

# **LISA**

# **GILT Industry**

# **Ethics**

**Guidelines and Model Contract**



**Localization Industry Standards Association**

# LOCALIZATION INDUSTRY STANDARDS ASSOCIATION



SINCE 1990, the Localization Industry Standards Association has been helping companies *enable global business*. LISA is the premier not-for-profit organization in the world for individuals, businesses, associations, and standards organizations involved in language and language technology worldwide. LISA brings together IT manufacturers, translation and localization solutions providers, and internationalization professionals, as well as increasing numbers of vertical market corporations with an international business focus in finance, banking, manufacturing, health care, energy and communications.

Together, these entities help LISA establish best practice guidelines and language technology standards for enterprise globalization. LISA offers other services in the form of standards initiatives, Special Interest Groups, conferences and training programs which help companies implement efficient international business models to provide a return on investment for their Globalization, Internationalization, Localization, and Translation (GILT) efforts.

LISA partners and affiliate groups include the International Organization for Standardization (ISO Liaison Category A Members of TC 37 and TC 46), The World Bank, OASIS, IDEAlliance, AIIM, The Advisory Council (TAC), Fort-Ross, €TTEC, the Japan Technical Communicators Association, the Society of Automotive Engineers (SAE), the European Union, the Canadian Translation Bureau, TermNet, the American Translators Association (ATA), IWIPS, Fédération Internationale des Traducteurs (FIT), Termium, JETRO, the Institute of Translating and Interpreting (ITI), The Unicode Consortium, OpenI18N, and other professional and trade organizations.

LISA members and co-founders include some of the largest and best-known companies in the world, including Adobe, Avaya, Cisco Systems, CLS Communication, EMC, Hewlett Packard, IBM, Innodata Isogen, Fuji Xerox, Microsoft, Oracle, Nokia, Logitech, SAP, Siebel Systems, Standard Chartered Bank, FileNet, LionBridge Technologies, Lucent, Sun Microsystems, WH&P, PeopleSoft, Philips Medical Systems, Rockwell Automation, The RWS Group, Xerox Corporation and Canon Research, among others.

## **Why Do the Leading Corporations and Organizations Around the World Support LISA?**

LISA has a proven track record of partnership with governments, non-governmental organizations (NGOs) and multinational corporations. LISA helps these bodies implement best practice and language technology standards, while providing them with access to the best independent information about what it takes to manage their multiple language content efficiently to communicate effectively across cultures. LISA has held more than 45 international forums and global strategies summits in Asia, Europe and North America, as well as workshops, executive roundtables, and other events tailored to meet the needs of specific groups or industry segments. LISA's members and partners know that they can come to LISA as an unbiased information resource to learn about the cost factors, technologies and business trends that affect how they do business in an increasingly globalized and integrated world.

## **Why Do GILT Service Providers Support LISA?**

LISA has provided an open forum for more than twelve years for GILT service providers to discuss the business and legal issues that affect them, and to learn from one another and from their customers. Like their clients, service providers understand that they need to stay current on technical standards and business developments in the GILT industry. They also know that they can rely on the largest archive of GILT-related information in the world, available to LISA members, including all (1) issues of the *Globalization Insider* (LISA's content-packed newsletter, now in its 13th year of publication), (2) presentations and summaries from every major LISA event since 1997, and (3) research and survey reports that indicate where the GILT industry is today and where it is headed in the future.

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**12.March 2004**



## INTRODUCTION

In response to numerous queries regarding ethics and business practices in the GILT (Globalization, Internationalization, Localization, and Translation) industry, LISA has developed these standards for ethical business practices in the GILT industry. The purpose of this effort is to provide a common reference for both suppliers and consumers of localization and related services as to what constitutes ethical behavior with regard to GILT-specific issues. It is not intended as a general ethical guideline for all aspects of business practice and effort.

This document is not intended to replace ethics guidelines already in existence for various national and regional translation groups. Readers are encouraged to refer to guidelines released by any organizations to which they belong or which are considered normative for the markets in which they are active.

This project includes a set of guidelines, as well as a model contract for use in the GILT industry that specifies many of these ethical issues in a contractual form and removes them from potential debate. These guidelines are posted on-line at the LISA website, as well as provided in appropriate downloadable format. Parties involved in GILT activities are encouraged to refer to these guidelines and to make use of them in forming contracts and carrying out general business activities.

