

Standard agreement for the publication of a translation of a literary work

adopted as of 1 March 2004 and provided with adjusted explanatory notes on 1 June 2007, by the Dutch Literary Publishers Group (*Litteraire Uitgeversgroep* (LUG)), member of the General Publishing Group (*Groep Algemene Uitgevers* (GAU)), and the Dutch Literary Association (*Vereniging van Letterkundigen* (VvL)), part of the Dutch Association of Writers and Translators (*Vereniging van Schrijvers en Vertalers* (VSenV))

The undersigned,

(1) ...

hereinafter referred to as 'the translator' of the one part and

(2) ...

hereinafter referred to as 'the publisher' of the other part, agree as follows.

Clause 1 Translation

1. The translator undertakes to deliver a faithful and accurate Dutch translation as regards both content and style, made directly from the original work.
2. The following shall apply to abridgment or other alterations:
 - a. The publisher undertakes that he shall inform the translator of any directions from the original author regarding desired abridgments or other alterations in the original work, with the instruction to follow said directions when making the translation:
 - b. Abridgments or other major changes in the translation as commissioned and executed may only be made with the consent of the translator.
3. The publisher shall keep the translator indemnified against all claims of third parties on account of any abridgment or other alternation referred to in subclause 2.a. of this clause.

Clause 2 Licence

1. The translator grants the publisher a licence, to the exclusion of himself and all others, to publish in book form in the Dutch language and to exploit the rights in the translation *made / to be made* by the translator, bearing the following provisional title: ..., which is the translation of the original work bearing the title: ..., edition and impression forming the basis of the translation: ..., number of words: ...;

After consulting with the translator the publisher shall decide on the title and subtitle, if

applicable, under which the translation will be published.

2. The translator declares that he holds the full copyright to the translation and that he will keep the publisher indemnified against third party claims to this translation.

3. The translator hereby grants the publisher irrevocable power to exercise the powers arising from his copyright for the purpose of protecting and maintaining towards third parties the powers granted to the publisher under this agreement and to take action both in and out of court for such purpose at his own expenses and if necessary on behalf of the translator. The publisher shall inform the translator of any measures to be taken. The parties mutually undertake to render each other every assistance as desired and to provide all necessary information on request.

4. If the publisher has been authorized by the author of the original work to exercise any of the subsidiary rights referred to in this clause, the translator shall conform to the arrangement offered him by the publisher for the use of his translation or part thereof for such purpose, unless the translator can in reasonableness and fairness come to the conclusion that his interests will be prejudiced by the proposed arrangement. The above applies likewise to exploitation rights which could not yet be foreseen at the time of concluding the agreement.

5. Subject to the translator receiving from the publisher the percentages mentioned below of the net proceeds of the exploitations concerned, the parties declare that the exclusive licence granted to the publisher includes *inter alia* the following exploitation rights, viz. the right to:

- a. reproduce part of the translation in an anthology, compilation, or otherwise (...%);
- b. publish part of the translation, to be inserted by way of prepublication or otherwise, in a newspaper, magazine or other medium (...%);
- c. present the translation or part of the translation to the public in unchanged form, either to an audience or on radio or television (...%);
- d. publish the translation or part of the translation in serial form in a newspaper or magazine (...%);
- e. reproduce the translation or part of the translation by recording it on audio recording media or image carriers and to publish such reproductions (...%);
- f. adapt the translation for radio, television, film, other audiovisual productions and for the stage (...%);
- g. cooperate free of charge in producing the translation and making it available for no payment for adapted publications for the blind and people who are otherwise visually handicapped (0 %).

6. The exclusive licence granted to the publisher under subclause 1 also comprises the right to publish and exploit the translation or part of the translation in an electronic form, whether or not in an adapted form, on firm data carriers or by making it available online on the Internet or in any other network, including for example as an *e-book* or on cd-rom, provided that the publisher has obtained the translator's written permission to exercise this right, all the

above subject to the provisions of subclause 4 (...%).

The publisher shall also require the prior written consent of the translator before he may exercise the exploitation rights mentioned in subclause 5.f , all this subject to the provisions of subclause 4.

