

Model contract for memorandum of agreement between a translator and a publishing house recommended by the Swedish Writers' Union and the Swedish Publishers' Association

With reference to the framework agreement convened between the Swedish Writers' Union and the Swedish Publishers' Association on 2 April 2004.

This agreement applies to prose translations of fiction and non-fiction for young people and adults.

between

(hereinafter referred to as the Translator)

and

(hereinafter referred to as the Publisher)

§1 The assignment

The publisher hereby commissions the Translator to translate the work, the original title of which is:

by

§2 Terminology

External subsidiary use

Use by any party other than the Publisher

The Publisher

The above-mentioned publishing house and any divisions the main activity of which is book-related and that are members of the same publishing group as the Publisher.

Internal subsidiary use

The Publisher's:
(i) publication of low-price editions
(ii) publication of audiobooks

(iii) use of the work in anthologies that are not covered by §18 of the Act on Copyright in Literary and Artistic Works.

Audiobooks	Translation read aloud (e.g. on cassette tape, CD, DVD, or other physical audio medium).
Low-price edition	New edition of a previously published work, the price of which, taking possible monetary value changes into account, corresponds to no more than 70% of the price of the standard edition – for example paperback or softbound editions.
Minimum fee	Such minimum remuneration as is determined on the basis of negotiations between the Swedish Publishers' Association and the Swedish Writers' Union and contained in a specific minimum fee agreement applicable for the time period stated in said agreement.
Standard edition	The edition considered to be the first publication of a work or a later publication at a price which, taking possible monetary changes into account, corresponds to the price charged for the first publication.
Primary use	All publication in book form under the auspices of the Publisher that cannot be considered subsidiary use.
Subsidiary use	Internal and external subsidiary use.
Edition	The number of copies of a work the Publisher has had prepared on one and the same occasion.

Note: Editions published in conjunction with and because of a special sale are considered low-price editions, on the condition that the definition of low-price edition given above is otherwise fulfilled.

§3 Granting of rights

3.1. Pursuant to this memorandum of agreement regarding the translation, the Translator grants to the Publisher the sole right to duplicate and publish the translation both in printed form

and as an audiobook.

All other rights remain with the Translator.

3.2. The right of the Publisher pursuant to subsection 3.1 above, reverts to the Translator at the end of the eighth year after said right was most recently exercised through primary or subsidiary use in the form of reprinting or publication of a new edition. However, the right of the Publisher is retained for as long as the book remains in stock.

3.3. During the period in which this memorandum of agreement is in force, the Translator is entitled to request information from the Publisher concerning the number of copies in stock and the most recent utilization. Such a request for information is to be submitted in writing, and the Publisher is to be given reasonable time to respond to it.

3.4. If, once the rights of the Publisher have expired pursuant to subsection 3.2 above, the Translator wishes to issue a new edition of the work, (s)he is required to offer the Publisher the opportunity to conclude an agreement concerning the right of first refusal. The Publisher must then make a decision concerning this right within two months of receipt. If the Publisher has not accepted said right of first refusal within this time, it is no longer incumbent upon the Translator to observe the obligation to offer it. If a new agreement is convened in relation to the right of first refusal, the provisions of said agreement apply.

Note: A translation is to be considered in stock as long as the number of remaining copies exceeds 100.

§4 Granting and transfer of rights

4.1. The Publisher may grant the right of subsidiary use without consulting with the Translator.

4.2. The Publisher does not have the right to transfer the rights and obligations of the Translator without the written consent of the Translator, with the exception of turnover of the entire publishing operation or some specific part thereof. If a transfer takes place, responsibility for the fulfillment of this memorandum of agreement remains with the Publisher.

4.3. If the Publisher should declare bankruptcy, this agreement becomes null and void with immediate effect. If the Publisher suspends payments, offers to come to a composition with creditors or – if the Publisher is a joint stock company – enters into liquidation proceedings, the Translator is entitled to give notice on this agreement with immediate effect. However, the Publisher is entitled to fulfill sales on the agreed terms concerning copies of the work that are in stock at the point in time when payments are suspended, an offer is made to come to a composition with creditors, or liquidation proceedings entered into.

