

EXAMPLE

Collection Agreement of Stichting ThuisKopie

THE UNDERSIGNED:

1. **COMPANY NAME**, with its registered office in [PLACE], the Netherlands, and its principal place of business at [ADDRESS] in ([POSTCODE]) [PLACE], the Netherlands, duly represented by....., hereinafter referred to as: 'the Contracting Party'

and

2. **Stichting de ThuisKopie**, with its registered office in Amsterdam, the Netherlands, and its principal place of business at Kruisweg 793-795, 2132 NG Hoofddorp, the Netherlands, hereinafter referred to as: 'the Foundation'

hereinafter jointly referred to as: 'the Parties'

WHEREAS:

- A. the Contracting Party is involved, as importer, wholesaler, middleman or manufacturer, in the trade in items for which, in accordance with the provisions of Sections 16(c) et seq. of the Dutch Copyright Act (*Auteurswet*) and Section 10(e) of the Dutch Neighbouring Rights Act (*Wet op de naburige rechten*) a levy (hereinafter: 'the Private Copying Levy') must be paid;
- B. The Foundation (after previous designations of 20 February 1991, 1 July 1993 22 May 2007 and 15 May 2012) has been designated by order of 18 May 2017 of the Dutch Minister of Justice and Security, in accordance with Section 16(d)(1) of the Dutch Copyright Act, a legal entity charged with the collection and apportionment of the Private Copying Levy;
- C. the Parties, in implementation of the statutory provisions of the Private Copying Levy, wish to enter into an agreement concerning the collection activities that have been brought about between them as a result of the Private Copying Regulation;
- D. the obligations to specify and pay, as contained in this agreement, ensue from Sections 16(c) and 16(f) or 16(ga) of the Dutch Copyright Act, as a consequence of which the statutory provisions, including the statutory time limits, applicable to these sections apply in full.

DECLARE THAT THEY HAVE AGREED AS FOLLOWS:

Article 1 - Definitions

- a. Private Copying Regulation: Sections 16(c) et seq. of the Dutch Copyright Act and all laws and regulations based on them, including the resolutions of Stichting Onderhandelend ThuisKopievergoeding (SONT) (Private Copying Levy Agency).
- b. Items: all items within the meaning of Sections 16(c) et seq. of the Dutch Copyright Act to which the Private Copying Regulation relates.
- c. Contracting Parties: importers, manufacturers, wholesalers or middlemen trading in Items - with the exception of retailers supplying direct to consumers - who have entered into a collection agreement with the Foundation.

- d. Manufacture: To manufacture, assemble, reassemble or arrange for the manufacture of an item within the meaning of Section 16(c) of the Dutch Copyright Act in such manner that this can be considered to be a complete product that is new to the market. This includes altering, renovating or reconstructing used items in such manner that they can be brought into the market as if they were new.
- e. Professional Use: Every use of an Item other than reproduction referred to in Section 16(c), subsection 1 of the Dutch Copyright Act, by a Professional User solely in the course of his/its profession or business.
- f. Professional User: natural person listed with the Dutch Chamber of Commerce or public or private legal entity who uses Items in a manner other than as referred to in Section 16(c), subsection 1 of the Dutch Copyright Act, solely in the course of its/his profession or business.
- g. Registered Professional User: natural person listed with the Dutch Chamber of Commerce or public or private legal entity who uses Items, solely in the course of his/its profession or business and who, following registration with the Foundation, has been added to the list of Exempt Professional Users on the Foundation's website by the Foundation.
- h. Export: the physical exporting (bringing across the national border) of Items from the Netherlands to another EU Member State or outside the EU.
- i. Delivery: the physical provision of Items by the Contracting Party to a buyer established or working in the Netherlands. In this context, 'buyers' are also understood to mean the Contracting Party's own businesses, including wholesale and retail businesses, and any parent and sister companies and subsidiaries that are members of the same group.
- j. Zero-specification: a written communication of the Contracting Party to the Foundation, stating that there were no Deliveries in a specific month.

Article 2 – Opening stock

On commencement of this agreement, the Contracting Party will specify the number of Items kept in stock by the Contracting Party at that time in the Netherlands, based on class, type and purchase date. The Contracting Party must provide this information on conclusion of this agreement. This information must also include proof, in so far as relevant, of the part of the stock for which a Private Copying Levy has already been paid.

