

Van Maarschalkerweerd Translations

Standard Conditions of Delivery and Payment of Van Maarschalkerweerd Translations

Article 1 – Scope

- 1.1 These Conditions apply to all offers, quotations and agreements entered into with or by Van Maarschalkerweerd Translations (hereinafter the Contractor) and the Client.
- 1.2 Deviations from these Conditions are valid only insofar as they have been agreed between the parties explicitly and in writing, and apply only to the offer, quotation or agreement for which they were adopted.
- 1.3 All prices that are quoted by the Contractor in mailings or catalogues or made known in any other way are exclusive of VAT and are not binding upon the Contractor unless expressly stipulated otherwise in writing.
- 1.4 If any of the provisions of these Conditions proves to be invalid, in whole or in part, this will have no effect on the validity of the remaining provisions.

Article 2 - Offer

- 2.1 Any offer made by the Contractor is made without engagement, unless it has been expressly stipulated in writing that the offer is irrevocable. Unless expressly stipulated otherwise in writing, any offer is valid for a period of two (2) weeks as from the date of the offer.
- 2.2 An agreement between the Client and the Contractor will only be deemed to have come into effect after the Contractor has notified the Client in writing that the assignment has been accepted or after it has become evident to the Client that the Contractor has executed said assignment.

Article 3 - Execution of the assignment

- 3.1 In carrying out the assignment, the Contractor will at all times exercise her duty of care in a manner befitting a professional. The Contractor will consider the Client's instructions in the execution of the assignment insofar as the Contractor deems such instructions appropriate in the context of the aforementioned duty of care. A notice of default in connection with any attributable or actual failure on the part of the Contractor to fulfil any obligation vis-à-vis the Client will only be deemed to have effect after the Contractor has received notice of said default from the Client by registered post.
- 3.2 Unless expressly agreed otherwise in writing, the Contractor will at all times be entitled to subcontract the assignment to a third party.
- 3.3 The Client will provide the Contractor at the latter's first request with any desired information in connection with the texts to be translated.
- 3.4 The Contractor keeps all information provided by the Client strictly confidential. The Contractor's employees and/or third parties engaged in the execution of the contract are bound to equal confidentiality.
- 3.5 Unless it has been expressly stipulated otherwise, the Contractor is authorized to have the Work (partly) performed by a third party, without prejudicing her responsibility for observing confidentiality and for the proper performance of the Work.

Article 4 - Fee and expenses

The Client owes the Contractor the agreed fee for the execution of the commissioned work. If no rate has been agreed prior to the execution of the assignment, the Client will owe the Contractor a reasonable fee based on the rates that the Contractor normally charges for work comparable to that of the assignment. A rate per word is applicable for translation work, whereas other work is charged at an hourly rate. Except when expressly stated otherwise, all prices charged to the Client by the Contractor are exclusive of VAT. In addition to the aforementioned rates, the Contractor is entitled to pass on to the Client all expenses reasonably incurred in the course of executing the work.

Article 5 - Delivery dates

Any lead times or delivery dates specified in offers, order confirmations or agreements are given on the basis of best estimation and will be honoured whenever possible without being binding. Failure on the part of the Contractor to meet a deadline, for any reason whatsoever, does not entitle the Client to any compensation, nor to dissolve the agreement or to defer fulfilment of any obligation ensuing from the agreement or from any contingent agreement, unless such failure continues for a period exceeding three times the original forecast lead time, up to a maximum of 10 working days; this provision does not apply in cases where the delay is partially or wholly attributable to some failure on the part of the Client. Delivery is deemed to have been effected at the moment the work is entrusted to a postal service or is transmitted by fax or email.

Article 6 - Complaints

Any complaints must be brought to the Contractor's notice in writing within 8 working days of the result of the assignment being brought to the knowledge of the Client. The reporting of a complaint in no way entitles the Client to defer his obligation to pay the Contractor for the work delivered.

