

General Terms and Conditions BABELFISCH

I. General Provisions

(1) The present Terms and Conditions (hereinafter referred to as "GTC") shall apply to any and all contractual relationships between Babelfisch Translations Bauer & Partner Übersetzer Partnerschaftsgesellschaft, represented by Henrike Bauer and Aya Kouamé, with its registered office at Naunynstraße 39 in D-10999 Berlin, Germany (hereinafter referred to as "BABELFISCH"), and its contractual partner (hereinafter referred to as "Customer"). Furthermore, these GTC shall apply to any and all quotations issued, services provided, and deliveries made by BABELFISCH.

Any contradictory or conflicting GTC of the Customer shall not apply, whereas no separate or explicit waiver shall be required. Any ancillary arrangement shall require BABELFISCH' s written consent.

(2) The present GTC shall apply to any and all subsequent transactions following the first transaction under these GTC. Any amendments to these GTC shall enter into force as of the date of the Customer' s receipt of the corresponding notification.

II. Conclusion of Contract

Any quotation issued by BABELFISCH shall be non-binding. Conclusion of any binding contract between BABELFISCH and the Customer shall require either the acceptance of the Customer' s enquiry by BABELFISCH or a written order confirmation issued by BABELFISCH to the Customer. Furthermore, any service provided by BABELFISCH and accepted by the Customer without any prior declaration of acceptance or order confirmation shall constitute a binding contract.

III. Customer Legitimation

(1) The Customer hereby declares all materials provided by them to BABELFISCH for translation or processing to be free of any defects of quality and title and to possess any and all required rights to those materials. Moreover, the Customer shall indemnify BABELFISCH against all third-party claims, including but not limited to claims arising from violations of copyrights or moral rights due to the processing/ translation services by BABELFISCH or the publication/ use by BABELFISCH or third parties. Such indemnification shall further include any and all reasonably incurred legal fees.

(2) By placing the order, the Customer effectively represents to legally bear any and all rights required for the execution, publication, and use of the services to be provided by BABELFISCH.

IV. Fees and Terms of Payment

(1) Unless stated otherwise, all professional fees and prices do not include VAT which therefore shall be stated separately.

(2) The professional fees for translation services shall be agreed upon separately for each order. For the avoidance of doubt, professional fees shall be calculated as follows:

- for texts per standard line of 55 characters, including spaces,
- for movies per subtitle or minute.

Unless otherwise agreed, invoicing shall be based on

- (a) the number of characters of the source text, provided, however, the text format allows for counting;
- (b) the number of characters of the target text if either the source text is non-editable or it has been agreed so in advance;
- (c) the number of subtitles of movies.

(3) Any quotation issued by BABELFISCH shall be based on information provided by the Customer. However, should any of the so provided information change or prove to be untrue, BABELFISCH shall be entitled to either withdraw from the contract or recalculate its quoted fees as per paragraph (2) in accordance with the changed conditions.

(4) Should the Customer' s material prove to be flawed and therefore cause additional efforts, BABELFISCH shall reserve the right to invoice such additional efforts to the Customer per time spent or in accordance with the calculation as per paragraph (2). BABELFISCH shall further reserve to right to invoice additional time spent for other specific efforts (including but not limited to the collection of information and data, special terms of performance, and conversion of movie files into formats suitable for processing/ subtitling).

(5) The Customer shall review any invoice immediately upon receipt. Unless a justified objection has been filed in writing within 12 business days after receipt of the invoice, both the invoiced amount and, if applicable, the expenditure of time spent shall be deemed accepted as stated in the invoice.

(6) Unless otherwise provided for in writing, all invoices shall be payable within 12 business days after receipt without any discount, whereas the date of credit to the account of BABELFISCH TRANSLATIONS shall be relevant. Any delayed payments shall be subject to an interest rate of 8 per cent above the currently applicable base rate.

(7) In the event of the Customer' s default of payment or in other instances which warrant substantial doubts as to the Customer' s solvency or willingness to pay, BABELFISCH shall be entitled to demand immediate payment of all outstanding amounts. In any such event, the Customer shall make advance payments for any and all services still to be provided by BABELFISCH at that time. After fruitless expiry of a reasonably set grace period, BABELFISCH shall be entitled to withdraw from the contract.

V. Submission/ Delivery to the Customer

Unless otherwise explicitly provided for, BABELFISCH shall submit its works to the Customer by e-mail or in another digital format.

VI. The Customer' s Duty to Cooperate and to Provide Information

(1) The original to be translated shall be provided by the Customer in full, including any and all additions and amendments. As a rule, the file format of movies to be delivered by BABELFISCH shall be agreed upon in advance.

(2) If so required, the Customer shall assist BABELFISCH by providing the necessary material and information (such as technical literature, terminology lists, glossaries, abbreviations, images, parallel texts, and background information).

(3) The Customer's enquiry shall include the desired date of delivery. However, any such delivery date shall become binding only upon written order confirmation by BABELFISCH. However, prior to such confirmation, the complete set of text and/ or movie files to be translated shall be submitted to BABELFISCH for review.

(4) The Customer shall provide to BABELFISCH clarifications as to the exact function of the target text and define the target audience. Specific terms of performance (e.g. translation on storage mediums, formatting, duplicates, readiness for print, requirements as to the appearance of the translation, etc.) shall be agreed upon separately.