Article 3 – Obligation to specify

1. After the end of each calendar month, the Contracting Party must provide a specification of all the Deliveries and Exports that have taken place in the relevant calendar month. If no Deliveries and Exports have taken place in a specific month, the Contracting Party must provide a Zero-specification.
2. The obligation to specify does not apply in respect of Items for which, at the time of import, a Private Copying Levy had not or not yet been determined and in respect of Items for which the Private Copying Levy had already been paid at the time of Delivery.

Article 3a - Further provisions regarding the obligation to specify

1. In the monthly specification referred to in Article 3.1 of this agreement the Contracting Party may set off the number of Items returned to the Contracting Party by virtue of Section 230(o) of Book 6 of the Dutch Civil Code (reflection period in case of a distance purchase), for which the Contracting Party has already paid the private copying levy, against the number of Items delivered by the Contracting Party in that

month, on condition that the Contracting Party keeps balanced accounts for these returned Items, in accordance with Article 10.1 of this agreement. If these Items are delivered at a later stage as referred to in this agreement, a new specification must be submitted in accordance with this agreement.

2. In the monthly specification referred to in Article 3.1 of this agreement the Contracting Party may set off the number of returned defective Items on account of 'dead on arrival', which cannot have been used to make private copies and for which the Contracting Party has already paid the private copying levy, against the number of Items imported by the Contracting Party in the relevant month, on condition that the Contracting Party keeps balanced accounts for these returned defective Items, in accordance with Article 10.1 of the Collection Agreement.
3. The obligation to specify does not apply in respect of Items which are exclusively used by the Contracting Party as demonstration models in its own shops and which are not delivered at a later date to buyers established or working in the Netherlands, on condition that the Contracting Party keeps balanced accounts for these demonstration models, in accordance with Article 10.1 of this agreement.

Article 4 – Manner of specification

1. The specification must be correct and complete.
2. The specification must be in the Foundation's possession no later than on the fifteenth day after the end of each calendar month.
3. In the event that the Contracting Party violates the rules concerning the manner of specifying by (repeatedly) providing a specification that is incorrect, late or incomplete, or fails to comply with its obligations as referred to in Article 10.2 of this agreement, the Foundation may charge the Contracting Party a surcharge of up to 10% of the amount of the most recent invoice in case of a first violation, 20% for a second violation, and up to 33% for a third and each subsequent violation, with a minimum of EUR 100, without prejudice to the obligations of the Contracting Party to provide a full specification after all and pay the Private Copying Levy, unless the violation discovered by the Foundation is so insignificant that application of this provision would be unreasonable.
4. If the Foundation discovers prior to or while preparing and sending the invoice based on the specification that the Contracting Party has made accounting errors in the specification concerned, the Contracting Party will be notified of this without delay and will be given a reasonable period of time to submit any corrections to the specification, during which period a surcharge as referred to in this article will not yet be imposed.
5. The provisions of paragraph 4 do not apply if it is likely that the errors are due to intent or wilful negligence or in case of a repeated violation.
6. Unless agreed otherwise, the Contracting Party must provide the specifications solely through the secure contracting party environment on the Foundation's website. If the secure contracting party environment is not available due to technical reasons, the Contracting Party may provide the specification by email on a one-off basis.
7. The Foundation will ensure an appropriate level of protection for the secure contracting party environment on the Foundation's website.
8. In the specification, the Contracting Party must provide separate details of all Deliveries to Contracting Parties, Professional Users and Registered Professional Users, as referred to in Articles 7 and 8 of this agreement.

Article 5 – Invoicing and payment

1. After receipt of the specification provided by the Contracting Party, the Foundation will send the Contracting Party an invoice containing the calculation of the Private Copying Levy payable by the Contracting Party for Deliveries subject to the Private Copying Levy made in the period to which the specification relates.
2. Payment must be made within 21 days of the invoice date.
3. The Contracting Party is in default of payment of the Private Copying Levy each time the levy payable for a calendar month has not been received by the Foundation within the period referred to in paragraph 2 of this article.
4. From the date on which the Contracting Party is in default of payment, the Contracting Party will owe the Foundation the statutory interest as well as the extrajudicial collection costs and other costs, at law and otherwise. In addition, the Foundation may in such event decide to withdraw, temporarily or otherwise, the permission referred to in Article 7(1) and Article 8(1) of this agreement.

