



# Terms of Service

**LAST UPDATED: 10 MAY 2018**

This Terms of Service Agreement is intended to tell you everything you need to know about working with me. It's a legal document so it isn't the most exciting read, but I've tried to make everything as clear as possible. When you ask me to do work for you, I will send you a copy of this Agreement as well as an estimate or Quotation specific to your project. These two documents should always be read together, because in some cases the details in the estimate or Quotation will differ from the general terms contained here. I will also send you a copy of my Privacy and Data Security Policy, which explains how I process and look after your data in accordance with the law.

As an Associate Member of the Chartered Institute of Linguists and the Institute of Translation and Interpreting, I am also bound by the Codes of Professional Conduct of each of these bodies — these can be found [here](#) (CIoL) and [here](#) (ITI).

I'm looking forward to working with you! Please let me know if you have any questions. I can be contacted by email at [info@tintavivatranslation.com](mailto:info@tintavivatranslation.com) or by telephone on +44(0)1367 560 732.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement, the following expressions will be given the following meanings, unless the context requires or specifies that they mean something else.

**Agreement** refers to these standard Terms of Service.

**Project** refers to the period during which I provide services or carry out work for or on behalf of my Client (you) or as otherwise agreed between us, commencing at the time at which I begin such services or work, and ending upon the cessation by me of all such work and services.

**Client (or you, or your)** refers to the Party commissioning a Translation or Edited Document or other Translation or Editing Task. A Client may be a natural or legal person, including, for example, private individuals, associations, organisations, partnerships or corporate entities.

**Confidential Material** means any commercially sensitive or private information relating to you and your business and any personal information relating to you as an individual.

**Party or Parties** refer to the parties to this Agreement; the Client (you) and the Translator (me). Parties may be natural or legal persons.

**Quotation** refers to a separate document specific to each Project that I will provide to you when you commission work from me and which should be considered in conjunction with this Agreement. The terms stated in the Quotation may prevail over those in this Agreement where this is explicitly stated.

**Source Language** refers to the language in which the original Source Material is written, for example Spanish or French.

**Source Material** refers to any text or other medium provided by you to me containing a communication which is to be translated, edited or proofread. This may include text, sound and/or images.

**Target Language** refers to the language in which I will produce the Translation; in other words, the language into which I will translate your Source Material. Like all professional translators in the UK, I only translate into my native language, and so the Target Language will always be English.

**Translator (or I, me or my)** refers to the Party providing a Translation or carrying out an Editing Task in the normal course of business, which will almost always be me, Ruth Grant, trading as Tinta Viva Translation. The Translator shall be the creator of the Translation. I do not usually subcontract work to any other language service providers, but if in exceptional circumstances I need to do this, I shall explicitly inform you of the reasons for this in advance of any Translation or Editing Tasks being commenced.

**Translation Task** refers to the preparation of a Translation or any other translation-related task such as revising, editing, proofreading, etc. and which calls upon the skills of a translator. It does not include administrative tasks or communications, although these may form part of the broader Project.

**Editing Task** refers to the preparation of a revised version of an English-language text that you have asked me to copyedit, revise or proofread. It does not include administrative tasks or communications, although these may form part of the broader Project.

**Translation** refers to the commissioned work created by the Translator in the Target Language.

**Edited Document** refers to the commissioned revised version of an English-language text that I have copyedited, revised or proofread.

**Third Party** refers to any party who is not a party to this agreement, i.e. anyone other than the Translator and the Client.

## 1.2 Interpretation

Unless otherwise stated, this Agreement should be interpreted as follows.

- a) Words in the singular shall include the plural and vice versa.
- b) Any reference to one gender shall, unless the context otherwise requires, include a reference to other gender states.
- c) No numbered clause or part of any numbered clause shall be read separately from any other part.
- d) A reference to a statute or statutory provision is a reference to its current form, as amended, extended or re-enacted from time to time.
- d) Any words following the terms ‘including’, ‘include’, ‘in particular’, ‘for example’ or any similar expression shall be construed as illustrative and shall not limit the sense of the preceding words.
- e) This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales.

