the Contract ("**Translator**"). In the event of your breach of this clause, you agree to pay us an amount equal to the aggregate remuneration paid by us to the Translator for the year immediately prior to the date on which you employed or used the services of the Translator.
3. You agree, upon demand, to indemnify us and keep us indemnified, from all losses, damages, injury, costs and expenses of whatever nature suffered by us to the extent that the same are caused by or related to:
  1. The use or possession by us of any of the Original Works or materials provided by you in relation to the provision of the Services, including the breach of any Intellectual Property Rights of any third party in or to any such Original Works or materials.
  2. The processing by us of any data (where 'processing' and 'data' have the meaning given in section 1(1) of the Data Protection Act 1998) in the provision of the Services.
  3. Any breach of warranty given by you.
  4. Any other breach by you of these Terms and Conditions.
4. In the event you require us to provide the Services on your premises you shall:
  1. Assign members of staff with suitable skill and experience to be responsible for our activities.
  2. Provide such access to premises, interpretation systems and other facilities which may be reasonably required by us.
  3. Provide such information as may be required by us to carry out the Services and ensure all such information is correct and accurate.
  4. Ensure that all necessary safety and security precautions are in place at your premises.

## Intellectual Property

1. All Intellectual Property Rights in the Original Works and the Translated Works shall vest in you (or your licensors) but, for the avoidance of doubt, you hereby grant to us (and our sub-contractors) a licence to store and use the Original Works and the Translated Works for the duration of the Contract, for the purposes of providing the Services to you.

## Confidentiality

1. Save as necessary in order for us to provide the Services neither party may use any of the other party's Confidential Information.
2. Neither party may disclose to any other person any of the other party's Confidential Information.
3. Either party may disclose the Confidential Information of the other:
  1. When required to do so by law or any regulatory authority, provided that party required to disclose the Confidential Information:
    1. Promptly notifies the owner of any such requirement; and
    2. Co-operates with the owner regarding the manner, scope or timing of such disclosure or any action that the owner may take to challenge the validity of such requirement.
  2. To its (or any of its associated company's) personnel, sub-contractors' personnel or any person whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person to whom such disclosure is made:
    1. Is informed of the obligations of confidentiality under these Terms and Conditions; and
    2. Complies with those obligations as if they were bound by them.
4. This obligation of confidentiality shall survive termination of the Contract howsoever caused.

## Data Protection

1. Each party shall ensure that in the performance of its obligations under these Terms and Conditions it will at all times comply with relevant provisions of the Data Protection Act 1998.
2. We acknowledge that if we are required to process any data in the course of providing the Services we shall do so only on your instructions.

## **Termination**

1. If you subsequently cancel, reduce in scope or frustrate (by an act or omission on your part or any third party relied upon by you) the Contract, the full price for the Contract shall remain payable unless otherwise agreed in advance. Any Original Works provided to us and Translated Works completed by us under the Contract shall be made available to you on termination of the Contract.
2. We shall be entitled to terminate the Contract immediately by written notice to you if:
  1. You commit a material breach of the Contract and, in the case of such a breach which is capable of remedy, you fail to remedy the same within 7 days of receipt of a written notice specifying the breach and requiring it to be remedied, and
  2. You make any voluntary arrangement with your creditors or (being an individual or firm) become bankrupt or (being a company) become subject to an administrative order or goes into liquidation, or an encumbrancer takes possession or a receiver is appointed over any of your property or assets, or you cease or threaten to cease business, or an equivalent or analogous event occurs in any other jurisdiction.
3. Any termination of the Contract shall not prejudice any rights or remedies which may have accrued to either party.

## **Dispute Resolution**

1. If any dispute arises between the parties with respect to the Translated Works or Services then such dispute shall at the request of either party be referred to a person agreed between the parties or (in default of agreement within 7 days of notice from either party) to a person chosen on the application of either party by the Chairman for the time being of the Institute of Translation and Interpreting.
2. Such a person shall be appointed to act as an expert and not as an arbitrator and the decision of that person shall be final and binding.
3. The cost of such an expert shall be borne equally by the parties, unless such expert otherwise directs.

## **Miscellaneous**

1. Neither party shall be liable to the other for any delay in, or failure of, performance of its obligations under the Contract arising from any cause beyond its reasonable control including act of God, government act, war, fire, flood, explosion or civil commotion.
2. We may engage any person, firm or company as our sub-contractor to perform any or all of our obligations and we may assign any or all of our rights and obligations under the Contract.
3. Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter post, facsimile transmission or e-mail. Any notice or document shall be deemed served: if delivered, at the time of delivery; if posted, 48 hours after posting; and if sent by facsimile transmission or e-mail, at the time of transmission.
4. No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
5. If part of these Terms and Conditions is or becomes invalid or unenforceable it will be severed from the rest of the Terms and Conditions so that the remainder of the Terms and Conditions shall continue to be valid and enforceable.
6. A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
7. The Contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.