

A GUIDE TO TRANSLATOR-PUBLISHER CONTRACTS



Basic Translator/Publisher Contract and commentary

This document inevitably generalises. Terms may vary widely e.g. because of the eminence of the translator, the obscurity of the original language, the likelihood of the publisher securing a grant, the nature of the work (bestselling fiction, poetry, the original being out of copyright). Members are strongly advised to consult the Society about any specific terms they are offered.

Every reasonable effort has been made to ensure that the information provided in this Guide is reasonably comprehensive, accurate and clear and up to date as at the date stated in the Guide. However, the information provided is necessarily general and should not be relied on as specific legal or professional advice. If you have any specific queries, contact our advisers or a suitably qualified lawyer or professional. If you think you may have noticed any error or omission, please let us know.

Contract

MEMORANDUM OF AGREEMENT made this [date] between [Translator's name] of [address] (hereinafter called 'the Translator') of the one part and [Publisher's name] of [address] (hereinafter called 'the Publishers') of the other part

WHEREBY it is mutually agreed as follows concerning the translation from the language into English (hereinafter called 'the Translation') of a work of about words in the original language at present entitled [title] by [author] (hereinafter called 'the Work') in which the Publishers hold the exclusive English language volume rights [and the rights specified at clause 12], in [the UK and Commonwealth/ worldwide]:

1. In consideration of the payments hereinafter mentioned the Translator grants to the Publishers the exclusive licence to publish the Translation in [volume form for print and ebook, and serial form/all forms], [and to handle the rights specified at clause 12] during the period and in the territory of the Publishers' exclusive licence for the Work.

Commentary

1. Most publishers will insist on ebook rights (sometimes also audiobook rights) in addition to print and serial rights. Some may well, in return for paying for the cost of creating the translation, seek a wider licence, e.g. world English language rights in all forms and media. However, as a general rule they should not be granted rights in the translation which exceed the rights they hold in the original work.

The Translator reserves right to license re-translations into third languages working from this Translation.

If the publishers insist that you assign copyright (which should not happen without good reason), it is important that the following safeguards be confirmed with the publishers:

- no changes beyond routine copy editing will be made to your translation without your agreement;
- your moral rights are asserted (see clause 8);
- there is a proper termination clause (see clause 16);
- the assignment of copyright is not valid until the entire fee (or advance) payment has been made.

Especially if you translate from a less common language, clarify with the publisher at the outset that you retain 'relay translation' rights and ask them to ensure that their rights department is aware of this.

2. The Publishers have delivered one copy of the Work to the Translator and the Translator shall deliver to the Publishers within months from the date of this Agreement [specify form of delivery e.g. on disk plus an identical paper copy] of the Translation which shall be faithful to the spirit of the Work and rendered into appropriate English.

2. Ensure the publisher has seen one of your previous translations, or a sample of your translating. If publication is conditional on the translation being subject to 'approval' or 'acceptance', it should be clear you will be paid the entire fee/advance if what you deliver conforms to the agreed specifications and is similar in style and quality to any sample the publisher has already seen.

If completion of the translation could be held up e.g. because it needs the approval of the original author or of a co-publisher in the US, it should be clear that you will not be penalised for delays beyond your control.

3. The Translator guarantees to the Publishers that he/she will not introduce into the Translation any matter of an objectionable or libellous character or which is otherwise unlawful which was not present in the Work. In reliance on such guarantee the Publishers undertake to hold the Translator harmless from all suits against or incurred by them on the grounds that the Translation contains anything objectionable or libellous or is otherwise unlawful.

3. For understandable reasons, publishers seek a warranty and indemnification from authors. Clearly the situation is different with a translation, where you have no control over the work of the original author. Hence the wording we recommend here.

4. The Publishers shall not make any alteration to the Translation without the consent of the Translator, such consent not to be unreasonably withheld. If the Publishers hold the right to adapt the Work for publication in the English language they shall notify the Translator and any adapting to be carried out by the Translator and payment for it shall be agreed separately between the parties.