## 2. Copyright in Source Material

- 2.1 I accept a Translation Task or Editing Task from you on the understanding that the performance of the Translation Task or Editing Task will not infringe any Third-Party rights. Accordingly, you warrant to me that:

- a) you have full right and authority to enter into this agreement, having acquired the right and licence to translate and publish the Source Material; and
- b) the Source Material does not contain anything libellous nor does it infringe the copyright or any other right of any person.

2.2 You shall indemnify me against any loss, injury or damage (including legal costs and expenses and compensation paid by me to compromise or settle any claim) which I suffer as a consequence of any breach or alleged breach of either of the above warranties or as a consequence of any claim that the Source Material contains anything libellous, blasphemous or obscene or which infringes the copyright or any other rights of any Third Party.

### 3. Fees and Quotations

- 3.1 Tinta Viva Translation aims to be as transparent as possible with regard to fees, and in most cases the quoted fee will be based on my standard rates and surcharges which will not vary from project to project. However, these standard rates and surcharges shall be considered as estimates until the Quotation is issued.
- 3.2 An estimate is an indication of the probable fee to be charged in the event of a Project being commissioned. Estimates are given for guidance or information only and shall not be considered contractually binding.
- 3.3 The final fee will be stated on the Quotation for your Project, and this Quotation shall be considered binding on me until I have received your Source Material or until thirty (30) days have passed, whichever occurs first. If I have not received your Source Material within this time, the Quotation may be subject to revision. In this case a new Quotation will be sent to you which shall take precedence over the original.
- 3.4 Occasionally, once I have seen or heard all of the Source Material and received your complete instructions as to the purpose of the Translation or Edited Document and any specific requirements for your Project, I may issue a revised Quotation if the original was issued prior to the receipt of the Source Material. This might happen, for example, if the Source Material is provided to me in non-editable format; if it makes exceptional demands in terms of the time needed for research, formatting or other tasks ancillary to translation; if it is poorly legible in the case of written texts or poorly audible in the case of sound media; or if in my opinion the description originally provided was materially inadequate, inaccurate or incomplete. This revised Quotation shall take precedence over the original and shall be considered binding on me until approved by you or for a period of thirty (30) days from the date on which it was issued, whichever occurs first. If I have not received approval of the revised quotation after this time, it may be subject to further revision.
- 3.5 The Quotation shall therefore not be considered fixed until I have received all of the Source Material as well as your full instructions. Once the fee for the Project has been agreed and the final Quotation approved by both Parties, the agreed fee shall not be subject to revision until the Project is complete except in the circumstances described in Clause 3.6 and Clause 3.7 below.
- 3.6 Any fee agreed for a Translation Task or Editing Task which is later found to present latent special difficulties of which neither Party could be reasonably aware at the time of offer and acceptance may be renegotiated. I

will always make these circumstances known to you as soon as reasonably practical after they become apparent.

- 3.7 Should any changes or additions be made to the Source Material or to your requirements at any time while the Translation Task or Editing Task is in progress, I may adjust the chargeable fee and the terms of delivery to reflect the additional work. In these circumstances I will send you a revised Quotation and I shall have the right to pause work on the Project until the revised Quotation has been accepted by you.
- 3.8 From time to time I may revise my standard rates without issuing a general announcement. Any such changes will have no bearing on any Projects in progress, or future work for which an estimate or quotation has been issued prior to this revision coming into effect.
- 3.9 VAT will be charged at the standard rate in force in the UK at the time of invoicing (currently 20%) in addition to the final invoiced fee for the Translation Task or Editing Task.
- 3.10 Costs of delivery of the Translation or Edited Document, either electronically or by regular mail, shall normally be borne by me. If you request a different delivery method which involves expenditure greater than the cost normally incurred (for example courier and/or recorded or special delivery), this cost shall be chargeable to you.