(5) Special characteristics as to the content shall be agreed upon separately, including but not limited to:

(a) the use of a certain terminology or specific corporate wording. The Customer shall provide the necessary documentation (e.g. internal editorial or translation guidelines) in this regard.

(b) any particular language variety (such as US-American English, Brazilian Portuguese, etc.).

VII. Terms and Delivery Dates

Delivery dates shall be postponed for the duration of any delay in delivery due to either force majeure or other events, such as computer failure, burglary, illness or accidents (also applicable to any translator working for BABELFISCH). In any such event, the Customer shall be entitled to withdraw from the contract after a reasonable grace period. However, should any such event prohibit BABELFISCH from performing its contractual duties, BABELFISCH shall be released from its obligation to perform and the Customer shall not be entitled to any damage claim whatsoever.

VIII. Acceptance and Due Date of Payments

(1) Any works or services by BABELFISCH requiring acceptance by the Customer shall be deemed so accepted:

- 12 business days after delivery or submission; and
- unless the Customer has notified to BABELFISCH a material defect which materially affects or completely inhibits the usability of the work or service.

(2) The invoiced amounts shall be due for payment upon acceptance or notional acceptance, unless otherwise agreed upon. Any subsequent visual or audio changes shall be invoiced separately.

XI. Warranty

(1) Any work provided by BABELFISCH shall be deemed free from defects

- if subtitles have been submitted to and approved by the Customer under the contract;

or

- if the subtitles have been reviewed on screen by BABELFISCH together with the Customer (or one of its authorized representatives, e.g. a producer) and no complaint has been filed (which shall further apply in the

event of changes made or ordered by the Customer or one of its authorized representatives which, in turn, lead to defects in the approved subtitles);

or

- if the subtitles have been reviewed and approved by the Customer or one of its authorized representatives in any other way;

or

- if defects are attributable to transmission errors/ reformatting works by either the Customer or the Customer's incompatible software. BABELFISCH shall not be held liable for any so caused defects.

(2) A material defect shall be constituted by a defect rate of 3% or higher. The Customer shall have no warranty claim for any defect rate below the aforementioned threshold.

(3) BABELFISCH shall have the right to remedy any defects by either correction or substitute delivery.

(4) Any changes to the works and services of BABELFISCH by either the Customer or third parties on behalf of the Customer without prior written consent of BABELFISCH shall forfeit any warranty claim of the Customer.

(5) The warranty period shall be 12 months after delivery and/ or acceptance. Unless a defect is based on willful breach of duty, the limitation of claims for defects under Section 634a par. 1 no. 1 of the German Civil Code shall be reduced to 12 months, the damage claims as per Clause XII notwithstanding.

XII. Liability and Compensation

(1) Other than for willful intent and gross negligence, the liability of BABELFISCH shall be limited to the amount of the respective order value (professional fee for translation/ subtitling services).

(2) BABELFISCH shall not be liable for any consequential damages incurred by the Customer or third parties due to the use of subtitles in further production steps.

(3) The Customer shall be prohibited from using the subtitles without prior approval by BABELFISCH. Therefore, BABELFISCH shall not be liable for damages due to the use of unapproved subtitles by the Customer or third parties.

(4) BABELFISCH shall not be liable for any information given free of charge outside the contractually agreed scope of services.

XIII. Assignment of Rights

(1) The Customer shall grant to BABELFISCH any and all copyrights and related rights required by BABELFISCH for its contractual performance, including but not limited to the right to process and translate as well as the right to assign both the contractually agreed processing and/ or translation services and the related rights of use to any third party, such as external freelancers/ translators. Upon first request, the Customer shall indemnify BABELFISCH against any and all third-party claims arising from the violation of individual rights, copyrights, rights of use, signs, rights under the German Act Against Unfair Competition or other rights due to the contractual performance hereunder. Such indemnification shall further include any and all legal fees incurred by BABELFISCH.

(2) BABELFISCH shall grant to the Customer the exclusive, indefinite and unrestricted right to use any of the approved works. Unless otherwise agreed upon in writing, an individual and non-transferable right shall be granted to the Customer for its own use of translations of texts which do not directly relate to the Customer' s industry, such as published and circulated texts, e.g. laws, regulations, policies, and newspaper articles.

(3) Pursuant to Section 158 par. 1 of the German Civil Code, the granting of any such right of use shall be subject to the condition precedent of the complete payment of all outstanding amounts invoiced for any service and additional effort. However, on a case-by-case basis, BABELFISCH shall be entitled to grant in its own free discretion a preliminary permission of use prior to such complete payment, however, without assigning any right.

(4) The Customer shall apply a copyright notice to the contractual works of BABELFISCH, including but not limited to the reference to BABELFISCH and the name of the translator (subtitling expert) in cinematographic works and/ or any specific copyright notice provided by BABELFISCH.

(5) The Customer shall not be authorized to process any of BABELFISCH' s works without prior written consent of the latter.

XIV. Final Provisions

(1) Any contract between BABELFISCH and the Customer shall be subject to the law of the Federal Republic of Germany.

(2) Where the Customer is a registered trader, a legal person governed by public law or a special entity governed by public law, the place of performance and jurisdiction shall be at the registered office of BABELFISCH. Additionally, BABELFISCH shall be entitled to bring action against the Customer at its place of general jurisdiction.

(3) Both the contract and the present GTC shall remain in full force and effect in case of individual Clauses being legally invalid. Any such invalid Clause shall be replaced by the appropriate legal provision, if applicable.

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