4. Be clear who has the final say over the finished text, especially if you have assigned copyright (whereby you forfeit such control to the publishers). For further guidance on the editing of translations, see Translation in Practice (for details, consult the Society).

You might want to press for the right to be consulted (or, much rarer, a right of approval) over the title of the translation.

Problems can arise where a translation is subject to the approval of the original author. There is no question that it is still their work, but sometimes their command of English may not be as sophisticated as they believe. It should be clear who has the final say in the event of impasse (you, the author, or the publisher); and - again - you should be entitled to the full fee/advance for doing the work even if the project founders for want of author approval. Also a further fee if you are required to do unforeseen additional work following feedback from the author.

5. The Publishers shall send two sets of proofs of the Translation to the Translator. The Translator undertakes to read, check and correct the proofs and return one set to the Publishers within [7/14] days after their receipt. The cost of alterations made by the Translator in the proofs (other than the correction of artists', copy editors' and printers' errors) above 10% of the original cost of typesetting shall be paid by the Translator.

6. The Publishers shall publish the Translation within [12] months from delivery of the Translation.

6. A publication deadline is particularly important if any part of your fee or advance will be paid at that time.

7. If the Translation includes quotations or other material from in-copyright sources, the Publishers will obtain the relevant permissions and pay any fees incurred.

7. If relevant, any copyright permission fees should be met by the publishers.

8. The Translator asserts his/her moral right to be identified as the Translator of the work. The Publishers undertake that the Translator's name shall appear on the title

8. The moral right of integrity exists automatically (unless it is waived, in writing) and is the right not to have your work subject to 'distortion or mutilation'.

page and jacket/cover of their edition of the Translation and in all publicity material (catalogues, advertisements, website etc.) concerning it, and shall use their best endeavours to ensure that this undertaking is adhered to in other editions of the Translation and that the name of the Translator is mentioned in connection with all reviews of and quotations from the Translation. The Publishers shall print the following copyright notice of the Translation: 'English language translation copyright © [Translator's name, 20....]'.

9. The Publishers shall send to the Translator on publication six complimentary copies of the first edition of the Translation and two copies of any subsequent edition issued by the Publishers or (where possible) under licence from them. The Translator shall have the right to purchase further copies at normal trade terms for personal use but not for resale.

10. The Publishers shall pay the Translator [a fee if/in advance and on account of all sums which may become due to the Translator under this Agreement the sum of] £..... which shall be payable one half on signature of this Agreement, one half on delivery of the Translation.

The moral right to be identified as the author of the translation needs to be asserted in writing.

10. The initial fee (or advance): you should insist on a lump-sum payment for doing the translating. It may be a fee (as your only remuneration, or in addition to royalties) or - less satisfactory but not unusual- it may be an advance offset against future royalty income.

The payment is often calculated on the basis of a rate per thousand words. Specialist skills, such as a knowledge of metallurgy, may well command a premium – likewise translations of poetry and from languages which use pictorial symbols. Assess the difficulty and any factors that might complicate the translation process. For more on rates, contact the Society.

Points which should be made clear at the outset:

- you will receive the full payment if you deliver the translation as commissioned (even if it is never published because, for example, an American co-edition cannot be secured);
- if part of the payment is subject to funding of which the publishers are not yet

certain, e.g. a grant due on publication, what sum you will be paid if that additional funding fails to materialise;

- if you are expected to do work other than translating (e.g. research, an introduction, a glossary, indexing) such work should be clearly itemised and you should be paid a separate fee for it.

11. On sales of the Publishers' edition of the Translation at home and abroad the Publishers shall pay to the Translator a royalty of: ...

No royalty shall be paid on copies of the Translation sold at cost or less, presented to the proprietor of the Work or the Translator, lost through theft or damage, or destroyed by fire, water, in transit or otherwise.