These guidelines are intended to be practical in nature, not a comprehensive theory of ethics. As a result they appear as a series of questions and answers that deal with specific issues commonly dealt with by GILT service providers and clients. In some instances you and your business partners may arrive at different arrangements than those specified in this document, but this document provides a general framework that describes what service/solutions providers and those purchasing services or solutions should generally expect in their business relationships. In cases of divergence from the norms established in this document, you are advised to make sure that your contracts include specific mention of areas of potential dispute.

It is the view of LISA that ethics are the responsibility of all parties involved in localization, and that they are all obligated to conduct business in an ethical manner that respects general business practice as well as particular practices of the GILT industry. This document therefore consists of three parts: questions intended for suppliers of GILT services, questions intended for clients (consumers) of GILT services, and a model contract for the GILT industry. Many of the questions appear in different format in both sections since they are issues faced by both suppliers and consumers. Although developers of tools are active within LISA, this document does not presently address ethical issues specific to them as their concerns are very different from those of service providers and their clients.

This document represents the 12. March 2004 revision that incorporates the feedback of numerous readers.

The *GILT Industry Ethics: Guidelines and Model Contract* was prepared by the Localization Industry Standards Association. LISA welcomes feedback on this document, which should be sent to Arle Lommel ([arle@lisa.org](mailto:arle@lisa.org)), LISA Publications Manager.

## SUPPLIER-ORIENTED QUESTIONS

### **Can I use Translation Memory (TM) from one client's project on another client's project (in the absence of a contractual spelling out of this)?**

In most cases use of TM from one client on another client's projects is unwise and unnecessary, and may violate intellectual property laws in many jurisdictions. In most cases reuse of materials localized for one client in another client's projects is, essentially, plagiarism. Discovery of such reuse by the client could open the localizer to legal action. In addition the degree of adaptation required to reuse client-specific material for another client would probably render such reuse more expensive than localization from scratch.

### **Can I use terminology from one company in developing terminology for another company?**

Some companies want you to use their terminology, while others don't. In some cases there may be no way to avoid it—if you have already developed terminology for one company you can't simply forget that work and start from scratch. The answer depends partly on the nature of the terminology. For example, use of Microsoft terminology for Windows™ or Apple terminology for Mac OS™ applications is essential for quality localization. In general, companies should use the most "neutral" terminology possible, and avoid using trademarked terms unless discussing the particular trademarked item. Where one company has emerged as a *de facto* standard in a field, it is wise to use terminology that corresponds to that company's usage (if possible), unless the client makes use of different terminology.

The key is to be open about methods and decisions and to check them with the client. In you would like to use existing terminology, the client should be informed of this and should be given the chance to review and approve key terminology. Most clients will want their products to be distinguished from other products, so a bit of creativity will be required.

### **Who should pay for extra work necessitated by errors on the client's part? on the supplier's part?**

This should be spelled out in a contract, but often is not. In general, significant additional work not part of the original budget/estimate should be billed to the client if it results from client errors, while extra work caused by vendor errors should in no case be billed to the client. What is deemed "significant" will depend in large measure on the scope of the project and the history of the client-vendor relationship.

Clients should always be informed of errors that impact their projects, and if the vendor is aware of ways to avoid such problems in the future, the vendor must inform the client of how to avoid them. Failure to notify clients of ways they can save money will harm business relationships and will only cost suppliers in the long run.

### **What do I need to disclose about my methods of work (e.g., if I outsource some parts of the work)?**

It is wise to be as honest as possible as regards implemented tools, resources and general processes. Most clients appreciate openness and will better trust vendors that are open about their methods. It also saves the vendor from stumbling over client queries and complaints. The vendor also needs to make sure that any partners you work with meet your client's requirements. Some clients will not care about your methods, while other might care a great deal, so it is wise to find out whether your internal methods matter to your client. In some instances failure to disclose methods could open service providers to legal action should their methods violate contractual obligations (such as non-disclosure agreements (NDAs)).

In no cases should you claim to have certified translators working on projects unless all translators involved with a the project are certified.

### **Can I take a contract if I am not 100% sure of having the capacity to meet it in a timely manner?**

Theoretically no, but most vendors will risk a reasonable degree of uncertainty to take on jobs that stretch their capacity, and still manage to deliver on time. If vendors consistently miss deadlines or deliver poor quality results on a tight schedule they will lose clients. The process is one of natural selection. If there is a high probability that a project may go over time, the client must be informed of this in advance and the decision about how to proceed should be made by the client. Keep clients informed of any problems that may impact their projects.