Article 7 - Payment

- 7.1 Unless expressly agreed otherwise in writing, payment of all invoiced amounts must be effected at the offices of the Contractor or by bank transfer to a bank or giro account nominated by the Contractor; payment is due within 30 calendar days of the invoice date. No set-off of any kind may be applied. Copyright to the translation(s) produced remains vested in the Contractor until full payment of all amounts due from the Client, for whatever reason, has been effected. This expressly includes the payment of any interest, collection or other charges. The Client's prerogative to dispute the Contractor's invoice lapses 30 days after the date of the invoice.
- 7.2 If the Client fails to effect payment within the agreed period, the Client will be deemed to be in default by operation of law and the Contractor will be entitled, without further notice, to increase the amount owed by the Client with interest at the statutory rate plus a mark-up of 3% as from the date on which the invoice went into default. In addition, all expenses incurred by the Contractor both in and out of court (which expressly includes debt collection fees, legal aid and lawyer's fees) will be for the account of the Client. Without prejudice to the Contractor's right to recompense for other loss or damage, the out-of-court collection fees will amount to at least 15% (fifteen percent) of the capital sum owed by the Client to the Contractor with a minimum of EUR 150; if the actual out-of-court collection fees are higher, the Client will be liable for the actual costs. Costs incurred for litigation and/or out-of-court debt collection become immediately due and payable as soon as they are incurred by the Contractor.

Article 8 - Copyright

- 8.1 The Contractor who actually produces the translation retains any moral right which is applicable to the translation. Copyright to the substance of the translation passes to the Client as from the moment that he fulfils all his payment and other obligations vis-à-vis the Contractor.
- 8.2 The Client indemnifies the Contractor against any claim by a third party regarding an alleged infringement of proprietary right, patent rights, copyrights, or other intellectual property rights in connection with the execution of the contract.

Article 9 – Changes, Termination of contracts

- 9.1 If the Client modifies the Work after formation of the contract, the Contractor is entitled to adjust the lead time and/or fee, or reject the Work. Any work already executed will be assessed in mutual consultation and in accordance with the principles of reasonableness and fairness.
- 9.2 If the Client cancels the Work commissioned, the Client has to pay for that part of the Work that has already been executed as well as and has to pay an amount of compensation, at an hourly rate, for any research executed with respect to the remaining part of the Work.
- 9.3 If the Contractor has reserved time for the performance of a work that subsequently has been cancelled, and if the reserved time cannot be used for other work, the Client shall pay the Contractor 50% of the fee for the portion of the Work that has not been executed.

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- 9.4 Without prejudice to the right of a Client who is not acting in the course of a business or profession to have the agreement terminated by early termination, the agreement between the Client and the Contractor will only end as follows:
- when both parties have fulfilled their obligations correctly;
 - at the designated time if such a time has been agreed between parties in writing;
 - by dissolution of the agreement by one of the parties on the grounds of Article 265 of Book 6 of the Dutch Civil Code; or
 - by termination with immediate effect on the part of the Contractor if the Client applies for a moratorium or suspension of payments or files for bankruptcy; all the above on the understanding that, in the case of dissolution by the Client on the grounds of Article 265 of Book 6 of the Dutch Civil Code, the Contractor is not under an obligation to rescind the agreement.
- 9.5 In the case of early termination of an assignment by a Client who is not acting in the course of a business or profession, the Client will be obliged - notwithstanding the provisions of Article 411 of Book 7 of the Dutch Civil Code - to compensate the Contractor for any preparatory research executed and for any time spent compiling terminology lists, etcetera.