7. The publisher, acting for himself and on behalf of the translator, may contract out the exercise of exploitation rights which it is impossible or inconvenient to exercise individually, to organisations specialized in the collective management of copyrights, insofar as the law does not already so provide, with due observance of the following provisions:

- a. reprographic reproduction of the translation or part of the translation and the publication of such reproductions insofar as the law has not charged the foundation *Stichting Reprerecht* with the exercise of this right (...%);
- b. lending the translation; insofar as required and subject to any agreements made with respect thereto by GAU and the LIRA Foundation ('LIRA'), the translator and the publisher hereby instruct LIRA to pay the translator's share in the money collected for the publication by lending rights foundation *Stichting Leenrecht* to the translator in accordance with the apportionment rules approved by the latter foundation; the publisher will instruct *Stichting Leenrecht* to exercise the right to fees arising from the lending of the work abroad (%);
- c. The translator hereby transfers the rights mentioned below to the publisher on the suspensory condition that the publisher transfer said rights to LIRA:
 - the real-time cable transmission of radio or television broadcasting of the translation (...%);
 - the real-time public showing and/or rendering of television and/or radio broadcasts of the translation (...%);
 - public rendering and/or showing of mechanical reproductions of the translation, otherwise than by means of television and/or radio broadcasting (...%);
 - the right to fees deriving from statutory levies on audio recording media and/or image carriers (...%).

The publisher accepts this transfer and the obligation to transfer these rights to LIRA. The translator shall state to the publisher whether he wishes to receive his share in the fees, if any, through the publisher or from LIRA. If the affiliation agreement between the publisher and LIRA is terminated, LIRA shall be obligated to retransfer these rights to the translator as soon as is feasible.

- d. If the translator has concluded an exploitation agreement with an organisation which is already exercising any of the exploitation rights mentioned in subclause 5 or subclause 6, for example with LIRA, SABAM, STEMRA or VEVAM, the translator shall inform the publisher thereof prior to concluding the present agreement.

8. The publisher shall inform the translator of the agreements relating to the exploitation rights mentioned in subclause 5 he has concluded with third parties if the remuneration resulting therefrom for the translator exceeds an amount of two hundred and fifty euros, which shall leave intact the obligation to provide information pursuant to clause 11 of this agreement.

9. The exclusive licence granted to the publisher under subclause 1 also comprises power to grant permission to another publisher, on behalf of the translator, for a separate publication under licence, without the other publisher being thereby granted the right to negotiate and contract about the translation with third parties. The publisher shall notify the translator in writing as soon as any such permission has been granted. The translator shall in all cases receive at least the royalty mentioned in clause 10.2 or in clause 10, subclauses 6 and 7, as appropriate, to be calculated on all copies from the first copy sold. The publisher shall remain responsible for settling these royalties with the translator.

Clause 3 Ultimate date of publication

1. The publisher undertakes to publish the translation in book form at his expense and risk within a period of eighteen months after the complete manuscript has been submitted.
2. The publisher may extend the period referred to in the preceding subclause by a maximum period of six months. He shall give the translator written notice to such effect stating the special reasons necessitating such extension.

Clause 4 Print number and price

1. The publisher shall determine the number of copies to be printed and the retail price. This information shall be available to the translator from the day of publication of each edition. On the translator's request the publisher shall also send the translator written confirmation of this information. The publisher shall in any case furnish this information to the translator together with the statement of account referred to in clause 11.
2. Depending on the nature of the work and the type of the edition, a number of copies to be determined in reasonableness by the publisher will not be intended for sale. No royalties are payable in respect of these copies.

Clause 5 Submission of complete manuscript

1. The translator *undertakes to place / has already placed* the complete manuscript in the hands of the publisher by ... at the latest.
2. The manuscript must satisfy the following requirements: typed or printed one-sided and double-spaced, with only negligible deletions and/or corrections, and produced with due observance of the publisher's house style, of which the publisher shall inform the translator in advance.
3. If the manuscript was made in an electronic form the term manuscript shall include the

electronic version in a format still to be agreed.

4. If the publisher has objections against the quality of the contents of the manuscript, he must make these known within thirty days after the submission of the manuscript. If the publisher accepts the manuscript, it is the task of the publisher to edit the manuscript, if necessary, in consultation with the translator and at the publisher's expense. If, however, the publisher will have to go to excessive expense to edit the manuscript, the publisher will first consult with the translator and consider whether he will proceed to edit the manuscript and whether the costs thereof will be partly deducted from the translator's fees.

If the quality of the contents of the manuscript does not meet reasonable expectations, and the translator is unable or unwilling to comply with his obligations in this respect within a reasonable period, the publisher may refuse the manuscript and decide to dissolve the agreement.

In this situation the translator shall, when so requested, repay the publisher any advance payments already made to him within one month after the date on which the agreement is dissolved.

5. The translator shall keep at least one updated duplicate of his manuscript, or a copy in electronic form, and on request shall place it at the publisher's disposal free of charge if the original has been destroyed or gone missing.