**Can I take a contract if I believe the client wants a long-term relationship that I might not be able to sustain?**

Theoretically, no, practically, yes. It depends on the degree to which you are certain the client does, in fact, want a long-term relationship. Many clients will indicate that they are looking for long-term relationships, when they are not in fact planning to do so. If you know a client is selecting a partner for small projects based on the assumption of using the same partner for larger projects you will not be able to handle, you must disclose this to the client.

**If I am competing for a contract with one company and I already have a contract with its competitor, do I need to disclose this?**

No. Most clients require their vendors to sign non-disclosure agreements (NDAs), and it may violate an NDA to disclose to competitors the fact that you work for a company. It also should not affect the quality of work (except perhaps to speed it up or improve the quality). Suppliers in almost every industry supply products or services to competing companies.

**If a project turns out to run significantly under a budget determined in good faith, do I have to return to the client any of the difference?**

This depends on how charges are determined. In the case of hourly work based on an estimate, funds must be returned. Every project is different, and margins will vary according to various factors such as size, terminology, updates and so on. As long as the scope and tasks agreed with the client have been fulfilled (i.e. promised corners haven't been cut) and all parties are satisfied, there is no requirement to return any funds to the client.

In most cases, however, returning funds helps cement a relationship and returning unexpected savings to clients is good business practice. Returning part or all of the difference will help establish your reputation as a fair company.

**Is it OK to take contracts at a loss or below typical market rate to build up clientele?**

No. This is a real problem in many industries. Remember that clients looking for the best price above all else are not generally loyal creatures. Even if clientele is built up by charging a cut rate, this clientele will generally evaporate when the vendor is forced to charge market rates. In some cases "anti-dumping laws" may also apply, and expose you to legal action from competitors. Cut-rate pricing is not good for the industry because it generates unreal expectations and sub-par results.

**If I know that claims made in something I'm localizing aren't true, what should I do?**

Bring this discretely to the client's attention and ask for instructions. The client will generally tell the supplier to localize the material. If the contract has been accepted, the supplier is generally obliged to localize the material unless it violates a law or is malicious. The supplier can then choose whether or not to work for this client in the future.

**If I know that, due to poor writing and/or internationalization on the client's part, something I'm localizing will be unacceptable or questionable in the target locale, but the agreed-upon budget/timeline doesn't allow me to fix the problems, how should I handle this?**

This is a problem with which suppliers are increasingly confronted. All a supplier can do is provide the client with a brief assessment of the situation and perhaps a cost estimate to remedy it. All such notifications should be in writing so that they are clearly documented and you are protected against future claims. If the client declines to take steps to fix errors, it may be wise to ask them to sign a disclaimer and never use them as a reference.

**How responsible am I for fixing my client's errors?**

The client should be informed of the errors and the errors should be rectified in the localized version, if possible and applicable. If the extent of the errors is not significant, it would make good business sense to inform the client and fix them; otherwise it is up to the client to decide whether solving the problem is in the budget.

**If it looks like a project is likely to run over schedule due to my own internal problems, what are my responsibilities, professionally and financially, for the results to the client?**

Responsibility be spelled out contractually, but penalties for non-completion may not be in all cases. The client should be informed of the situation as early in the project as possible (or as soon as the supplier becomes aware of the situation). There are two cases that may apply:

1. The client can give you the extra time needed to complete the project
2. The client will retract the portion of the project the supplier cannot complete and have it done elsewhere.

The client may also require payment of damages, so situations such as these should be avoided if at all possible, and it is best to have internal emergency backup for such cases. You should also carry adequate professional liability insurance for your business.

**What do I do if portions of a contract are outsourced and come back below my quality standards and I don't have time to fix them?**

Quality issues *must* be fixed by the supplier before delivery. It is in the best interest of the supplier to do so. If you do not have time to fix the project, the best solution is to ask the client for an extension. If the client is unwilling to provide an extension, long and sleepless nights may be the only real solution. If you are unable to deliver on time, it is your responsibility to remunerate the client and rectify the situation as quickly as possible.

**What do I do if I have to work with poor-quality material from another vendor that a client uses and this will affect the quality of my results?**

The client must be made aware of the situation. This is usually best done with a brief assessment with examples and a cost estimate to remedy the situation, as well as an explanation detailing why the suggested steps are necessary for long-term quality. If the client does not want the material to be fixed, a quality disclaimer would be wise for the future.