11. Payments beyond the initial fee (or advance)

Consult the Society about the terms you are offered - such provisions vary widely and specialist advice before you sign is strongly recommended.

If it is not possible to negotiate more than a one-off fee, try for further fees to be paid if sales reach an agreed level and/or if e.g. US or dramatisation rights are licensed.

If the publishers will not pay royalties from the outset on print and ebook versions, they may agree to do so after a specified number of copies of the translation have been sold.

The size of any royalties will depend on many variables, but generally there will be a total royalty, divided between you and the author. In what proportion will be subject to negotiation, but three quarters to the author, one quarter to you would not be unusual. Higher royalties may be obtainable if the translator is well known or if the original work has gone out of copyright (so the publishers will not be paying a royalty to the author).

Publishers will generally want to control ebook rights. For fiction and narrative non-fiction, the total author royalty should be in the region of 25% of which we would expect the translator to be paid 5%. For specialist non-fiction, the total ebook royalties payable maybe lower.

12. The Translator grants the Publishers an exclusive licence to handle the following rights [delete/include as appropriate] during the continuance of this agreement in the territory exclusively granted and the Publishers shall pay to the Translator the following percentages of the proceeds:

First serial rights [...%];

Second serial rights [...%];

US rights [...%];

Paperback rights [...%];

Bookclub rights [...%]

Anthology and quotation rights [...%];

Readings on radio or television [...%];

Audio rights [...%];

Large-print rights [...%];

Public Lending Right (PLR), rental and lending rights, and any other rights not specified above are reserved by the Translator.

The work shall be included in the scheme administered by the Copyright Licensing Agency, with the Translator's share of any income from the CLA being paid to him/her by ALCS.

12. The list of subsidiary rights should be the same as have been granted to the publisher by the owner of the original work.

If rights in the underlying work and in the translation are being dealt with discretely there is a danger that almost all the monies paid by the licensee are deemed to relate to the underlying work and only a token fee is deemed to apply to the translation.

Where the publisher is granting permission for both the underlying work and the translation, the authors' share of any payment from sub-licensing (likely to be anywhere from 50% to 80%) should be divided between author and translator e.g. three quarters/two thirds to the author and one quarter/one third to you.

If the publisher does not control the relevant rights in the underlying work, but you have granted it control of such rights in the translation, that publisher should be taking no more than, say, 20% commission on any income from sub-licensing the translation because its role is in effect that of an agent.

An alternative is to try for a further fee each time a major subsidiary right is licensed.

Some publishers insist that their margins on subsidiary rights deals are so small they cannot pay anything to the translator – which should be resisted where possible.

If the publishers also have the right to license dramatisations (for stage, radio, TV, film and other media) and/or electronic rights, it should be clear that the licensing of such rights is subject to the Translator's approval (or that the Translator will be informed of the licensing of such rights) and the Publisher will use best endeavours to ensure that the Translator is prominently credited on the licensed version.

13. If the Publishers license US rights to another company, the Translator will be entitled to ...% of any income the Publishers receive from the US publisher;

if the Publishers supply bound or unbound copies for sale inclusive of royalty, the Translator will be paid [...] % of [the US imprint's receipts/the amounts received by the Publishers].

Alternatively: If the Translation is published in the USA (in the Publisher's edition or sub-licensed), the Translator will be paid a fee of £....

13. If you can secure a further payment for any US version, that may be in the form of a share of the royalties. Alternatively a lump sum payment if/when US rights are licensed means a guaranteed sum of money in hand, and is likely to appeal to the publisher as it involves considerably less administration.

There are a number of ways US rights can be dealt with. If the publisher has its own US division, it may well sell the work in the US itself and you should try for royalties as on the UK edition. Where US rights are, instead, sub-licensed, it is likely to be in one of the following ways:

Publishers may license an American publisher to produce a separate edition. The British publisher will pay to the author and translator a share of its income from the American licensee (depending on the nature of the work that could be anywhere from 50% to 80% of such income).