6. If the complete manuscript of the translation is not submitted in time, the publisher may declare the agreement dissolved if the translator remains in default after receiving written notice allowing him a reasonable period for still discharging his obligations. If so requested the translator shall repay any advance payments made to him within one month after the date on which the agreement was dissolved. In the event of the translator being in default, the publisher may demand that he compensate the damage, consisting of the costs actually incurred for the publication under consideration up to the date of dissolution of the agreement.

7. The translator undertakes to correct the proofs of his translation and to return these corrected proofs to the publisher within a reasonable period to be agreed well in advance. If the publisher has not received back the corrected proofs within the agreed period, he shall be authorized to undertake the correction himself or to charge another person with it and to recover the costs entailed thereby from the translator.

8. Up to the first proof the translator may introduce adaptations and corrections. If the translator subsequently wishes to make further adaptations and corrections in the proofs which entail higher cost than what is customary in the correction of proofs of the same length, the publisher may deduct the costs of such additional corrections from the royalties payable to the translator insofar as said costs exceed an amount of one hundred and seventy euros.

9. If the translator is confronted with extra work due to unforeseen circumstances over which he has had no control, the publisher shall be bound to pay a reasonable and fair consideration for such work. The amount of the consideration shall be determined by mutual

agreement.

Clause 6 Exploitation

1. The ultimate responsibility for and the power of decision concerning the exploitation method and the definitive design of an edition are vested in the publisher.
2. The publisher shall state the year of publication of the edition, reprint or republication in each copy of the work, and shall also cause the copyright sign © to be shown, stating the year of first publication and the name of the translator, which may be followed by 'care of' or 'c/o' and the name of the publisher.
The translator shall be designated in the work as follows: ...
3. The publisher undertakes to mention the translator's name or the pseudonym the translator wishes to use in a clearly visible place in or on the published copies.
4. If the publisher or the translator publish part of the work in an electronic form on the Internet or otherwise for promotional purposes, such part shall never comprise more than 2500 words of the work, or in the case of poetry never more than 100 lines, unless otherwise agreed.

Clause 7 Complimentary copies

On publication of the translation in book form the translator shall receive eight free copies, and four free copies of each reprint if he so desires.

Further arrangements on this aspect shall be made in the case of publication in an electronic form. The translator shall moreover have the right to buy more copies from the publisher at any time at a discount of forty percent on the retail price, in respect of which copies the translator shall receive the royalties payable pursuant to clause 10. The translator shall not market, sell or cause the sale of such copies.

On publication of the first edition the publisher shall, on the translator's request, make five additional complimentary copies available for the use of the Dutch Literature Fund *Fonds voor de Letteren*.

Clause 8 Descent of rights on death

1. Upon the translator's death, his rights and obligations shall descend to his heirs or other successors in title insofar as these rights and obligations do not relate to work which must be done by the translator personally.
2. If several persons are entitled, they shall designate one person who shall represent them in all matters concerning this agreement. As long as no such person has been designated, the payment obligations of the publisher, if any, shall be suspended. Payment by the

publisher to said representative shall discharge the publisher's obligations towards all persons entitled.

Clause 9 Assignment of the agreement

1. The publisher may assign his rights and obligations under this agreement to another publisher. Such assignment shall not take effect until written notice thereof has been given to the translator. Unless the translator has agreed to the assignment in writing, the publisher shall remain jointly and severally liable towards the translator for the obligations assigned to the other publisher until the translator has been notified of the assignment in writing .

2. If the translator can in reasonableness and fairness come to the conclusion that his interests will be prejudiced by an assignment according to the preceding subclause, he shall be authorized to have the agreement dissolved by the court. This authority shall cease after the lapse of two months of his being notified of the assignment in writing .

Clause 10 Fees

1. The translator shall receive a fee for the first 2500 copies of €.., being the equivalent of a royalty of €.. per copy sold.

2. The translator shall receive additional royalties as follows:

- a. for paperback an/or bound editions and/or mid priced editions:
 - a royalty of ... % of the retail price for 2501 through 5000 copies sold;
 - a royalty of ... % of the retail price for more than 5000 copies sold.
- b. for reprints in pocket edition:
 - a royalty of ... % of the retail price.

3. For the purposes of the preceding subclause retail price means the retail price exclusive of VAT as formally fixed by the publisher.

4. If in the opinion of the publisher an edition in a different form than those mentioned in this clause is advisable, the fees for such edition shall be laid down in a supplementary agreement between translator and publisher.