**What can I say about the another vendor's poor-quality work that affects my work?**

Whatever may be said, criticism must be well-founded and documentable, and it must focus on objective measures. E.g., saying that work is "sloppy and sub-standard" is not as effective as pointing to examples of quality lapses or mistranslations. When criticizing the work of others, it is vital to avoid the impression that you are trying to obtain the other vendor's work for yourself. However, if quality truly is bad, this must be said diplomatically. A few examples the client will understand are a good start.

Criticism is best received in the context of a trusting relationship between client and vendor. Criticism should be reserved for situations when it is justified, and should be judiciously given.

**Do I need to pass on all productivity gains achieved through technology and automation?**

Many clients expect productivity to be passed on completely and often expect more than is actually feasible due to poor education and aggressive technology sales pitches. The only way for many localizers to make a profit is to keep a portion of the gains to themselves, so not all gains need to be passed on. Most gains will have been achieved through vendors' own means and not out-of-the-box applications. Some productivity must be passed on to the client, as many are well-versed in the tools of the trade and don't appreciate having the wool pulled over their eyes.

**Who owns TM data and terminology?**

General business practice in the GILT industry assigns ownership of TM data to the client. Client glossaries, i.e. glossaries either provided by, or contracted by the client, are client property. Terminology of TM databases developed during a project that are *not* paid for can be considered non-proprietary, if researched at the supplier's own cost and not client or product-specific. However, to prevent any confusion, ownership should be contractually specified. Suppliers are recommended to state their policies on linguistic asset ownership up front. Suppliers should also include the costs of maintaining linguistics assets in contracts, and make it clear to their customers that maintenance is an important part of any project, and not something that can be left out of jobs.

**If I discover that I can save significantly within a large project by applying TM or other technology after I've started work, do I need to pass these savings back to the client?**

There is no obligation for the supplier to pass any savings back to the client, as the supplier has likely created its own solution somehow for the job. However, it would make good business sense to pass some of this on to the client the next time—if the supplier doesn't, the next one will.

**What do I do if the client doesn't want to pay for service that I consider essential (like thorough QA) and that reflect on my performance as a service provider? I can't simply ignore these steps, but neither should I give the client what he or she is not paying for.**

It is generally best to provide clients with a rate that includes QA, and which does not allow for QA to be separated from localization tasks. Ethically speaking, QA should not be left out of the process, and if a client refuses to pay for proper QA, it is the supplier's decision as to whether this will allow it to live up to its reputation. The supplier could cut the margin on the project in question and try to add the cost somewhere the next time, but as a long-term strategy this can create real problems for the supplier.

A client that is ISO certified should be made aware of the fact that QA is a requirement and should be done, in addition to the fact that it saves money in the long term. This also applies to suppliers who are ISO certified.

**What do I need to do if I make mistakes that I discover after a project is completed and released (i.e., I can't change them now, but they do exist and the client bears the consequences)?**

The client should always be informed and supplied with an updated version of the project so that they are not using outdated materials going forward. You should also carry sufficient liability insurance to protect yourself if you face legal action as a result of problems you cause.

**What sorts of criticisms from clients do I need to respond to and how?**

All criticism from clients requires a response. It is naturally always best to stay as objective as possible when dealing with complaints. If they are justified, it is always best to try and find a compromise. If not, it is best to explain why, regardless how time-consuming this can be. Only if legal action is threatened or unavoidable should the supplier dig his/her heels in (providing the criticism is unjustified). The client is always right, so if it is simply a matter of style, then just take a deep breath and change it. The client will be happy and return.

Contract should specify a process for conflict resolution so that, in the event of a serious disagreement, there is a mutually-acceptable method for assigning responsibility and determining the course of resolution. When faced with non-specific criticism of your work (e.g., "our customer said your translation is very poor"), you should also request specific instances of problems so you can determine the validity of complaints and respond appropriately.

**May I use the names of clients in promotion of my business?**

Absent any legal reason not to (such as an NDA), you may include a list of current and former clients in your promotional material, but realize that doing so is an invitation for potential clients to contact these companies in evaluating your services, so you should not include companies likely to have anything negative to say about your services or business (for whatever reason). It is a good idea, to ask your clients if you can mention them in your materials in case there is any reason they may not want to be included. List only clients for whom you have worked directly, not those who originate jobs you may have worked on under contract to a third party. Do not list companies as clients for whom you have not carried out full-scale projects.