#### **4. Delivery**

- 4.1 The agreed delivery date or dates will be stated on the Quotation and shall become final only after I have seen or heard all of the Source Material to be translated or edited and received complete instructions in writing from you. If the delivery date is revised once I have received the Source Material, a revised Quotation will be issued which shall take precedence over the original.
- 4.2 I will always do everything I can to meet the agreed delivery date, and this commitment is reflected in my Fulfilment Guarantee outlined in Clause 10.4. Where the Fulfilment Guarantee does not apply, the delivery date or dates shall not be considered to be of the essence unless otherwise agreed between us in writing.
- 4.3 Unless otherwise agreed, I shall dispatch the Translation or Edited Document in such a way that both Parties can reasonably expect it to be received at the address specified in the Quotation no later than 5 pm on the agreed date of delivery.
- 4.4 If you request an express weekend service and this is agreed in the Quotation, I shall dispatch the Translation or Edited Document in such a way that both Parties can reasonably expect it to be received at the address specified in the Quotation no later than 10 am on the date of delivery.

- 4.5 Delivery of a Translation or Edited Document will usually be carried out via an encrypted file attached to an email or transferred through a secure file sharing application or File Transfer Protocol (FTP) client. I will confirm your preferences in relation to the delivery method with you in advance. If an alternative delivery mechanism is required, this must be clearly stated by you at the time of commissioning the Translation or Editing Task.
- 4.6 If you require the Translation or Edited Document to be delivered by Royal Mail or a commercial courier, I shall not be responsible for any delays arising as a result of the actions or circumstances of any such Third Party, or for any losses arising from such delays. I shall not be liable for the security and privacy of information sent through the mail or by courier.

## 5. Payment

- 5.1 Payment in full shall be made no later than thirty (30) days from the date of invoice by the method of payment specified in the Quotation.
- 5.2 Unless otherwise specified in the Quotation or by separate written agreement, payment should be made by direct bank transfer, UK cheque or PayPal, using the payment details printed on the invoice. If you choose to pay via PayPal, any personal data provided to PayPal will be subject to PayPal's own privacy policy and data management practices, and I shall not be liable for any loss or damage arising as a result of loss or unauthorised access to such data.
- 5.3 Payment may be made in GBP, EUR or USD. Payment in currencies other than sterling (£) shall be made by bank transfer, either directly using an IBAN number or via the currency broker specified in the invoice, or by PayPal, unless otherwise agreed between us.
- 5.4 For large Projects (in excess of 100,000 words) I may request an initial payment of up to fifty percent (50%) of the total fee and periodic partial payments on terms to be agreed in the Quotation.
- 5.5 Any payment that is not made before the due date shall bear interest, in accordance with the Late Payment of Commercial Debts Regulations 2013. The rate of interest shall be three percent (3%) above the Bank of England base rate, calculated on a daily basis from the date when such payment fell due until the date on which payment in full is received by me or until forty-five (45) days after the date on which payment was due, whichever occurs first. If the full payment has not been received by me forty-five (45) days after the date on which payment was due, the rate of interest borne by the proportion of the payment that has not been paid shall increase to eight percent (8%) above the Bank of England base rate, calculated on a daily basis from the date when such payment became overdue by forty-five (45) days.

- 5.6 The charging of such interest in accordance with Clause 5.5 shall be without prejudice to any sums due and without any liability whatsoever to the Client or any Third Party.
- 5.7 Where delivery is in instalments and notice has been given that an interim payment is overdue, I shall have the right to cease working on the Translation Task or Editing Task at hand until the outstanding payment is made or other terms agreed.