Article 6 - Objection

1. An objection to the invoice or the amount thereof may be submitted up to three months after the invoice date. The objection must have been received by the Foundation within this period.
2. The objection must be submitted to the Foundation in writing (this includes by email) and supported by reasons.
3. The Foundation will decide on this objection within two months of receipt of the objection.
4. Unless agreed otherwise, the Contracting Party is not entitled to suspend or set off its payment or payments during the objection proceedings.
5. It may be decided in consultation that during the objection proceedings the Contracting Party transfers the disputed amount to a blocked account of a civil-law notary designated by mutual agreement. The relevant costs will be payable in full by the Contracting Party, even in the event that the objection is upheld.
6. If the objection is upheld, the amount paid in excess will be refunded by the Foundation to the Contracting Party, unless this amount can be set off against any debts due and payable by the Contracting Party.
7. After the period referred to in paragraph 1 of this article, the Contracting Party will no longer be able to submit an objection to the invoice or the amount thereof . The invoice or the amount thereof will then be fixed between the Parties, which, however, does not exclude instituting proceedings before the civil court.

Article 7 – Levy-exempt Delivery to another Contracting Party

1. The Contracting Party is permitted to deliver Items for which a Private Copying Levy has not yet been paid to other Contracting Parties who are specified as such on the Foundation's website, without charging the Private Copying Levy, on condition that the other Contracting Parties consent to this in writing in advance and the Contracting Party provides the Foundation with a specification of these Deliveries, in accordance with Article 4 of this agreement.
2. The Contracting Party will not be charged any Private Copying Levy by the Foundation for these Deliveries.
3. The possibility of delivering or purchasing without paying the Private Copying Levy as referred to in this article is not enforceable at law against other Contracting Parties and will under no circumstances imply a right to setoff and/or suspension. The burden of

proof with respect to the consent referred to in paragraph 1 of this article rests with the Contracting Party. Should it become apparent that the Contracting Party, without being entitled to do so in the context of this agreement, has delivered Items without charging the applicable levy, the Contracting Party will still be liable for payment of the Private Copying Levy with retroactive effect from the date on which the Delivery was made. In addition, the Foundation may in that case decide to withdraw, temporarily or otherwise, the permission referred to in paragraph 1 of this article.

4. Under no circumstances do the provisions of this article create an obligation on the part of the Foundation to provide a refund or a right on the part of the Contracting Party to setoff and/or suspension.

Article 8 – Delivery to an Professional User

1. The Contracting Party is permitted to Deliver specific Items without charging the Private Copying Levy to Professional Users and/or Registered Professional Users, on condition that a specification of these Deliveries is provided in accordance with Article 4 of this agreement.
2. The Contracting Party guarantees that the Items that have been delivered in accordance with this provision are intended solely for the own Professional Use of the Professional User himself/itself.
3. The Contracting Party will not be charged any Private Copying Levy by the Foundation for these Deliveries.
4. With regard to Deliveries of smartphones/telephones with MP3-player to a Professional User the Contracting Party must provide the Foundation with a copy of the user agreement or user regulation, showing that private use within the meaning of Section 16(c) of the Copyright Act is not permitted.
5. In accordance with Article 12 of the Collection Agreement, the Contracting Party will be obliged, at the request of the Foundation, to provide additional information such as sales invoices, concerning the deliveries to Professional Users if there is any doubt as to whether the Items are actually destined for Professional Use, or for ad-hoc checking purposes.
6. Should it become apparent that the Contracting Party, without being entitled to do so in the context of this agreement, has delivered Items without charging the applicable levy, the Contracting Party will still be liable for payment of the Private Copying Levy with retroactive effect from the date on which the Delivery was made. In addition, the Foundation may in that case decide to withdraw, temporarily or otherwise, the permission referred to in paragraph 1 of this article.
7. Under no circumstances do the provisions of this article create an obligation on the part of the Foundation to provide a refund or a right on the part of the Contracting Party to setoff and/or suspension.
8. If and to the extent that the Deliveries mentioned in paragraph 1 of this article have been made to Registered Professional Users paragraph 2, 4 and 5 do not apply.