In any event you should never mention a client in any way that might be construed as an endorsement of your services without express permission to do so (even if you know the customer is happy with your service). Many clients are forbidden from endorsing products or services, and using their names in promotional materials could have legal and/or business consequences. If you are in doubt about using a company's name in your materials, discuss the matter with your contact(s) in the company. It would generally be fine to include a statement such as "Clients include..." (a factual statement), but not "Satisfied clients include..." (a value judgment) unless your clients have agreed to be listed and know how their names are to be used.

## CLIENT-ORIENTED QUESTIONS

**Is localization quality an aspect of work that is important to me and am I willing to pay for it? How do I perceive the value of localization (something that has to be done or as an important selling point on a global market)?**

You need to determine what your quality expectations are and what you are willing to pay to achieve them. You also need to decide whether your expectations and your budget match. It is unfair to your suppliers to expect them to provide what you are unwilling to pay for. This is a fundamental ethical issue because many potential ethical problems result from trying to cover a mismatch between expectations and what you are willing to do to obtain them. Understanding the role localization plays in your organization, and the value placed upon it, will help you select appropriate partners and keep valuable business relationships.

**How do I / does my company determine the value of localization (e.g. budget, local/global market)? Is there something we are forgetting?**

You can help prevent a mismatch between your expectations for localization and the reality of your results by understanding the localization process and what is involved in obtaining the results you want. It is your responsibility to be an informed consumer who knows what to expect of your suppliers and what you will have to pay a premium to obtain. Knowledge of the localization process and its value to you and your organization will help you appropriately allocate resources and work with your partners in a fair and equitable manner. Many ethical dilemmas can be prevented by being knowledgeable about business practices and methods, and making sure that your actions accord with industry best practice.

**Should I attempt to have my supplier reduce rates by telling them that “there are others out there” even though I know that these others don’t make the grade and would never be chosen as our supplier?**

Keep in mind the maxim “you get what you pay for”. Obtaining low prices under false pretenses will only result in poor quality and ill will if your subterfuge is discovered.

**Should I tell my supplier that I am looking for a long-term relationship to get discounts even though I know I will ask for tenders the next time around?**

Making false statements to obtain discounts is always a bad idea. In the long term such tactics will also generally lead to increased costs as service providers decline to deal with you. Long term relationships also lead to increased efficiencies that can result in substantial savings that will likely outweigh any short-term savings in per-word rates you may obtain by claiming to be looking for long-term relationships. It is in your best interest to pay fair rates for the results you want to obtain.

**Can I expect my supplier to deliver quality results if I know that the rates I am willing to pay are well below competitive market rates?**

Again, you get what you pay for. It is in your long-term best interest to pay a fair price for quality results. That said, if your supplier agrees to deliver quality results at an unbelievably low rate, this is a business decision to be made between you and your supplier. Remember, however, that competitive market rates are competitive for a certain level of service. Significantly lower rates may indicate that the service provided does not compare with the service of others in the market (or it may simply mean you have found a good deal).

**If I know the quality of a previous translation I am using for leverage is poor, should I tell my supplier and ask that it be done properly for a fee or should I hide it?**

Open disclosure of problems will result in better results and, generally, lower cost, than failure to disclose problems. Your suppliers will recognize the source of problems and bill you for the cost of fixing them. Hiding problems will only create ill-will with your suppliers. In addition the quality of your localization project will suffer; disclosing the problems will allow your suppliers to take steps early on to help improve quality.

**Can I expect my supplier to correct previous translations at little or no cost?**

Any work a supplier has to undertake (other than correcting its own mistakes) should be paid for. How the supplier and you may agree to handle this or pay for it is up to you, but correction of linguistic resources must be paid for and the supplier must be fairly compensated for time and effort. Correction of previous translations is a time-consuming task that must be taken care of to avoid future costs and quality problems.

**Should I be up-front with my supplier about production delays, translation sequence and updates?**

Quality can only improve when your supplier can plan ahead to meet your needs. It is also fundamentally a matter of fairness to let your suppliers know about issues such as delays or revisions that will affect their ability to provide service in a timely manner to you and their other clients. If you try to conceal problems and, as a result your supplier loses money by making or keeping resources available, you will create a bad relationship. The more lead time you can give your suppliers to make adjustments, the easier it will be for them to provide quality resources for your project and, ultimately, to deliver quality results.

