

## Straker Translations Client Terms and Conditions

These terms and conditions apply to each request for a quote from Straker for provision of translation services and to the provision of services following acceptance by the client of a quote from Straker.

### 1 Definitions: In these terms and conditions:

- 1.1 **"Accepted Quote"** means a Quote which the Client accepts in writing to Straker, including by the Client giving written notice to Straker to proceed with the Services (provided that the Client is not permitted to make any change to the Quote and if the Client does so the Quote is deemed to be not accepted by the Client);
- 1.2 **"Client"** means the client that requests translation services from Straker (or on whose behalf translation services are requested) as subsequently named in the Quote;
- 1.3 **"Confidential Information"** means any proprietary information, know-how and data disclosed in confidence by one party to the other party (and including in the case of the Client the Source Materials and the Deliverables), but does not include any information which (a) is in the public domain; (b) on receipt by the other party is already known by that party; (c) is at any time after the date of receipt by the other party, received in good faith by that party from a third party; (d) required by law to be disclosed by the other party;
- 1.4 **"Contract"** means a contract comprising an Accepted Quote and these terms and conditions;
- 1.5 **"Deliverables"** means the final deliverables produced as a result of the Services;
- 1.6 **"Intellectual Property"** includes all copyright, trade marks, designs, patents, domain names, concepts, know-how, trade secrets, logos and all other similar property and rights whether registered or unregistered;
- 1.7 **"Quote"** means a quote issued by Straker to the Client;
- 1.8 **"Services"** means the services specified in the Quote;
- 1.9 **"Source Materials"** means the document/s submitted by the Client to Straker for translation, as identified in the Quote;
- 1.10 **"Straker"** means "Straker Interactive Limited a company registered in New Zealand;
- 1.11 **"Website"** means Straker's website at [www.strakertranslations.com](http://www.strakertranslations.com);
- 1.12 **"Working Day"** means any day other than a Saturday, Sunday or public holiday in New Zealand

### 2 Requests for translation services

- 2.1 Each request for translation services made to Straker and supply of Source Materials to Straker is made subject to these terms and conditions.
- 2.2 No contract exists in respect of any request for translation services or in respect of any Source Materials that may be submitted to Straker, unless and until there is an Accepted Quote. Once there is an Accepted Quote, a 'Contract' is formed between the Client and Straker in respect of the Services described in that quote.
- 2.3 Subject to clause 2.4, Straker will issue a Quote after receiving from a client a request for translation services made in accordance with the procedures used on the Website.
- 2.4 Straker reserves the right to decline to issue a Quote or to provide any translation services if the Source Materials contain any material which Straker at its discretion (and without any obligation on Straker to review the Source Materials for appropriateness, legality or otherwise) considers to be offensive, obscene, contrary to any law or otherwise considered by Straker to be inappropriate.

### 3 Provision of Services

- 3.1 Subject to receipt of all applicable amounts due from the Client, Straker will provide the Services as specified in the

Accepted Quote and in accordance Straker's standard practices and procedures including the practices and procedures as described on the Website at the time the Quote was issued to the Client.

- 3.2 The Client must provide all information requested by Straker (via the Website) in respect of the Services and ensure that all such information is accurate and complete.
- 3.3 Straker provides services at different specified quality levels. It is the Client's responsibility to select the preferred level of service to suit its requirements. Straker will deliver to the selected level of service as specified in the Accepted Quote and has no obligation to check whether that quality level is appropriate for the Client's needs.
- 3.4 Straker has no responsibility to review the quality of the Source Materials for typographical or any other errors and has no liability to review the Source Material for or to correct any errors or omissions contained in any Source Materials regardless of the nature of such errors or omissions and regardless of the impact that such errors or omissions may have on the quality of the Deliverables.
- 3.5 On completion of the Services and subject to receipt by Straker of all amounts due from the Client, Straker will issue the Deliverables to the Client.
- 3.6 Straker will issue the Deliverables to the Client in accordance with Straker's standard practices and procedures applicable at the time or as otherwise specified in the Quote. Straker will use reasonable endeavours to issue the Deliverables on or before the agreed delivery date / time, or where no specific delivery date/ time is agreed within a reasonable time following receipt of the Accepted Quote, but Straker accepts no liability for any delay in meeting the applicable timing.