## **6. Copyright in Translations and Edited Documents**

- 6.1 In the absence of express written agreement to the contrary, copyright in the Translation as a literary work remains the property of the Translator. This copyright holds worldwide from the commencement of work on the Translation up until seventy (70) years after the death of the Translator. Copyright of an Edited Document remains with the author of that document or the legal copyright holder.
- 6.2 I grant you a licence to reproduce the translated text in all mediums and for the purposes agreed in the Quotation from the date of the delivery. You shall not use the Translation for any other purpose without my express prior written permission.
- 6.3 In all cases where the Translation is to be published or distributed for use by Third Parties other than your direct clients, regardless of whether the copyright has been retained by me or transferred to you or a Third Party, I assert my moral rights in accordance with the Copyrights, Designs and Patents Act 1988, including the rights of paternity and integrity. This means that I must be named as the author of the Translation wherever it is published or distributed and the Translation must not be amended or edited in any way that distorts its meaning or compromises my honour or reputation.
- 6.4 Where I retain the copyright, unless otherwise agreed in writing, any published text of the Translation shall carry the following statement: '©English text (Ruth Grant) (Year)'.
- 6.5 Where I assign the copyright to the Translation and the Translation is subsequently printed for distribution, you shall acknowledge my work in the same weight and style of type as used for acknowledgement of the printer and/or others involved in the production of the finished document, by the following statement: 'English Translation by Ruth Grant'.
- 6.6 As the copyright owner, I may use and sell, or resell, a non-confidential Translation or any part thereof not covered by copyright, the Official Secrets Act, legal professional privilege or public interest immunity, unless copyright has been assigned or licensed formally in writing as required by Section 90(3) of the Copyright, Designs and Patents Act 1988.

- 6.7 Where I retain the copyright in a Translation, or if a Translation is to be used for legal purposes, no amendment or alteration may be made to a Translation without my prior written permission, excepting copyediting amendments to conform with your standard style in terms of punctuation, spelling and capitalisation or that of your direct client. In the event of any amendments being made to the Translation, you shall provide me with a copy of the amended Translation for review and approval prior to its use, publication or distribution. I will provide any revisions or corrections within five (5) working days of receipt of the amended Translation.
- 6.8 If a Translation is in any way amended or altered by you or any Third Party without my express prior written permission, I shall not be in any way liable for amendments so made or their consequences.
- 6.9 If an Edited Document is amended by you or any Third Party after delivery, or if you choose not to accept the changes I have recommended, I shall not be in any way liable for these actions or their consequences.
- 6.10 Where at the Client's instigation the translated text is to be published or distributed by a Third Party as part of a new work, or a new translation into a language other than English is made based on the Translation authored by me, a repeat fee of up to fifty percent (50%) of the total invoiced fee for the Project shall be payable and the Client shall be liable for ensuring that this fee is paid. This clause does not apply to uses of the Translation covered by the Principle of Fair Dealing established by Sections 29 and 30 of the Copyright, Designs and Patents Act 1988.
- 6.11 Where a Translation is to be incorporated into a translation memory system or any other corpus, I shall license use of the Translation for this purpose for an agreed fee. Such incorporation and use shall only take place after the licence for the purpose has been granted by me in writing and the agreed fee has been received in full. It shall be your duty to notify me in advance of any such incorporation that such use will be made of the Translation. This clause does not apply to Translation Agencies whose own terms and conditions I have accepted.

## **7. Confidentiality, Privacy and the Security of Data and Documents**

- 7.1 Tinta Viva Translation is committed to protecting the security and confidentiality of Clients' personal data and any personal data contained in the Source Material. This information is treated as confidential and is processed and stored in compliance with current data protection law in England and Wales, including, as of 25 May 2018, the EU General Data Protection Regulation (GDPR) Directive.
- 7.2 By accepting this Agreement, you confirm that you have read and accept my Privacy and Data Protection Policy, which explains how your data is collected, processed and kept safe.