**If the supplier detects errors caused by our developers, should we pay to have them fixed?**

Ultimately this is a question for you to decide in terms of your localization needs. Not all problems need to be fixed (or, indeed, can be fixed, given finite resources). Knowing where to focus your efforts will result in improved quality and business relationships. Ultimately, if you decide to fix problems your developers caused, you are responsible for the cost of fixing them, whether that means going back to your in-house developers and having them fix the problem, or paying your suppliers to fix them. If your errors will negatively impact the ability of your supplier to complete its job in a timely and efficient manner, you should generally have them fixed.

**Can I expect my supplier to implement changes I make to the project as part of general services (i.e., without additional charge)?**

You cannot assume that your supplier will implement changes you request free of charge. That said, most suppliers will implement reasonable changes as part of the localization process, provided they are notified about them early on and can make the changes without extensive delay or effort. If your changes require retranslation or considerable effort on the part of your supplier, you should expect to pay for them. You should make your suppliers aware of any forthcoming changes as soon as possible to prevent wasted effort on their part and to allow them to allocate resources in the most efficient manner. Doing so will help minimize costs associated with changes.

Not all changes are created equal. Changes such as adding files to a project prior to its start date or replacing files that have not yet entered a workflow will require adjustment of estimates, but generally will not cause problems for your supplier or result in cost increases for the remainder of a project, while changes to text after a project has begun, especially systematic changes that affect many locations in a project, can create major problems for your suppliers and will almost certainly result in your being required to pay change fees.

It is your responsibility to deliver projects to your suppliers in a final form—changes should be the exception rather than the norm. If you consistently find yourself requesting changes of your suppliers after projects have begun you need to examine your own processes to identify problems. Examining your own process for problems will not only make your suppliers happy, it will also help you identify problems that may be creating additional expenses in other areas. If you consistently request changes you will find your suppliers less willing to work with you over time.

**Can I ask suppliers to participate in a selection process if I am reasonably sure of staying with my current supplier?**

You may request quotes from suppliers (they understand that quotes are not in any way binding), but you should not ask suppliers to participate in selection processes that will require them to spend substantial time or money if they do not stand a chance of obtaining your business. Even if you believe you will stay with your current supplier, you owe it to those in your selection process to at least evaluate their proposals and references. Suppliers will know if you have checked their references and done due diligence. If you do not do due diligence these suppliers will be unlikely to regard you seriously in the future if you do need their services.

**Can I expect potential suppliers to perform sample projects at their own cost prior to any decision to use their service?**

Generally you should not expect a potential supplier to perform any sample work at their own cost unless (1) you are seriously considering them as a service provider, (2) the scope of the sample project is reasonable, and (3) you have made the nature of the sample project and its role in the selection process clear. You should never expect potential suppliers to provide sample projects to you unless they stand a reasonable and fair chance of being chosen in your selection process. Requesting sample projects from suppliers that do not stand a reasonable chance of being chosen is unfair and wastes the suppliers' time and resources. In addition you should never use real projects you would normally pay for as sample projects in order to avoid paying for them. Sample projects should be carefully chosen to provide a basis for evaluation of quality and work.

**If I am dissatisfied with the performance of a supplier and am asked to provide a reference for the supplier, what can I say about my experience to the supplier's potential clients?**

Generally you will not be asked to provide a recommendation for a supplier you are unhappy with (it isn't in the best interest of the supplier to have unhappy customers serve as references), but if you are contacted about your experience you are best advised to only provide factual and substantiated criticisms in order to avoid potential liability. You may be best advised to decline to serve as a reference: the supplier's potential clients will understand that you are unhappy without you saying anything about the supplier. (At the same time, if you are unable to serve as a reference for some reason that has nothing to do with your satisfaction with a supplier, make sure that you explain this to those seeking references so that you don't send the wrong message.)

**What criticisms may I direct at my supplier and under what circumstances? What criticisms may I mention to other parties?**

Positive criticism that will help improve the supplier's performance on future projects is always a good idea, provided it is factual and specific. Before making criticisms, however, you need to be make sure that the criticisms are not the result of your own actions or source material; source material should be put to the same standards as their localized versions—it is quite common for problems in localization to be the direct result of undetected problems in the source. You should grant your supplier the opportunity to respond to criticisms prior to taking any action based on them. In many cases problems arise because of factors out of a suppliers's control (such as corruption of electronic files), or miscommunication between supplier and client.