Article 9 – Refund in the case of Export

1. Subject to the conditions stated in the attached Conditions for Exemption and Refund, which form an integral part of this agreement, the Contracting Party may request a refund for Items in respect of which the Contracting Party can prove that, after the Contracting Party had first paid the Private Copying Levy for them to the Foundation, the Items were subsequently exported by the Contracting Party.
2. A refund must be requested by submitting a refund request through the Foundation's website. All the information must be provided fully and truthfully.

3. In the event that Items are Exported by a buyer of the Contracting Party, the Contracting Party will not be able to claim a refund in respect of these Items and the Foundation may refund the buyer concerned, in accordance with the provisions of the Conditions for Exemption and Refund. If the Contracting Party is in default of payment, the Foundation will be entitled to set off the amount to be refunded against all debts due and payable by the Contracting Party to the Foundation.
4. The Contracting Party is not permitted to set off and/or suspend payments based on this article.

Article 10 – Audit

1. The Contracting Party must keep balanced accounts for determining the payability and amount of the Private Copying Levy, as worked out in further detail in the Audit Protocol which is attached to and forms an integral part of this agreement.
2. For the purposes of auditing the specifications provided by the Contracting Party in accordance with this agreement, the Contracting Party, at its discretion, must provide:
 - a. should the Foundation so demand, all the information which, in the Foundation's opinion, is required to determine the payability and amount of the Private Copying Levy, including but not limited to the information stated in the Audit Protocol, OR
 - b. annually, an audit opinion in accordance with the relevant provisions of the Audit Protocol.
3. If the Contracting Party is unable to provide certain elements of this information, it must inform the Foundation of this, stating reasons, and it will determine in consultation with the Foundation whether, and if so in which other manner, the audit obligations can be met.

A request to provide the information referred to in paragraph 2(a) of this article will in principle not be made more than once a year, unless there are obvious reasons to suspect non-compliance on the part of the Contracting Party with its contractual and statutory obligations.
4. If there is any doubt about the accuracy and/or completeness of the information provided on the basis of paragraph 2(a) of this article, the Foundation may have books and documents audited at the Contracting Party's business premises, in which case the Contracting Party must make available all the relevant accounting evidence, which in any case includes the information specified in the Audit Protocol.
5. In case of overdue and/or incomplete submission of the required information referred to in paragraph 2(a) of this article, the Foundation can decide to withdraw, temporarily or otherwise, the permission referred to in Article 7(1) and Article 8(1) of this agreement.
6. The audit referred to in paragraph 4 of this article will be conducted on the following conditions:
 - a. the audit will be conducted by or on behalf of the Foundation;
 - b. all the costs incurred for the audit will be payable by the Foundation, unless it becomes apparent from the audit that the specification provided by the Contracting Party differs negatively by more than 5% from the actual Private Copying Levy due by the Contracting Party, in which case the costs of the audit will be payable in full by the Contracting Party;
 - c. if any differences are discovered, the Contracting Party will be obliged as yet to pay the shortfall in the Private Copying Levy, plus the statutory interest from the date on which the Delivery was made. If any differences are discovered, and it becomes apparent that the Contracting Party has paid too much Private Copying

Levy, the amount paid in excess will be refunded by the Foundation to the Contracting Party, unless this amount can be set off against any debts due and payable by the Contracting Party.