- 7.3 If you are the Data Controller of personal information being passed to me for processing for the purposes of translation, editing or proofreading, by accepting this Agreement you confirm that you have lawful grounds under the GDPR for this processing to take place. If the Source Material contains personal information that falls under the Special Categories of Data as set out in the GDPR, I will ask you to confirm that you have obtained explicit, specific consent for processing from the data subject (or the data subject's legal guardian in the case of a child) unless I am satisfied that one of the other conditions for processing special categories of data under Article 9 of the GDPR applies.
- 7.4 When I send files to you, I will take reasonable precautions as set out in my Privacy and Data Security Policy to protect this information in transit (see Clause 4.5). You shall be responsible for the privacy and security of information contained in files you send to me, and I shall not be liable for any loss or damage resulting from insecure file transfer practices.
- 7.5 Other than personal data, you shall be responsible for specifying which if any of the Source Materials should be deemed to be Confidential Material at the time of their delivery to me. However, I shall at all times treat the Source Materials with due discretion in respect of disclosure to any Third Party of information which they contain.
- 7.6 Clause 7.5 notwithstanding, unless you request otherwise, I may consult colleagues or relevant specialist authority on specific terminology queries and other linguistic matters relating to the Project. If such consultation takes place, I shall ensure that no Confidential Material or identifiable personal information is disclosed to any Third Party.
- 7.7 I shall be responsible for the safekeeping of the Source Material and shall, where necessary, ensure its secure disposal. All Source Material shall be stored securely and all reasonable precautions will be taken to prevent loss, theft, unauthorised access or misuse during storage and transfer, including daily backups, password protection and file encryption. These precautions are described in more detail in my Privacy and Data Security Policy.
- 7.8 I shall not make copies of the Source Materials supplied by the Client other than what is required in the normal course of the translation tasks at hand, and any copies shall be for internal use only. I may retain copies of the Source Materials for my records unless you request otherwise, and for insurance purposes.
- 7.9 If you request me to do so, I shall insure documents in transit from me to you, at your expense.
- 7.10 You shall not disclose any information relating to me, my business or my working practices that is not already in the public domain without my express permission.

## **8. Cancellation and Frustration**

- 8.1** If you commission me to carry out a Translation Task or Editing Task for you and this work is subsequently cancelled, reduced in scope or frustrated (i.e. impeded) by an act or omission on the part of the Client or any Third Party, you shall, except in the circumstances described in Clause 8.3 below, pay me for the work which has already been completed, at the rate agreed in the final Quotation. The work that has been completed shall be delivered to you as described in Section 4 of this Agreement.
- 8.2** If you go into liquidation (other than voluntary liquidation for the purposes of reconstruction), or have a receiver appointed or become insolvent, bankrupt or enter into any arrangement with creditors, I shall have the right to terminate the contract and you shall pay me for any work which has already been completed, at the rate agreed in the most recent Quotation. Any such work shall be delivered to you as described in Section 4 of this Agreement.
- 8.3** Neither I nor you 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.
- 8.4** I shall notify you as soon as is reasonably practical of any circumstances likely to prejudice my ability to comply with the terms in this Agreement and in the Project Quotation, and I will assist you as far as reasonably practical to identify an alternative service provider if necessary.

## **9. Complaints and Disputes**

- 9.1** I am deeply committed to providing you with the very best service I can. However, on rare occasions things might go wrong. In the event of you raising a complaint or dispute with me, I will endeavour to respond within twenty-four (24) hours of receiving this communication from you.
- 9.2** Any substantial errors of meaning or delays in delivery are covered by the Fulfilment Guarantee as outlined in Clause 10.4 below. If you have any concerns about my work not covered by the Guarantee, for example with respect to the purpose of a Translation or Edited Document or the requirements as originally communicated, and these are brought to my attention within ninety (90) days of delivery of the Translation or Edited Document, I will undertake to correct these within forty-eight (48) hours for no additional charge. If we are unable to resolve the problem, the matter may be referred by either Party to the Chartered Institute of Arbitrators. Such referral shall be made no later than two (2) months from the date on which the original complaint was made.

- 9.3 Similarly, any disputes relating to payment or delivery terms on which we are unable to reach agreement may be referred to the Chartered Institute of Arbitrators within two (2) months from the date on which either Party raised the original complaint.
- 9.4 If we are unable to resolve a dispute amicably between ourselves, or if either Party refuses to accept arbitration, both Parties shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## 10. Responsibility and Liability