At the same time, if you are involved in a large project that will be delivered over time, it is your responsibility to examine the first deliverables in a timely manner and return criticism/comments promptly to your supplier so that needed adjustments can be made in the project before they cause downstream problems or require expensive (and preventable) rush fixes. If a supplier makes mistakes that you could have prevented by diligently managing your side of a project, the blame and responsibility are at least partly your own.

Any criticisms should have an objective basis. If you did not provide a style guide up front, you cannot complain when a vendor fails to meet your stylistic ideals. Evaluation of translation quality can be very subjective and translations can be endlessly modified, so agree with your partners on the ground-rules for evaluation before a project begins. You should also consider using a *formal* quality metric (like the LISA QA Model) to gain a verifiable picture of project quality in addition to the subjective evaluation of reviewers.

If you receive complaints from third parties such as consumers, you should independently verify them prior to complaining to your supplier. Often complaints about localization will be highly subjective, and one individual's criticism may simply reflect his or her opinion; if multiple sources make the same criticism, however, you can generally assume the complaint represents a real problem.

As a matter of courtesy you should never pass on criticisms of a supplier's work to other parties without first providing the supplier with a chance to rectify the problem. Often a supplier may not be aware of a problem (and would appreciate the opportunity to fix it) or may be able to help you identify an internal source for the problem. Criticisms should not be made to third parties except in appropriate circumstances. For example, references are commonly asked about how suppliers have dealt with problems, and a factual discussion of a problem and its solution is appropriate in this context, as is your candid (and subjective) opinion of a supplier's performance.

## Model GILT Services Contract

Between

\_\_\_\_\_ represented by \_\_\_\_\_ (hereinafter called Client)

and

\_\_\_\_\_ represented by \_\_\_\_\_ (hereinafter called Localizer)

### 1. Definitions

- 1.1. "Localizer" refers to the individual or business providing localization services.
- 1.2. "Client" refers to the individual or business stipulating this contract.
- 1.3. "Original Material" refers to the documents and other material supplied to the Localizer for services of translation, localization, or for consultancy on globalization according to these Conditions.
- 1.4. "Final Material" refers to the final localized version of the Original Material.

### 2. Tariffs

- 2.1. The service stipulated will be carried out by the Localizer and billed according to the terms and tariffs given in the estimate.
- 2.2. All the offers and all the estimates given, in whatever form, are to be considered binding for the Localizer or the Client unless explicitly stated otherwise. They will have a maximum validity of thirty (30) days. The Localizer reserves the right to modify the prices and tariffs and/or the estimated delivery date which may have been indicated on previous estimates, at the time of receipt and evaluation of the complete Original Material to be localized. The Localizer will inform the Client of any additional costs or changes to the delivery date before beginning the localization.

### 3. Quality of the service and Original Material

- 3.1. The Localizer will carry out the service based on established quality standards, translating special terms according to their conventional meaning, based on glossaries previously approved by the Client.
- 3.2. The Localizer will not be responsible for any delays in delivery which are due to the Original Material being made available late, incorrectly or not at all.

### 4. Modifications or additions to the Original Material

- 4.1 All modifications or additions to the Original Material must be presented to the Localizer with clear indications of the changes made and their positions with respect to the copy previously presented.
- 4.2 The evaluation of the cost and time required to carry out the changes or additions to the Original Material for the localizations which have already been initiated, will be calculated based on the quantity and nature of the variations and the percentage of work which has already been completed.

4.3. The Localizer will supply the Client with an estimate of the additional time and cost before beginning the modifications or additions.

## **5. Corrections**

5.1 The Localizer will correct the following errors free of charge: incorrect translation, omission, spelling errors, grammatical errors, failure to follow any approved glossaries.

5.2 The Client recognizes that the Localizer will not bear any responsibility or obligation for possible errors of translation, unless such errors are indicated in writing within thirty (30) days of the delivery of the Final Material to the Client.

5.3 The Localizer's sole obligation with respect to any errors indicated within this time period will be that of correcting the Final Material free of charge.

## **6. Limits of responsibility**

6.1 The Localizer assumes responsibility for any damages, direct or indirect, or claims made against the Client by third parties, resulting from the services carried out by the Localizer, regardless of the object or manner of the action, and that the damages be of a contractual or non-contractual nature, and or their predictability by the Localizer, independently of what is set out in the proposals and associated documents.