Article 11 – Reimbursement arrangement

1. As further elaborated on in the Audit Protocol, the Contracting Party may be entitled to reimbursement by the Foundation of 8%, subject to the provisions of paragraph 4 of this article, of the total net (after deduction of any refunds made) Private Copying Levy paid by the Contracting Party to the Foundation in a calendar year, if:
 - a) during the relevant calendar year the Contracting Party at all times provided specifications of its Deliveries in accordance with Article 4 of this agreement, and
 - b) during the relevant calendar year the Contracting Party at all times paid the invoiced Private Copying Levy within the specified period, and
 - c) after the end of the relevant calendar year the Contracting Party complied, within the specified time and fully, with the obligations included in Article 10 and the Audit Protocol and no irregularities have emerged in this respect.
2. The amount of the reimbursement and whether it will be granted will be determined by the Foundation after the end of each calendar year and, if granted, the reimbursement will be set off by the Foundation against later invoices.
3. If the conditions referred to in paragraph 1 of this article have not been fully met, the Foundation may nevertheless decide unilaterally to grant all or part of the reimbursement.
4. The costs incurred by Stichting de ThuisKopie in connection with legal proceedings may however give rise to adjust, following consultation with the Private Copying Levy Agency (SONT), the general reimbursement percentage referred to in paragraph 1 of this article.
5. Should it become apparent in retrospect that the reimbursement was granted in error, the Foundation may reclaim the amount reimbursed.
6. The Contracting Party is not permitted to set off and/or suspend payments based on this article.

Article 12 – Obligation of confidentiality and obligation to provide information

1. Following a request to that effect, the Parties will be obliged to provide each other with all the information reasonably required for the proper performance of this agreement and the Foundation's legal duties.
2. The Foundation, its employees and any third parties engaged by the Foundation are obliged to keep confidential all the technical, commercial, financial and other information exchanged between the Parties and which the Contracting Party has specified as confidential or which must otherwise be deemed to be confidential, unless any statutory provisions oblige the Foundation, its employees or third parties engaged by the Foundation to disclose such information or the necessity to disclose ensues from the Foundation's duties in implementing the Dutch Copyright Act and/or the Dutch Neighbouring Rights Act.

Article 13 - Liquidation

1. In the event of liquidation, if a winding-up petition has been filed or a moratorium, provisional or otherwise, has been applied for or granted or goods or capital seized, the Contracting Party will no longer be able to rely on the provisions of this agreement.
2. In the event that the business of either party is in a state of liquidation, has been granted a moratorium, provisional or otherwise, has been closed down or wound up,

the other party will have the right to terminate all or part of the agreement, without notice of default or judicial intervention and without prejudice to the other rights of the party terminating the agreement.

3. Termination of this agreement pursuant to the provisions of paragraph 2 of this article will in no manner whatsoever affect existing claims arising from this agreement or the law.

Article 14 – Term and termination

1. The agreement will come into effect on as soon as it has been signed by both Parties and has an initial term until 31 December 2018, following which this agreement will each time be renewed automatically for a period of 12 months, unless one of the Parties has given written notice to terminate the agreement, with due observance of a period of two months.
2. On termination of this agreement, the Contracting Party must provide a specification, no later than on the date of termination, of the Items the Contracting Party still has in stock at that time and for which the Private Copying Levy has not yet been paid. The Private Copying Levy still due must be paid immediately.

Article 15 – Unforeseen circumstances

1. With regard to any matters not provided for in this agreement, the Foundation will make further arrangements, with due observance of the statutory provisions. With regard to urgent matters, the Foundation will make a provisional arrangement.
2. Within a period of four weeks after the Foundation has communicated in writing what arrangement, as referred to in the first paragraph, has been made, the Contracting Party will be authorized to terminate the agreement early with immediate effect by giving notice in writing, failing which the arrangement will be deemed to form part of this agreement after expiry of the aforementioned period.

Article 16 – Priority provision

1. Unless agreed otherwise in writing, this agreement constitutes the entire agreement between the Parties concerning the collecting activities that have been created between them as a result of the Private Copying Regulation and will replace all previous written and oral agreements and arrangements between the Parties.
2. In the event of any conflict between the provisions of this agreement and other conditions applied by the Foundation, the provisions of this agreement will prevail.
3. Deviations from the provisions of this agreement and other conditions applied by the Foundation is only permitted in and in so far as these deviations have been set out in writing and legally signed by both Parties.

Article 17 – Choice of law

This agreement is governed by Dutch law. Any disputes concerning this agreement will in the first instance exclusively be decided on by the District Court of The Hague, the Netherlands.

Drawn up in duplicate and signed,

on behalf of the Contracting Party:

Place:

Date:

on behalf of the Foundation:

Hoofddorp

Date:

.....
[signature and company stamp]

Please sign and date both copies and initial each page and return them to Stichting de ThuisKopie, Postbus 3060, 2130 KB HOOFDORP.

EXAMPLE