### 4 Charges and payment

- 4.1 The Client will pay all applicable fees as specified in the Accepted Quote. All payments must be made in full without deduction or set-off.
- 4.2 Any applicable value added tax, and any other applicable taxes and duties are added to the amount charged.
- 4.3 If any amount is not paid by the due date:
  - (a) Straker may charge interest on that amount at 10% per annum calculated from the due date up until the date that payment is received by Straker;
  - (b) Straker may suspend provision of Services or may cease to provide the Services or Deliverables and may at its discretion terminate the Contract in accordance with clause 10.2.
- 4.4 Where a deposit option is offered to the client and the client pays by creditcard, the client's credit card will be stored in Straker's third party online secure payment processing provider Direct Payment Solutions ([www.paymentexpress.com](http://www.paymentexpress.com)). For more details on this secure storage see <http://www.paymentexpress.com/privacypolicy.htm>. Your card will be charged for the remaining figure (quote minus deposit already paid) on completion of the job and prior to the files being released.

### 5 Refund policy

5.1 Straker will provide a refund to the Client in respect of the affected Services if:

- (a) **Translation no longer required:** the Client terminates a Contract (or partially terminates a Contract) under clause 10.1;
- (b) **Non-Delivery of Translation:** the electronic translation is not delivered to the Client after 4 Working Days from the delivery date specified in the Accepted Quote, provided that no refund will be made if the Client has not provided all required information to Straker, as requested by Straker, in a timely manner;
- (c) **Translations not-as-required:** the Deliverables as supplied to the Client are significantly different from the deliverables required by the Client as specified in the Accepted Quote (for example, the Deliverables are in the wrong target language); or
- (d) **Translations contain gross errors:** the Deliverables contain gross errors, provided that the Client must first, within the stipulated period, request revisions to correct any such errors and identify the errors in the Deliverable. If errors are identified or revisions are requested after the stipulated period, the Client will not be eligible for any refund.

5.2 In the event of any monetary refund, the return payment will be 100% of the amount paid by the Client for the affected Services less courier and handling costs, and only if the following actions/conditions have been completed/fulfilled within 10 Working Days of submission of the relevant Deliverable to the Client:

- (a) The request for a refund is received by Straker, in writing via email sent to [accounts@strakertranslations.com](mailto:accounts@strakertranslations.com); phone calls will not be sufficient. The request for a refund must include: Job #, date of commissioning, name of company under which the service was commissioned, name of person the invoice was billed to, the e-mail address used at the time of the commissioning of the required service and the manner in which the service was paid for (eg Credit Card, Cash, Remittance).
- (b) The Client completed the required checklist providing the appropriate background, overview, audience, language tone, reserved words and glossary terms as requested prior to dispatch of the any of the Source Materials by Straker to a Straker translator.
- (c) Where applicable the Client has clearly explained why any rectifications proposed by Straker would not be effective.
- (d) An undertaking that is endorsed by the Client and submitted to Straker that clearly states that the Client will not use the relevant Deliverables / translations delivered by Straker in part or in whole for personal, business, commercial or any other purposes.

5.3 Straker will endeavour to investigate and where applicable to process refunds within 5 Working Days of receipt of a refund request, but refund requests may take up to 2 weeks to investigate and process. A reply will be sent to the Client after Straker has determined whether a refund is necessary. If Straker determines that the refund request meets the requirements of this clause 5, Straker will notify the Client in writing and advise the payment method that will be used to refund the monies paid.

## **6 Intellectual Property**

6.1 Nothing in this Contract transfers to Straker, ownership of any Intellectual Property in the Source Materials or the Deliverables.

6.2 All Intellectual Property in the processes, methodology and know-how used by Straker in its performance of a Contract are and will remain the property of Straker. Nothing in any Contract transfers to the Client any of Straker's Intellectual Property.

## **7 Confidential Information**

7.1 The parties recognise and acknowledge the confidential nature of the Confidential Information.

7.2 Neither party may disclose any Confidential Information other than:

- (a) to its directors, employees, contractors or subcontractors to the extent necessary in the performance of the Contract;
- (b) with the express prior written consent of the other party; or
- (c) to its professional advisers.

## **8 Client warranties**

8.1 The Client represents and warrants to Straker that:

- (a) it owns or has all necessary rights in the Source Materials to entitle it to submit the Source Materials to Straker and to request the Services and that by doing so the Client is not infringing the Intellectual Property rights of any third party;
- (b) it will not submit and has not submitted anything to Straker or to the Website and will not use anything in respect of its use of the Website, the Services or otherwise in connection with Straker (whether a device, software or any other thing whether embedded into the Source Materials or otherwise) that will or could interfere with the functioning of Straker's systems and/or the Website; and
- (c) it has authority to enter into and perform and the ability to perform its obligations under this Agreement.