- 10.1 At every stage of the Project, I will endeavour to provide you with excellent service both in terms of the quality of the Translation or Editing Task provided and the speed, fullness and clarity of my attention and communication to you as my Client. Except in the case of force majeure, I will use all reasonable endeavours to carry out the commissioned work to the very best of my ability, knowledge and belief, consulting such authorities as are necessary and reasonable available, and seeking more specialised opinion on the translation of specific terms if needed.
- 10.2 The Translation Task shall be carried out by me using reasonable skill and care and in accordance with the provisions and spirit of the Codes of Professional Conduct of both the Chartered Institute of Linguists and the Institute of Translation and Interpreting.
- 10.3 Every Translation shall be fit for its stated purpose and target readership unless you expressly indicate that the Translation is 'for information' only.
- 10.4 Tinta Viva Translation is proud to offer a Fulfilment Guarantee for Translations whereby the entire fee for the Project shall be waived in the following circumstances only:
- a) The Translation provided by the Translator contains a significant error or errors in meaning, or
  - b) The Translation is delivered more than twenty-four (24) hours after the agreed delivery date and time specified in the Quotation. If no such delivery date is specified in the Quotation the delivery date agreed shall not be considered of the essence, in accordance with Clause 4.2 of this Agreement.
- 10.5 Any claims made by the client in respect of the aforementioned Fulfilment Guarantee must be made within thirty (30) working days of delivery of the Translation. Thereafter, any errors in meaning will be corrected within twenty-four (24) hours free of charge.
- 10.6 In the event of my being prevented from completing the commissioned Project or delivering a Translation or Edited Document within the time agreed as a result of force majeure, I will notify you as soon as reasonably possible and both Parties will be entitled to terminate the contract subject to payment being received for any

work which has already been completed. Force majeure encompasses any unforeseen circumstances which are entirely beyond my control, for example fires, floods, natural disasters, industrial disputes, acts of war or terrorism or civil unrest. In such circumstances I will do everything I can to take remedial action, in which case the terms of the Quotation may be subject to revision, or else help you to place the Project elsewhere if necessary.

- 10.7 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.
- 10.8 Subject to clause 10.7, the liability of the Translator under or in respect of this Agreement, whether in tort, contract or otherwise, shall be limited to the amount of the quoted fee for the Translation Task or Editing Task which has given rise to the liability.
- 10.9 Neither You nor I shall be liable to the other in respect of any consequential or indirect loss whatsoever.

## **11. Unfair Competition**

- 11.1 In accordance with the Codes of Professional Conduct of the Chartered Institute of Linguists and the Institute of Translation and Interpreting, I shall not knowingly make direct contact with my Client's clients without the express permission of my Client. I shall not approach any Third-Party work-providers for whom my Client is an intermediary or agency for the purposes of soliciting work unless I have had previous dealings with this Third Party or I am acting in response to an independent approach from the Third Party or a call for applications published by the Third Party on the open market.

## **12. Ethical Considerations**

- 12.1 I reserve the right to refuse to work with any potential client, and to refuse individual Projects, on ethical grounds. Tinta Viva Translation will not usually accept work from individuals or companies whose actions or objectives promote: violence; armed conflict; hatred or discrimination on the grounds of ethnic group, nationality, religion, sexual orientation or physical ability; illegal activity; corruption; the exploitation of men, women or children; significant harm to public health and/or safety; significant harm to the environment or infringements of inalienable human rights as defined by the 1948 Universal Declaration of Human Rights. This list is not exhaustive and other considerations may be taken into account. Should such ethical concerns arise after a project has been accepted but before work has begun, the contract shall be terminated and the Client shall be notified immediately. If, during the course of the Translation Task or Editing Task, it becomes apparent that the project is in breach of Tinta Viva Translation's ethical code, the Project shall be treated as if cancelled in accordance with Clause 8.1 of this Agreement.

### **13. Applicability and Integrity**

- 13.1** This Agreement shall come into effect either (1) when you sign the Agreement or communicate your acceptance of the Agreement in writing or (2) when you commence delivery of the Source Material; or (3) when I provide any services under the Agreement, whichever occurs first.
- 13.2** This Agreement should be read in conjunction with the Quotation issued to the Client in respect of a specific Project and may be amended by any such Quotation where such amendments are made explicit.
- 13.3** No waiver of any breach of any condition in this Agreement shall be considered as a waiver of any subsequent breach of the same or any other provision.

Signed by \_\_\_\_\_ (The Client)

Print name \_\_\_\_\_

Date: \_\_\_\_\_

AND

Signed by \_\_\_\_\_ (The Translator)

Print name \_\_\_\_\_

Date: \_\_\_\_\_