5. The fee for the initial print number of copies referred to in the first subclause of this clause shall be due and payable as follows:

- a. 25% on signing the agreement;
- b. 75% thirty days after submission of the complete translation, or, if the publisher has requested submission in instalments, pro rata to the submission of instalments of the translation, unless the publisher has rejected the translation in the aforesaid period.

6. For copies distributed to a book club the translator shall receive a royalty of ...% of the member price fixed by the book club.

7. For copies distributed at a discount of fifty-five percent or more of the retail price to additional distribution channels, for example in the case of promotional gifts and membership recruitment campaigns, the translator shall receive the percentage pursuant to the second subclause, calculated on the net proceeds. The publisher shall give the translator advance notice before using any such additional distribution channel.

8. The publisher may require the translator to submit a Declaration of Self Employment or a Declaration of Independent Contractor Status before paying out the fees.

Clause 11 Settlement

1. Annually on ... at the latest the publisher shall send the translator a statement of account for the preceding calendar year, which shall in any case include the following information:

- a. the opening stock of the edition still available in the relevant calendar;
- b. the total number of copies produced in the relevant calendar year;
- c. the number of copies sold in the relevant calendar year stating the retail price and the number of copies remaindered, if applicable;
- d. the number of complimentary and review copies given out;
- e. the number of damaged copies and bad copies;
- f. the stock of unsold copies still present, including returns;
- g. the amount of the royalties payable to the translator;
- h. the other revenues from exploitation by the publisher or third parties ('subsidiary rights') to which the translator is entitled;
- i. the advance amounts paid and, if applicable, the cost of additional corrections chargeable to the translator.

2. The amount which the publisher owes the translator as shown in this statement of account shall be due and payable one month after the date of the statement.

3. Notwithstanding the provision of subclause 2 the translator may demand that the publisher pay him within one month his share in the amounts which the publisher has received from third parties on account of the exploitation of the rights mentioned in clause 2 or on account of remaindering, provided that such share amounts to at least two hundred and fifty euros.

Clause 12 Inspection of the books

1. If the translator requires any information from the publisher's accounts and/or records for the purpose of establishing his entitlements, the publisher shall furnish him with an extract from the accounts or copies of the records.

2. The translator is entitled, once a year and at his own expense:

- a. on request to receive, together with the statement of account referred to in clause 11, a report from a registeraccountant who is a member of the Dutch association of registeraccountants NIVRA;
 - b. to cause such accounts and records of the publisher as relate to the exploitation of the translation to be examined at the publisher's offices by a registeraccountant, member of NIVRA, designated by the translator.
3. If the examination should show that the publisher has made significant mistakes or omissions in calculating the royalties to which the translator is entitled at the translator's expense, then contrary to subclause 2 the expense of the examination shall be borne by the publisher.

Clause 13 Reprints

1. The publisher may publish reprints of the translation whenever he thinks it advisable.
2. The publisher shall give the translator timely notice of his intention to publish a reprint of the translation and shall give the translator the opportunity to make corrections in his translation, within a reasonable period to be agreed between the parties.
3. All provisions of this agreement shall apply to reprints, with the proviso that the applicable percentage referred to in clause 10 shall be calculated on the total number of copies sold.

Clause 14 Deadline for reprint

1. If the translation has been out of print for four years, the publisher shall, within three months of a request to such effect from the translator, state in writing whether he intends to publish a reprint of the translation in any form. In the event of an affirmative answer the publisher shall be bound to bring out the reprint within a period of one year after:
 - a. making such statement;
 - b. the corrected manuscript has been handed in, if correction is necessary.
2. Clauses 13.2 and 13.3 shall apply *mutatis mutandis* to reprints pursuant to the preceding subclause.

Clause 15 Termination

1. The translator may terminate this agreement with one month's notice:
 - a. if the translation has not been published after the expiry of the extended ultimate date of publication referred to in clause 3.2, without prejudice to his right to damages;
 - b. if the publisher has stated his intention to reprint the translation in accordance with clause 14.1 and such reprint has not been published within a period of one year after either the date of such statement or the date of receipt of the corrected manuscript;

