

The Society of Authors  
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Quick Guide 19:  
Translator/Publisher Contracts

This Guide aims to give guidance on the main points a literary translator should bear in mind when commissioned by a publisher. It includes a sample translator/ publisher agreement on pages 7-10.

### 1 Delivery of the typescript

Ensure that the delivery date is one you can meet easily. If completion of the translation could be held up by events outside your control, e.g. the approval of the original author, or of a co-edition publisher e.g. in the US, it should be clear that you will not be penalised for delays beyond your control.

### 2 Warranty and indemnification

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. Therefore, wording along the lines suggested at clause 3 of the sample contract should be used.

### 3 The licence of rights

Publishers may well seek a wider licence, up to and including 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. For example, if the publishers have the right to publish a translation in printed form only, and you have retained dramatisation rights, if a producer wants to make a movie of the original work he may well come to you for the English-language version on which to base the screenplay.

### 4 Assignment of copyright

If the publishers insist that you must assign copyright (which should not happen without good reason); the following safeguards are important and should 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 point 8);
- your advance (or, if assigning copyright, probably your fee) should be paid when you deliver what was commissioned (not on 'acceptance' or on publication);
- there is a proper termination clause (see point 13).

If you assign copyright for a single fee, remember that that is all you will be paid however the publishers exploit the translation, in any form or medium.

## 5 Editorial control

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). Problems can also arise where a translation is subject to the approval of the original author. There is no question that it is still the author's work, but sometimes his/her command of English may not be as sophisticated as s/he believes. It should be clear who has the final say in the event of impasse (you, the author, or the publisher); and you should be entitled to your full advance (or fee) for doing the work even if the project founders for want of author approval.

## 6 Publisher's undertaking to publish

The publishers should undertake to publish the translation within a specified time, e.g. 12 months (18 for highly illustrated works) from delivery of the typescript.

## 7 Illustrations, quotations and indexing

If you are expected to do work other than translating, that should be clearly stated in the contract and you should be paid a separate fee for it. Such additional activities could include adapting the material in some way, picture research, indexing, or clearing of copyright permissions for quotations or artwork from other sources. Copyright permission fees, and any fees charged by indexers, should be met by the publishers.

## 8 Moral rights

There are two main moral rights: the 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'. The moral right of paternity is the right to be identified as the author of the translation, and the 1988 Copyright Act specifies that this right should be 'asserted in writing'. Suggested wording is given at clause 8 of the sample agreement.

## 9 The initial payment

Whether the initial payment is an advance (a sum of money which will then be offset against royalties earned) or a fee, it should be clear when it will be paid - ideally half on signature of the contract and half on delivery of the typescript. Also clarify that you will receive the full payment, unless you fail to deliver the translation which was commissioned (even if the translation is never published because, for example, an American co-edition cannot be secured).

The advance (or fee) is often calculated on the basis of a rate per thousand words, and it needs to be clear whether the word-count is from the source text or target text (generally in the UK it is the source text). If specialist skills, such as a knowledge of metallurgy, are required, they may well command a premium rate. For translations of poetry and those from languages which use pictorial symbols, assess the difficulty of the text and any factors that might complicate the translation process. For further guidance on rates, contact the Society of Authors.

## 10 Royalties

The size of the total royalty may well already have been determined by the author. It is rash to suggest figures because there are so many variables that may be relevant, but for a mainstream work of fiction hardback royalties usually start at 10%, and paperback royalties at 7.5%, with a rise

after a specified number of copies have been sold. Ideally the royalty will be calculated on the recommended retail price, although for some sorts of work it is more likely to be based on net receipts (retail price minus the discount given to wholesalers or retailers). Where relevant, royalties should be due on all copies that are sold, in electronic as well as conventional form. Generally you should expect the total royalty due on the translation to be divided between you and the author. The proportion in which it will be divided will be subject to negotiation in each individual case but three quarters to the author and one quarter to the translator would not be unusual. Higher royalties are sometimes 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).

If it is not possible to negotiate a royalty, it is worth asking for an agreement that further tranches of money will be paid if sales reach specified levels and for a fresh fee when any rights are sub-licensed (American rights, or as listed at point 12).

For a more detailed discussion of royalties, see points 11(b)-(f) of the Quick Guide to Publishing Contracts (free to members on request and in the members section of the Society's website, £10 non-members). And remember that when negotiating a contract, members are welcome to send the proposal to the Society for vetting.

