



BOPIS

TERMS AND CONDITIONS

In these Terms and Conditions we have used "we", "us", and "our" to refer to Bay of Plenty Interpreting Service/Tauranga Regional Multicultural Council and "you" to refer to our Customer. By ordering Work from us, you agree to these Terms and Conditions.

1. PROVISION OF SERVICES

1.1 Each request for services made to us is made subject to these Terms and Conditions.

1.2 You must provide all information requested by us in respect of the services and ensure that all information is accurate and complete.

1.3 We have no responsibility to review the quality of the information or any other errors and have no liability to review the information for or to correct errors or omissions contained in any information provided by you regardless of the nature of the impact that such errors or omissions may have on the quality of our Work.

2. ESTIMATES

2.1 Unless stated otherwise, any price we give you for the anticipated cost for us to complete the Work is an estimate ("the Estimate").

2.2 We may require a 25% deposit of the Estimate from you before we commence the Work, unless we have waived this requirement by notice to you.

3. PRICE (see price list)

3.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Work, you shall pay to us our actual cost of completing the Work ("the Actual Cost") which will be calculated by totalling the following:

- a. the number of hours of service for interpreting multiplied by the hourly rate set by us, and the number of pages for translation or the number of 100 words for translation;
- b. any disbursements, without limitation, incurred by us on your behalf;
- c. the cost of interpreter's travel time to and from the requested location.

3.2 The Actual Cost and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.

3.3 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

3.4 The Estimate and Actual Cost will be based on a range of factors, including, without limitation, the volume of the content to be interpreted or translated, the timeframe required, the type of content, the language pair, and the quality of required Work. The rates in Appendix A are only indicative of the Estimate and the Actual Cost. The rates in Appendix A may change from time to time.

3.5 In the event these Terms and Conditions are terminated in accordance with clause 13 or as agreed by the parties prior to completion of the Work, you must immediately pay us the Actual Cost at the termination date and a cancellation fee of 25% of the Actual Cost at the termination date.

4. TERMS OF PAYMENT

4.1 We may require you to pay a deposit, being an advanced payment for the Work, before we commence the Work.

4.2 Payment for the Work (and any associated expenses and disbursements) is due on the 20th day of the month following the date of our invoice except where we have agreed in writing that other terms shall apply ("the Due Date").

4.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 10% per annum, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.

4.4 You must pay in cash for any Work done by us until payment is made in full (together with any accrued interest).

4.5 We may notify you at any time that we have ceased to carry out the Work. This cessation does not relieve you for amounts owing up to the date on which the contract is terminated.

4.6 Payment of all money shall be without set-off or deduction of any kind.

4.7 We will apportion payments to outstanding accounts as we think fit.

5. PERFORMANCE OF WORK

5.1 We will:

a. perform the Work with reasonable skill, care and diligence in a professional manner;

b. endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with you;

c. liaise with you during the course of performing the Work in accordance with your reasonable requirements.

5.2 You will give reasonable assistance to enable us to perform the Work by:

a. giving clear instructions;

b. promptly providing any information or content required from you for us to complete the Work;

6. LIMITATION OF LIABILITY

6.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

6.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Work and/or Goods from us for the purposes of a business in terms of sections 2 and 43 of that Act.

6.3 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause, we shall not be liable for any loss or damage of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work provided by us to you.

6.4 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arising brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.

6.5 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms and Conditions or for any other reason, such liability is limited to the amount of the Actual Cost. If you make a claim in writing to us in relation to the services provided under the Work, we may, at our discretion re-perform the services, or refund the amount of those services to you, provided that:

a. the claim must be made in writing to us within 14 days of the services being provided; and

b. you must supply the date and number of any invoice relating to the Work; and

c. we must have a reasonable opportunity to inspect the Work.

7. INTELLECTUAL PROPERTY

7.1 Nothing in the Work transfers to us, including ownership of any Intellectual Property in the information provide to us by you for translation.

7.2 All Intellectual Property in the processes, methodology and know-how used by us in our Work are and will remain the property of us.

8. NOTICES

8.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).

9. VARIATION

9.1 We shall be entitled at any time by notice in writing to you to vary any provision of these Terms and Conditions and you shall be bound by such variation.

10. CONFIDENTIALITY

10.1 The parties recognise and acknowledge the confidential nature of all Confidential Information received between the parties.

10.2 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 Work;

b. with the express prior written consent of the other party; or

c. to its professional advisers

11. COSTS

11.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms and Conditions.

12. CREDIT INFORMATION

12.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.

13. TERMINATION

13.1 Either party may terminate these Terms and Conditions by giving 14 days written notice to the other party, or as agreed by the parties. You must specify in the written notice that our services are no longer required.

14. GOVERNING LAW

14.1 These Terms and Conditions are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms and Conditions.

15. ASSIGNMENT

15.1 You must not subcontract or assign any part of these Terms and Conditions or your obligations under them.

16. DISPUTES

16.1 Where any dispute arises between the parties concerning a Work or these Terms and Conditions or the circumstances, representations, or conduct giving rise to the Work, 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 16.

16.2 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 7 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.

16.3 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.

16.4 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.

17. DEFINITIONS

17.1 In these Terms and Conditions:

"Confidential Information" means any proprietary information, know-how and data disclosed in confidence by one party to the other party (and including information provide to us under clause 1.2) 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. "Intellectual Property" includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).

"Work" means our performance of services for you, as well as any final materials produced as a result of the services.

17.2 The rule of construction known as the contra proferentem rule does not apply to these Terms and Conditions.

17.3 Words importing the singular include the plural and vice versa.

17.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms and Conditions.

Bay of Plenty Interpreting Service, PO Box 447, Complex 1, upstairs, Main Street, Historic Village on 17th Avenue, Tauranga

17.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

17.6 References to a statute include references to:

- a. regulations, orders, rules or notices made pursuant to that statute;
- b. all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- c. any statute passed in substitution of that statute.

17.7 References to "us" include our employees, contractors and agents.