§5 The Manuscript

5.1. A complete manuscript is to be delivered by _____ .
Unless otherwise agreed, delivery is to take the form of

a text file in the word processing program _____,
version _____

as a printout on paper.

5.2. At the time of delivery, the manuscript is to be ready for press, i.e. finished and complete, and in condition acceptable to the Publisher such that no extra costs will be incurred owing to any lack of clarity.

5.3. If the manuscript has not been submitted within the time period designated above, and in the condition specified in subsection 5.2 above, and if this is attributable to neglect on the part of the Translator, the Publisher reserves the right to revoke the agreement. Should the Publisher wish to exercise said right, notification thereof must be sent to the Translator at least two weeks in advance.

If the Translator has not fulfilled his or her contractual obligations within the period of notification and if the Publisher does not wish to exercise the right to revoke the agreement, the Publisher is entitled to demand that the Translator pay remuneration to the Publisher for any attested costs incurred by the Publisher and attributable to delivery delay or shortcomings in the manuscript pursuant to subsections 5.2 and 5.3 above, but not in excess of 20% of the agreed fee for primary use.

5.4. If the original manuscript has been submitted to the Publisher as per the Publisher's request, it is to be returned to the Translator when it is no longer needed for preparation purposes. Until the time of publication, it is incumbent upon the Translator to save a copy of the manuscript in the form specified in subsection 5.1 above.

§6 The Content and quality of the translation

The Translator is to carry out the translation accurately and completely and in agreement with established norms in the field.

Should the Publisher, upon examination of the manuscript, find the translation unsatisfactory in terms of style or content, the Publisher is to provide the Translator with the opportunity to make the necessary changes. If the assessment of the Publisher remains after the changes have been made, the Publisher is entitled to make proposed alterations in the text. The Translator is to be notified of this, and be given an opportunity to scrutinize the alterations made by the Publisher. If the Translator has not registered objections within two weeks, the alterations are to be considered approved.

The Publisher reserves the right to reduce the agreed-upon fee in order to cover attested costs for rectification of obvious shortcomings in the translation.

If the translation deviates substantially from the original, from what the parties have agreed upon, or from established norms in terms of language, style or content, the Publisher reserves the right to revoke the agreement.

The Publisher is to notify the Translator of errors within a reasonable time from the submission of the ready-for-press manuscript.

§7 The proofs

7.1. The Translator has the right and the obligation to read proofs. There is no separate remuneration for reading the proofs.

7.2. If, once the work has been typed in/typeset (or the equivalent), the Translator makes alternations to such an extent that that the cost for said alterations exceed 10% of the original cost of typing/typesetting (or the equivalent), the Publisher reserves the right to demand that the Translator pay the amount in excess. Any such demand is to be made within one month of the return of the proofs.

7.3. Should the Translator fail to return the proofs within two weeks of receipt, or in the time specifically agreed, (s)he will be considered to have approved them, such that the Publisher is entitled to print the work, after having corrected typesetting errors (or the equivalent).

The rights of the Publisher pursuant to the paragraph above only apply if the Translator has received forewarning as to when to expect the proofs.

§8 Marketing

The Publisher is entitled to freely prepare and publish portions of the translation for marketing purposes:

- (i) When the book is marketed using sample text, such text must not comprise more than a maximum of 10% of the translation.
- (ii) When an audiobook is being marketed such that an audio sample is prepared and published, such a sample must not exceed a maximum length of 10 minutes.

The stipulations in §14 subsection 1 below apply to all marketing.

Note: §8 applies to marketing of the translation to consumers. The right of the Publisher to freely prepare and disseminate the translation, in forms covered by the granting of rights, to a retail seller or any other distributor for marketing purposes is part of the Publisher's primary use.