8.2 The Client indemnifies Straker against any losses, costs (including legal costs on a solicitor and own client basis), expenses, demands or liability whether direct, indirect, consequential or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of a claim by a third party where the claim arises from any breach of the representations and warranties made by the Client in this clause 8.

## **9 Straker's warranties**

9.1 Straker warrants that it has authority to enter into and perform and the ability to perform its obligations under this Agreement.

9.2 Except as expressly provided in these terms and conditions, all warranties, terms and conditions (including, without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise, are excluded by Straker to the extent permitted by law.

## **10 Termination**

10.1 The Client may, without cause, terminate a Contract (or, subject to this clause 10.1, part of a Contract) at any time up until 30 minutes after first payment in respect of that Contract has been received by Straker, by giving written notification to Straker within that 30 minute time period. The Client may only terminate part of a Contract where separate pricing is specified in the Accepted Quote for the Services no longer required. Where a Contract is partially terminated under this clause, the Client must, at the time of giving notice of termination, specify the Services that are no longer required.

10.2 Without limiting any other rights or remedies that Straker may have, Straker may terminate the Contract on written notice to

the Client if the Client fails to pay any overdue amount within five days following written notice from Straker requiring payment.

10.3 Without limiting Straker's rights under clause 10.2, either party may terminate the Contract immediately if the other party:

- (a) breaches any of its obligations under the Contract and fails to remedy the breach within 20 days of receiving notice requiring the breach to be remedied; or
- (b) becomes insolvent or goes into liquidation or has a receiver or statutory manager appointed over its assets or ceases to carry on business or makes any arrangement with its creditors.

10.4 On termination of a Contract:

- (a) any amounts due to Straker will become immediately due and payable;
- (b) the provisions of the Contract that are by their nature intended to survive termination will remain in full force.

## **11 Liability**

11.1 Subject to clause 11.2, Straker will be liable for direct loss only (excluding loss of business or profits and excluding all consequential loss) up to a maximum of NZ\$100.

11.2 For 'Professional Plus' Services, Straker will be liable for direct loss only (excluding loss of business or profits and excluding all consequential loss) up to a maximum of the amount paid by the Client to Straker for the Services.

## **12 Dispute resolution**

12.1 Where any dispute arises between the parties concerning a Contract or the circumstances, representations, or conduct giving rise to the Contract, neither party may commence any court or arbitration proceedings relating to the dispute unless that party has complied with the procedures set out in this clause 12.

12.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within seven days of receipt of the notice, give written notice to the first party naming its representative for the negotiations. Each representative nominated will have authority to settle or resolve the dispute.

12.3 If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, then the parties must immediately refer the dispute to mediation.

12.4 The mediation must be conducted in terms of the LEADR New Zealand Inc Standard Mediation Agreement. The mediation must be conducted by a mediator at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected and his/her fee determined by the Chair for the time being of LEADR New Zealand Inc.

## **13 Consumer Guarantees Act**

13.1 If the Client acquires, or holds itself out as acquiring, goods or services from Straker under a Contract for the purposes of a business, and the Consumer Guarantees Act 1993 would apply were it not for this clause 13.1, the Consumer Guarantees Act 1993 will not apply.

## **14 General**

14.1 Entire agreement: Each Contract constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of that Contract.

14.2 Amendments: Except as specifically provided, no amendment to a Contract will be effective unless it is in writing and signed by both parties.

14.3 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.

14.4 Partial invalidity: If any provision of a Contract or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Contract and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

14.5 Independent contractor: Straker is an independent contractor to the Client and is in all respects independent of the Client. Nothing in any Contract constitutes either party a partner, agent, employee or joint venturer of the other.

14.6 Suspension: Straker may suspend performance of its obligations under a Contract for so long as it is unable to perform for reasons outside of its control.

14.7 Assignment: The Client must not assign its rights under any Contract without the prior written consent of Straker.

14.8 Severability: If any provision of a Contract is held invalid, unenforceable or illegal for any reason, the Contract shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

14.9 Precedence: In the event of any conflict or inconsistency as between the Accepted Quote and these terms and conditions, these terms and conditions will take precedence.

## **15 Notices**

15.1 Notices under each Contract must be in writing and sent by post or facsimile to the address or facsimile number specified in the Quote (unless otherwise notified on seven days written notice).

15.2 Notices sent by post shall be deemed received 10 days after posting to or from an overseas destination and three days after posting within New Zealand and notices sent by facsimile shall be deemed received on transmission so long as the sender has a transmission report specifying the correct number of pages sent, the date and time of transmission and that transmission was successful.

## **16 Governing law**

16.1 Each Contract is governed by and construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.