- c. if the translator has sent the publisher the request referred to in clause 14.1 and the publisher has answered that he does not intend to publish a reprint.
2. Termination pursuant to subclause 1 shall be invalid if and to the extent that the publisher demonstrates within the notice period that he holds the exclusive Dutch language publication rights to the original work .
3. Any serious breach of this agreement by one party shall entitle the other party to dissolve the agreement in whole or in part, unless the breach, in view of its nature or its minor significance in relation to the assumed obligations, does not justify such dissolution and the consequences flowing therefrom. The dissolution shall not have retroactive force and can be effected only by judicial intervention, but not until the other party has been set a reasonable period within which he can remedy the breach insofar as performance is not permanently impossible.
4. If the publisher is adjudicated bankrupt or if his business goes into voluntary liquidation, the translator may terminate the agreement with immediate effect by written notice to the publisher.
5. If the publisher files a petition for suspension of payments, the translator may terminate the agreement by notifying the publisher in writing subject to reasonable notice, unless this is manifestly unreasonable vis-à-vis the publisher on account of the business being continued.
In connection with the reasonable notice period to be observed the translator may demand that the publisher provide security immediately for any payment obligations of the publisher towards the translator.
6. Notwithstanding the (notice of) termination of this agreement the publisher may continue selling the copies of the translation still in stock and if necessary may for this purpose use the powers granted him under clause 16.
If the publisher has informed the translator in writing that he has decided not to exploit the translation any longer, the translator may acquire any unsold copies still in the possession of the publisher against payment of forty-five percent of the retail price. No royalty shall be payable in respect of these copies.
7. After termination the translator shall not, without further agreement with the publisher, cooperate in any exploitation using as image carrier the type made at the publisher's expense.
8. If the publisher has been authorized by the author of the original work to take advantage of new exploitation opportunities after termination of the present agreement, the translator shall conform to an arrangement offered him by the publisher for the use of his translation or part of his translation for such exploitation, unless the translator can in reasonableness and fairness come to the conclusion that his interests will be prejudiced thereby. If an arrangement is made with the translator, the present agreement shall govern

such arrangement as far as possible.

If the original work has meanwhile come to be in the public domain and if the translator wishes to take advantage of new exploitation opportunities, whether or not in cooperation with another publisher, the translator shall first offer his translation to the publisher for publication and for a reasonable period he shall give the publisher the opportunity to acquire the rights thereto in reasonableness and fairness.

9. After this agreement has terminated the publisher will be prepared, on the translator's request, to make the up-to-date digital file of the work, if present, available for a reasonable consideration, without prejudice to any claims of third parties to the content or the form of the translation.

Clause 16 Reduction / abandonment of the price

1. If two years have passed after the date of first publication of any edition and in the publisher's opinion the copies remaining in stock at the publisher's prove to be unsalable at the fixed price, the publisher shall be authorized to reduce the price of the publication. The translator will in that case receive the royalty percentage stated in clause 10 calculated on the reduced price.

2. In the case referred to in the preceding subclause the publisher may also abandon the price of the publication and dispose of the remainder of the edition in one parcel to a dealer or in the form of waste paper or otherwise. No royalty shall be payable to the translator in respect to these copies. The publisher shall inform the translator of his intention and shall for a period of four weeks give him the opportunity to buy the remaining stock or part thereof at the price which a dealer is prepared to pay for it.

Clause 17 Dissolution / legal relationship after termination

1. Except in the case referred to in clause 5.6 and in the case of mutual agreement, this agreement can only be dissolved by judicial intervention.

2. In all cases in which this agreement terminates, it will continue to govern the legal relationship between the parties in the event of the reproduction and/or publication of the work or part of the work by third parties using the edition marketed by the publisher. This agreement shall moreover continue to govern said legal relationship insofar as necessary for its settlement.

Clause 18 Amendment

Apart from the present agreement there are no previous or subsequent oral agreements in force; any previous agreements (whether oral or written) shall cease to have effect, unless they have been laid down in writing and signed by both parties either in the present agreement or in a subsequent agreement.

Clause 19 Change of address

The translator undertakes to send the publisher prompt written notice of any change of address. Whenever the publisher is bound to address a written communication to the translator, he shall be discharged by sending such communication to the address which the translator has most recently stated to him in writing.

Clause 20 Net proceeds

Wherever there is mention of net proceeds in the present agreement, the parties understand this to mean the payments received by the publisher from time to time less the trade discount granted, commission for intermediaries, payments to the party/parties entitled to the original work, bank charges and turnover tax.

Clause 21 Netherlands law

The interpretation and implementation of this agreement shall be governed exclusively by Dutch law.

Clause 22 Disputes

Unless the parties otherwise agree, they shall submit all disputes in connection with this agreement to the competent courts.

Special provision(s) (optional)

...

...

Thus done and executed in ... copies, of which ... copies have been handed to the publisher and ... copies to the translator, in on

The translator: ...

The publisher: ...

N.B.: The phrases in italics in clauses 2 and 5 are alternatives which should be maintained or removed depending on what they have agreed.