§9 Financial terms

9.1. The Publisher will pay, for the translation, a basic fee for primary use of SEK _____ per 1,000 characters, including spaces. When calculating the length of the translation, the software mentioned above (see §5) is to take precedence.

9.2. Remuneration for *internal* secondary use is to be paid as follows:

- (i) for the right to publish low-price editions in book form the Translator shall receive a lump sum corresponding to 15% of the minimum fee.
- (ii) for the right to publish audiobooks, the Translator shall receive a lump sum corresponding to 25% of the minimum fee.
- (iii) for the right to use the work in anthologies that are not covered by §18 of the Act on Copyright in Literary and Artistic Works, the Translator shall receive a lump sum corresponding to 50% of the remuneration due to the author pursuant to the agreement between the Swedish Writers' Union and the Swedish Publishers' Association concerning anthologies that are covered by §18 of the Act on Copyright in Literary and Artistic Works.

9.3. Remuneration for *external* subsidiary use is to be paid as follows:
the Translator shall receive a lump sum corresponding to 20% of the minimum fee.

For the right to place the translation as an audiobook, the Translator shall receive the equivalent of 25% of the minimum fee.

For the right to place a portion of the translation in a newspaper or periodical, the Translator shall receive the equivalent of 50% of the sum collected by the Publisher for licensing use of the translation.

If it should be the case, at the point in time when the utilization takes place, that no minimum fee agreement is in effect as stipulated in §2, the subsidiary remuneration shall, instead, be calculated on the basis of the factual fee paid to the Translator for primary use, adjusted upwards using the Swedish cost of labor index (AKI) from the point in time when the agreement was signed.

9.4. If 10 years have passed since the translation was first published by the Publisher, and if the Publisher still uses the translation, the Translator shall receive further remuneration as considered reasonable, on the condition that the use of the translation during that period has not occasioned the payment of remuneration for secondary use.

Note: *One* payment corresponding to the amount stated in subsection 9.2 above gives the Publisher the right to publish one or more editions in the form or forms of use (low-price edition, audiobook and/or anthology) granted in this agreement. Hence, if the Publisher publishes, for example, more than one low-price edition, this only entitles the Translator to remuneration for the first such edition. All low-price editions subsequently published are considered to be covered by this sum, and consequently no further remuneration is paid. The same applies to remuneration for audiobooks.

Note: What was previously referred to as "diskette remuneration" is now included in the agreed minimum fee, and is therefore not paid out separately.

Note: The cost of labor index that may be invoked in the absence of a minimum fee is the AKI for salaried employees. Upward adjustment is made on an annual basis, using the preliminary July index.

§10 Special assignments

If the Translator accepts other assignments for the Publisher in addition to the translation assignment, (s)he is to receive separate remuneration for it.

§11 Payment

The fee for primary use falls due two weeks after submission of the ready-for-press manuscript.

The fee for internal subsidiary use falls due 30 days after publication.

Remuneration for external subsidiary use falls due 30 days after the Publisher receives remuneration for the granting of such use.

§12 Employer's contributions

The above-mentioned fee for primary use is

exclusive of employer's contributions (the Translator pays taxes as a wage earner).

Translator's census registration number: _____

inclusive of employer's contributions (the Translator pays taxes as self-employed).

Note: *if the Translator pays taxes as a wage earner, the Publisher pays employer's contributions and deducts tax.*

If the Translator pays taxes as self-employed, (s)he is responsible for paying employer's contributions and tax.

§13 Complimentary copies

For the first primary use, the Translator is entitled to receive _____ complimentary copies (no fewer than 15).

If the work is subsequently published in a different edition or used in a way that makes the Translator eligible for further remuneration, the Translator is entitled to receive no fewer than 10 complimentary copies. For anthologies, the Translator is entitled to receive no fewer than 2 complimentary copies.