Article 10 - Liability

- 10.1 In the event of any attributable failing on the part of the Contractor, the Contractor's liability - subject further to the remaining provisions of this Article - is limited to the duty to belatedly fulfil her obligations, unless such proper performance is impossible, either temporarily or permanently, and unless the Contractor elects to dissolve the agreement; in such a case proportional reimbursement must be made of any fee due or received for the assignment.
- 10.2 With due observance of the remaining provisions of this Article, the Contractor is only liable for any loss or damage incurred by the Client as a direct consequence of the former's failure to perform her obligations under the agreement in a proper and/or timely fashion. The Contractor cannot be held liable for consequential loss (which includes, but is expressly not limited to: loss of turnover, loss of profit, intangible loss, defamation and slighted reputation) ensuing from an attributable failing or an unlawful act, unless such loss is caused by wilful recklessness or intent on the part of the Contractor, on the understanding, however, that the Contractor cannot be held liable where such a loss is caused by the wilful recklessness or intent of the Contractor's non-executive subordinates (assistants).
- 10.3 For each incident, or series of incidents with a common cause, and subject to the remaining provisions of this Article, the Contractor's liability on the grounds of Article 10.2 is limited to the amount due from the Client (excluding VAT) for the assignment during the performance of which the loss or damage was incurred.
- 10.4 Notwithstanding the provisions of Article 10.3, the total cumulative liability of the Contractor for any one assignment will never exceed a total amount of EUR 2,500 (two thousand, five hundred Euros).
- 10.5 If and insofar as it can be established at law that the Contractor's appeal to any of the limitations specified in the foregoing paragraphs of this Article cannot in all reasonableness and fairness be deemed legitimate, the liability of the Contractor for the loss or damage in each case will be limited to an amount to be determined by the Court in the proper administration of justice; that amount will take into account, as far as possible, the underlying principle agreed between parties that the Contractor's liability vis-à-vis the Client for loss or damage must be restricted.
- 10.6 Insofar as the Contractor acts as intermediary or otherwise mediates, whether or not for consideration, in the formation of an agreement between the Client and a third party with regard to work (whether translation or interpreting) to be executed by said third party, the Contractor cannot be held liable for any loss or damage incurred by the Client as a direct or indirect consequence of such mediation. This also applies in cases where the Client is of the opinion that an incorrectly translated text is ambiguous.
- 10.7 Transmission or dispatch of manuscripts, documents, books, other valuable papers and data carriers entrusted to the Contractor will be effected for the Client's risk and account.

Article 11 - Force Majeure

- 11.1 In these Terms and Conditions, the meaning of the term "force majeure" includes all causes recorded in statutory law and case law, as well as all exterior causes, whether foreseeable or not, that are beyond the Contractor's control and that prevent the Contractor from meeting her obligations. Force majeure includes - but is not confined to - fire, accident, illness, strike, riot, war, government measures, prolonged power cuts, disrupted transfer, and terrorist threats.
- 11.2 During the period of force majeure, the Contractor's obligations are suspended. If, due to force majeure, the Contractor is unable to meet her obligations, both parties are entitled to terminate the contract, without any damages being required. However, the obligation to pay for work already executed remains in place. If the Client is the consumer, the power to suspend only applies in so far as this power is enforceable by law.
- 11.3 If, at the commencement of force majeure, the Contractor has already met part of her obligations, or is only able to meet part of her obligations, the Contractor has the right to send a separate invoice for the work executed so far, and the Client must pay this invoice as though it concerned a separate contract.

Article 12 - Indemnification

The Client guarantees that he is authorized to have the documents in question translated and indemnifies the Contractor against any claim or legal action of any kind whatsoever from third parties, except and insofar as such claim or legal action is attributable to wilful recklessness or intent on the part of the Contractor.

Article 13 - Disputes

- 13.1 All disputes and legal claims, which might arise in connection with or in respect of the performance of the assignment by the Contractor, must be brought before the competent Dutch Court.
- 13.2 The parties initiate court proceedings only if they have done their utmost to resolve the dispute by mutual consultation.

Article 14 - Choice of law

The law of the Netherlands is applicable to all agreements between the Contractor and the Client.

Article 15

The Standard Conditions of Delivery and Payment of Van Maarschalkerweerd Translations have been filed with the Chamber of Commerce on 17 December 2014.

Van Maarschalkerweerd Translations has been entered into the Trade Register under number 31045110.

Note:

this translation is provided for convenience only and has no force in law. In the event of any dispute as to the interpretation of any provision, the original Dutch language version will prevail.