The publisher may supply copies to an American firm for distribution. Since the price paid by the US firm may well be little more than the manufacturing cost, a deal of this kind is a poor one. Alas, it is often the only feasible way of selling to the US. Any royalties generated will be very modest.

See also the comments on clause 12 about the division of income between author and translator on sub-licensed versions.

14(a). The Publishers shall make up accounts of sales of the Translation to 30 June and 31 December in each year following the date of the first publication and the accounts shall be delivered to the Translator and settled by the succeeding 1 October and 1 April respectively. Any sum of £100 or more due to the Translator in respect of sub-licensed rights shall be paid to the Translator within one month of receipt if the advance has been earned.

14(b). The Translator or his/her authorised representative shall have the right upon written request to examine the Publishers' books of account insofar as they relate to the Translation, which examination shall be at the cost of the Translator unless errors exceeding £50 shall be found to his/her

14. If you are VAT-registered, and/or if your translating work is done in your capacity as a limited company, you must inform the publisher from the outset and the contract should be adapted accordingly. Failure to do so can result in financial penalties for both you and the publisher.

disadvantage in which case the costs shall be paid by the Publishers.

15. The Translation shall not be remaindered within one year from first publication without the Translator's agreement. If the Translation is remaindered, the Publishers will pay the Translator 10% of receipts on copies sold at above cost and will give the Translator first refusal to purchase copies at the remainder price.

16(i). If the Publishers fail to fulfil or comply with any of the provisions of the contract within one month after notification from the Translator of such failure, or if they go into liquidation or have a Receiver or Administrator appointed, the contract shall automatically terminate and all rights granted by it shall revert to the Translator.

16(ii). If the Translation shall become out of print in the publisher's own edition, or the publisher's stock falls below 50 hardback copies or 100 paperback copies, and the publishers do not reprint a new edition of the Translation within nine months after receiving such a written request from the Translator, the contract shall automatically terminate and all rights granted by it shall revert to the Translator.

Should the work be available only as print-on-demand and/or as an ebook, and sales have been below [... copies] in the preceding 12-month period, provided the advance has been earned out, or more than three years have passed since first publication (whichever is the sooner), the Translator may terminate the contract on one month's notice.

16(iii). If the Publishers' rights in the Work revert to the Proprietor, this Agreement shall terminate automatically and all rights granted in the Translation shall revert to the Translator.

Termination shall be without prejudice to any sub-licences properly granted by the Publishers during the currency of this

agreement (if termination is under (ii) or (iii) above); any claims which the Translator may have for monies due at the time of such termination; and any claims which the Translator may have against the Publishers in respect of breaches by the Publishers of the terms of this agreement.

17. Any dispute or difference arising between the parties hereto relating to the interpretation of this Agreement may be submitted in the first instance to an Alternative Disputes Resolution process to be agreed between the Translator and the Publisher. Failing agreement on such or on the terms of such submission the parties agree to submit to the jurisdiction of the [English/Scottish] courts.

18. The Publisher will not knowingly use or grant others the right to use the Translator's name, voice, image, likeness, or any other identifying data nor any part of the Translation in any manner which could help the machine-learning or training of generative artificial intelligence technologies.

The Publisher will not knowingly use or allow the use of generative AI in association with the production of the Translation – for example for purposes of narrating, translating, images, cover design.

19. This Agreement shall be governed by and interpreted in accordance with the Law of [England/Scotland].

18. Unless the publisher gives assurances that it will not allow your identity or translation to be accessed and possibly exploited by generative AI systems, especially if you assign copyright or your contract is with an academic publisher:

Seek confirmat that any waiver of any of your moral rights does not extend to any use made by or sourced from generative-AI materials derived from your translation.

Members can consult the SoA for further advice.