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Contract Checklist

Literary
Delivery and obligation to publish; payment and rights; royalties and subsidiary rights; copyright; editing and acceptance; credits

Work-for-hire
Engagement of service; payment, invoicing, and delivery; confidentiality and nondisclosure; indemnification; term and termination

Boilerplate Provisions
Same for both; part 2 of webinar
The previous slides contained samples of some of the most important provisions you’ll find in a translation service contract. The way I draft my contracts is by dividing the main obligations up into five categories and then adding boilerplate provisions at the end under “Miscellaneous”. If you’re an agency, you may want to have a section on Innovations and one on Non-solicitation and/or Non-interference and/or Conflict of interest.
Contracts that resort to too many absolutes or unnecessarily strong language reveal a lot about how the other party views you and your contractual relationship.

**Determine Intent**

Provisions with key words like “sole and absolute discretion” or “absolute duty” or “without notice”, etc. should be read very carefully. When in doubt, ask a local lawyer.

**Watch Your Words!**

If a certain provision seems to contradict existing custom and practice in that particular industry, you’ll want to ask for clarification or renegotiate.

**Take Custom and Practice into Account**

A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations. Courts have principles for determining if a provision is ambiguous.
Interpreting Contracts

Context Matters
Contracts should be viewed in light of the circumstances under which they were made.

Reasonability is Key
Contracts should be construed in a commercially reasonable manner. If a provision is not reasonable, it should be renegotiated.

Contracts are to be Harmonized
The terms of the contract should be “harmonized” and read in context with all other pertinent documents, including POs, emails, etc.
TRANSLATION AGREEMENT

Date of this Agreement:

Client's Name

Translator's Name

of ___________ of ___________ (TRANSLATOR)

and

of ___________ of ___________ ("CLIENT")

Client's Address

Translator's Address

___________________________________________________________

Client: ___________________________________

__________________________ of __________________________________ ("CLIENT")

___________________________ of _______________________________ ("TRANSLATOR")

hereby agree as follows:

1. Description of services. Translator, as an independent contractor, will provide the following service(s) (Identify item(s) to be translated and the particular service(s) to be performed):

________________________________________________________________________

Schedule completion date is:

Translator shall make every effort to complete service(s) by the above date but shall not be responsible for delays in completion caused by events beyond Translator’s control.

Method of delivery:

Format of delivery:

Delivery:

Method of delivery:

3. Payment for service(s). Client agrees to pay $ ____________ as Translator’s fee for the above service(s). Payment is due as follows:

________________________________________________________________________

4. Additional costs. Additional costs shall be paid as required. Additional fees will be payable, to be calculated as provided below, in the event the following additional service(s) are required:

a. investigation, inquiry, or research beyond that normal to a routine translation is required because of ambiguities in the item(s) to be translated; (b) additional services are required because Client makes changes in the item(s) to be translated after the signing of this Agreement; and (c) Translator is requested to make changes in the translation after delivery of the translation, because of Client’s preferences as to style or vocabulary, and such changes are not required for accuracy. Such additional fees will be calculated as follows:

5. Additional provisions. Add all additional provisions required by the parties.

6. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

7. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

8. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

9. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

10. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

11. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

12. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

13. Governing law. This Agreement shall be governed by the laws of the State of ___________________.

IMPORTANT NOTICE

THIS CONTRACT FORM GUIDE IS GENERAL IN NATURE AND IS NOT INTENDED TO PRESCRIBE THE USE OF ANY TERMS AND CONDITIONS HEREIN. THE ISSUANCE OF THIS FORM DOES NOT RESTRICT IN ANY RESPECT ANY MEMBER OR NON-MEMBER FROM CONTRACTING FOR SERVICE ON TERMS AND CONDITIONS DIFFERENT FROM THOSE SET FORTH HEREIN. THE USE OF ANY PORTION OF THIS FORM OF AGREEMENT IS STRICTLY VOLUNTARY, AND IS THE SOLE RESPONSIBILITY OF THE CONTRACTING PARTIES. NEITHER THE AMERICAN TRANSLATORS ASSOCIATION NOR ITS MEMBERS ASSUME ANY RESPONSIBILITY OR LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, WITH RESPECT TO THE USE OF THIS CONTRACT FORM. THE AMERICAN TRANSLATORS ASSOCIATION AND ITS MEMBERS MAKE NO WARRANTY, EXPRESSED OR IMPLIED, WITH REGARD TO THE LEGALITY OR ENFORCEABILITY OF THIS FORM OF AGREEMENT.
As we learned throughout this webinar, boilerplate provisions are far more important than they seem and the ATA model agreement fails to capture their complexities. Very weak boilerplates

There is a chance that you are not fully protected if you use the agreement as is, so please talk to a local lawyer and draft a stronger agreement.

Specific to translation
Description of service; payment; cancellation or withdrawal by client; additional costs and fees; client review of translation; unauthorized changes; confidentiality.

The model agreement is a good start for industry specific provisions, which can be easily strengthened with very minor changes.

Maximizing the good parts

The model agreement is a good start for industry specific provisions, which can be easily strengthened with very minor changes.

Not fully covered

There is a chance that you are not fully protected if you use the agreement as is, so please talk to a local lawyer and draft a stronger agreement.