If the Publisher intends to undersell or destroy remainders, the Translator is entitled to redeem up to 25 such copies free of charge.

§14 Translator's name

14.1. The Publisher undertakes for the name of the Translator to appear on the title page of the work. If possible, the Translator's name should also appear on the cover of the work. When the Publisher markets the translated work in advertisements, catalogues and other advertising material, the name of the Translator shall be given, *whenever practically possible*. The name of the Translator shall appear, except when the work is a collection in which more than three translators have participated.

If the Publisher enters into an agreement with a third party regarding such use of the translation as is stipulated in §9 subsection 3 above, the Publisher is to ensure that said agreement contains a reservation stating that the Translator is entitled to have his or her name to appear as pursuant to paragraph one of this section.

14.2. If the Publisher has published the translation without the name of the Translator appearing on the title page, the Publisher is subject to a fine of SEK 10,000, to be paid to the Translator. Said fine is to be paid 30 days after the Translator has invoked this clause stipulating the fine in writing to the Publisher. It is incumbent upon the Publisher to ensure that the name of the Translator is stated correctly on any subsequent impressions/editions to the edition to which the payment of the fine was attributable.

***Note:** In anthologies, the name of the Translator is normally given in conjunction with each contribution to the anthology, provided that no more than three translators are responsible for all the translations, in which case the rule as stated in paragraph one of this section is to apply.*

***Note:** The cover is defined as the front and back sides of the work as well as the jacket flaps. If the Publisher has arranged for the name of the Translator to appear on the cover as well, it is sufficient for the name to appear on one of the parts of what is defined in this note as the cover.*

***Note:** Having paid the fine, the Publisher is then held harmless for recalling the edition to which the payment of the fine was attributable.*

***Note:** The responsibility of the Publisher for the appearance of the name of the Translator when the translation is marketed is restricted to such marketing as is arranged by, and thus in the control of, the Publisher. Hence the Publisher is held harmless for marketing carried out at the initiative of a retail seller or other distributor.*

§15 Notification of use

The Publisher undertakes to notify the Translator if the Publisher intends to grant use of the translation to any third party pursuant to §9 subsection 3 above.

If this applies to publication of the translation more than 10 years after the translation was first published, the Publisher is to allow the Translator reasonable time to revise the translation.

If the Translator wishes to revise the translation on the grounds of publication by the Publisher pursuant to paragraph 2 above, (s)he is to notify the Publisher. If the translation is to be retyped/set (or the equivalent), the Translator has the unconditional right to revise. If the work is to be reprinted the Translator only is entitled to revise if the cost of doing so does not exceed 10% of the cost of the new typesetting (or the equivalent). If the Translator should wish to revise the translation on the grounds given in this provision, the Translator is to notify the Publisher within two weeks.

The conditions applying to the revision are to be regulated through a special agreement between the Translator and the Publisher. However, remuneration is only to be paid for such revision as may be considered essential.

For publication of audiobooks, the Translator shall be entitled to make revisions as stipulated in the second and third paragraphs of this memorandum of agreement only when the Publisher intends to make a new recording of the translation.

§16 Disputes

Should the Publisher and the Translator, concerning *the application of this memorandum of agreement*, fail to agree as to its content or as to what may be considered reasonable in a given context, either party may request mediation from the Swedish Writers' Union and the Swedish Publishers' Association concerning the subject of dispute.

If the question of the content and *quality of the translation* arises in conjunction with any matter relating to a reduction of the agreed fee, either party may request the opinion of a committee appointed jointly by the Swedish Writers' Union and the Swedish Publishers' Association.

No statement issued by said committee or either association in relation to this provision constitutes an impediment to traditional legal recourse.

§17 Duration of applicability of this memorandum of agreement

This agreement becomes binding upon the signature of the parties, and remains in force until the rights of the Publisher are terminated pursuant to §3 above.

THE PUBLISHER	THE TRANSLATOR
Signature	Signature
Place and date	Place and date