6.2 The Localizer will be responsible for the return, loss or any possible damage to the Original Material.

## **7. Declarations and warranties**

7.1 The Localizer declares and guarantees that the service will be rendered following standard in house quality procedures, using all the technology, instruments and qualified personnel available, such that the result satisfies the quality standards proposed and normally applied by the Localizer.

7.2. The Client declares and guarantees a) that the Original Material is owned by him and is free for his use and b) that the localization of the Original Material and the publication, distribution, sale or other use of the Final Material does not violate any author's rights, trademarks, patent or other third party rights.

## **8. Limits of guarantee**

8.1. The Localizer's guarantees as above replace any other guarantees, express or implied, of the Final Material's saleability or its suitability for a particular purpose.

8.2. The Localizer does not guarantee that the use of the Final Material or of material contained within it does not violate any trade secrets, author's rights, trademarks, patents or other third party rights.

## **9. Cancellation of the contract**

9.1. Should the Client default, the Localizer will have the right to cancel the contract and the Client will be obliged to pay a sum calculated according to services completed at the time of the contract cancellation and all work in progress.

9.2. Should the Localizer default, the Client will have the right to cancel the contract and will be obliged to pay a sum calculated according to services completed at the time of the contract cancellation and all work in progress.

9.3. In the event of contract cancellation, the Localizer will be obliged to hand back to the Client all Original Material and data provided, together with all localized material existing on the date of cancellation. In addition the Localizer will hand offer all glossaries and dictionaries made under the projects.

9.4. The Localizer will have the right to withhold the Original Material and the Final Material by way of a guarantee of payment by the Client of the entire sum owed.

9.5. Neither party will be held responsible for delays or non-fulfilment when these are due to events and/or causes of force majeure, non-attributable to either party.

## 10. Title and ownership

10.1. All rights relative to the Original and Final Materials, and any author's rights, patents, technology and commercial secrets are and remain solely and exclusively with the Client.

10.2. This notwithstanding, the Client recognises that the Localizer is the sole and exclusive owner of all rights regarding:

- (a) inventions, methodology, innovations, data, technology, software and databases used in the localization of the Original Material and
- (b) inventions, methodology, innovations, technology, software and databases developed by the Localizer during the localization of the Original Material, including all related rights, excepting translation memory databases and terminology databases, which are considered works for hire and the property of the Client

10.3. The Localizer reserves the right to withhold the Final Material as a guarantee of payment by the Client of the entire sum agreed upon.

## 11. Confidentiality

11.1. The nature of the work commissioned and all information given by the Client to the Localizer shall be subject to the utmost confidentiality.

11.2. The Localizer must not, without the prior written consent of the Client, publicly divulge or bring any such information to the attention of third parties, with the exception of authorised collaborators or subcontractors authorised by the Localizer whose operational or consultative roles require them to have access to this information.

11.3. The above guarantee does not apply in cases where the Localizer is required by law to communicate such information, or when such information is in or comes into the public domain independently from any divulgence on the part of the Localizer.

**12 .Indemnity**

12.1. The Client shall indemnify the Localizer, his agents, managers, staff, employees, collaborators, representatives and assignees against any loss, damage, cost or expense, including legal costs, deriving from or connected with any claim or legal action concerning (a) the execution of this contract; (b) the Client’s violation of contractual declarations and guarantees; (c) the production, publicity, promotion, sale or distribution of any material on behalf of the Client; (d) any duty, tax, tariff or similar charge laid down by law or by the production, publicity, promotion, use, importation, licensing or distribution of any material on behalf of the Client; (e) any claim for damages through the violation by the Final Material of any author’s rights, trademarks, industrial patents or other rights.

**13. Terms and methods of payment**

13.1. Client and Localizer agree the following payment terms:

- 33.3% of the approved forecast as an up-front payment within 10 days after start of the project
- 33.3% after delivery of the final goldmaster
- 33.3% within 30 days after delivery of the final goldmaster

**14. Place of jurisdiction**

These General Conditions are governed by the laws of \_\_\_\_\_, and the parties elect by mutual consent to submit to the jurisdiction of \_\_\_\_\_.

Client _____ Name _____ Title _____ Place and Date _____ Signature _____	Localizer _____ Name _____ Title _____ Place and Date _____ Signature _____
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# **The Localization Industry Standards Association**

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