## 11 US rights

There are a confusing number of ways US rights can be dealt with. Any of the following arrangements may apply:

(i) Publishers may sub-license an American publisher to produce a separate edition. Normal US royalties will be paid and the author will probably receive something like 80% of these (50% for some types of work e.g. academic), of which an agreed share should be paid to the translator - in similar proportion to that in which the UK royalties are divided.

(ii) Increasingly, British firms operate through allied or subsidiary companies in the USA or set up their own distribution arrangements there. Ideally the author and translator should be receiving royalties on such editions, calculated on the monies received by the US subsidiary (or, in the perfect world, the US retail price). However, the most usual arrangement, whether the British firm is operating through an associated company or not, is described at (iii).

(iii) The publishers may ship bound or unbound copies (sheets) to an American firm for distribution. Usually, the US publisher will insist that the price paid for the copies includes the author's (and translator's) remuneration - which will be only 10% or at most 15% of the British publishers' receipts. Since the price paid for the copies may well be little more than the manufacturing cost, a deal of this kind is a poor one; but it frequently applies where - as is often the case - it seems to be the only feasible way of selling to the American market. Assuming that the translator's payment will probably be roughly 2.5% of the British publisher's (very modest) receipts, the sums at issue are likely to be extremely small. Translators may well be better advised to seek a fee, to be paid if/when an American edition is licensed. Not only will that guarantee a sum of money in hand in such event, it is also more likely to appeal to the publisher as it involves considerably less administration.

## 12 Other subsidiary rights

Depending on a range of factors, notably the nature of the work and the

status of the author, the author and translator between them should be getting at least 50% of the publisher's income from sub-licensed rights in the Translation - and in some cases (e.g. dramatisations) rather more. Again, try for the total author percentage to be shared, e.g. three quarters to the author one quarter or two to you, from the licensing of any rights in your translation. 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 - something which should be resisted where possible.

The list of subsidiary rights should be the same as that which appears in the publishers' contract with the owner of the original foreign work. It could include some/all of the following:

- Bookclub rights
- First serial rights (the right to publish one or more extracts from the work in a newspaper or periodical, before book publication);
- Second serial rights (the right to publish one or more extracts from the work in a newspaper or periodical, after book publication);
- Anthology and quotation rights;
- Dramatisation rights for stage, film, TV and radio, and other media;
- Readings on radio or television or in other media;
- Audio recording rights;
- Electronic rights;
- Large-print rights.

Only in special circumstances should the British publishers permit the translation to be re-translated into a third language - something which would need the author's consent.

PLR (Public Lending Right) should not be mentioned in the contract as it is a right to which authors and translators are entitled, but not publishers. For full information on PLR for translators, contact the PLR Office, Richard House, Sorbonne Close, Stockton-on-Tees TS17 6DA, [www.plr.uk.com](http://www.plr.uk.com).

### 13 Termination

Every publishing contract should have a clause setting out the circumstances in which it is to terminate. Suggested wording is given at clause 16 of the sample agreement.

### Sample translator/publisher agreement

This is a sample contract for the translation of an in-copyright work. Certain of the terms will be more like those in an author/publisher agreement when the original work is in the public domain.

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 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.
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 [two copies], [on disk/in typescript form] of the Translation which shall be faithful to the spirit of the Work and rendered into appropriate English.
3. The Translator guarantees to the Publishers that he/she will not introduce into the Translation any matter of an objectionable or libellous character 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.
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.
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 [12/18] months from delivery of the Translation.
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.
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 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 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 half on signature of this Agreement and half on delivery of the Translation.

11. On sales of the Publishers' edition of the Translation at home and abroad the Publishers shall pay to the Translator a royalty of.....% [based on the recommended retail price/the publisher's net receipts - see Note 10]. 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.

12. If the Publishers obtain an offer for publication of the Translation elsewhere [e.g. the USA], the share of the proceeds due to the Translator shall be [mutually agreed or see Note 11].

13. Under their licence of rights in the Work, the Publishers also control the following: [give list of rights]. The Publishers shall have the exclusive right to license such rights in the Translation. The share of the proceeds due to the Translator from such licences shall be [mutually agreed or see Note 12].

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 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. Termination of the contract:

(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.

(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.

(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. If any difference shall arise between the parties concerning the interpretation of this Agreement, it shall be referred to the Informal Disputes Settlement Scheme of the Publishers Association.

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